

decision regarding the LOR on 3 Apr 15. Although unusual to provide an explanation for upholding, in full or part, an LOR, 47 FTW/CC's comments did not violate AFI 36-2907. The 47 FTW/SJA testified to this expanded final endorsement of the LOR:

For (b)(6),(b)(7)(B) [the 47 FTW/CC] in coordination with my office, did an expanded endorsement where he gave his rationale for why he believed that the, the allegations that were substantiated Why his rationale and thinking of why that happened or why he is upholding the LOR. Very unusual. The reason we did that was because (b)(6),(b)(7) his civilian defense counsel said uh, in his response, that this wouldn't be the end of it, that this would be taken to the BCMR, the Board of Corrections for Military Records. My advice to [47 FTW/CC] was to do an expanded third endorsement so that uh, if this paperwork did go to the BCMR um, the BCMR would have some record of his rationale as the Commander. Otherwise it would just be an LOR that was upheld or not, and the response from the individual. So the expanded third endorsement would allow some third party, neutral third party down the road, we thought the BCMR, to understand what [47 FTW/CC]'s thinking was on why to uphold the LOR. And in that for [redacted] it's clear. Uh, the reasons (b)(6),(b)(7) said for using Ambien did not exist during the timeframe that he was getting Ambien and was talking about getting fucked up on Ambien with [redacted] Ex 74:32-33)

(b)(6),(b)(7)
(C)
(b)(5),(b)(6),
(b)(7)(A),(b)(7)(C)

(b)(6),(b)(7)(C) acknowledged the final decision by endorsing the memorandum on 6 Apr 15. (Ex 51:5)

Generally, the IO found the LOR to be in compliance with AFI 36-2907 in that it explained the misconduct, the improvement expected and allowed the member 3 duty days to submit rebuttal documents (an extension was granted), and noted the individual's rebuttal would become part of the record. However, the LOR issued to (b)(6),(b)(7)(C) indicated that there was "substantial" evidence regarding (b)(6),(b)(7)(C) alleged violation of Art 112a, Art 133, and Art 134. In reviewing the evidence, although the IO noted that the evidence did appear to meet the "preponderance of" the evidence threshold, the term "substantial" appeared to overstate the strength of the actual evidence. That said, the evidence that (b)(6),(b)(7)(C) wrongfully used Ambien did appear to meet the preponderance threshold, therefore the LOR was an authorized action for the commander to take.

Additionally, the initial LOR as presented on 10 Mar 15 stated that the wrongful discussion of illegal use of Ambien occurred between on or about 14 Aug 2014 and 15 Aug 2015, yet the text messages were from 14 and 15 Aug 2012. Though an error, it is not found to be prejudicial because the member was on notice as to the offense and provided a response regarding the alleged illegal use as to the 2012 time frame vice 2015 time frame. Additionally, the final indorsement from the 47 FTW/CC addressed the correct timeframe of the suspected Ambien use. Finally, the commander did not advise the individual of the final decision within 3 duty days. This delay in final response did not invalidate nor affect the final outcome of the

LOR matter, but is noted as a procedural deviation. Despite this error, the member received due process.

NJP. The 47 FTW/CC recommended (b)(6),(b)(7)(C) be offered non-judicial punishment under UCMJ Article 15 on 2 Mar 15, based on three allegations of misconduct: wrongfully discussing his AFOSI investigation in violation of the 47 OG/CC no contact order (this was an additional instance not documented in the LOA described above), (b)(5),(b)(6),(b)(7)(A),(b)(7)(C) (b)(5),(b)(6),(b)(7)(A),(b)(7)(C) (Ex 52:1) (b)(6),(b)(7)(C) accepted the NJP on 20 Mar 15, and (b)(6),(b)(7)(C) requested a public appearance with the General Court Martial Convening Authority (GCMCA), 19 AF/CC, which was held on 9 Apr 15. (Ex 52:1) The 19 AF/CC found (b)(6),(b)(7)(C) guilty of two of the three offenses. While making his closing comments, the 19 AF/CC made an inappropriate comment some considered to be racist or derogatory in nature. (Ex 52:4, Ex 77:22) As result of these comments, the 19 AF/CC offered his resignation to the AETC/CC, who accepted it the following morning. (Ex 76:20, Ex 77:22)

In the interim between the 19 AF/CC's determination on 9 Apr 15, and the termination of the proceedings on 29 Apr 15 by the AETC/CC, (b)(6),(b)(7)(C) ADC and civilian counsel both submitted a request for appeal of the NJP. (Ex 52:148, 153) Prior to their full consideration, based on the timeline of events, the 2 Mar 15 NJP proceeding was terminated. (Ex 52:156) According to the AETC/SJA, the AETC/CC decided the best course to complete (b)(6),(b)(7)(C) NJP would be to terminate the 2 Mar 15 Article 15 proceedings and refer the case back to the 47 FTW/CC for action with the AETC/CC acting as GCMCA. (Ex 76:20) The original NJP proceeding was terminated on 29 Apr 15. (Ex 52:156)

The ultimate disposition of (b)(6),(b)(7)(C) NJP became complex after the comment made by the 19 AF/CC, ultimately resulting in the initiation of a second NJP proceeding for the same offenses. The 47 FTW/SJA discussed the overall sequence of events:

[19 AF/CC] upheld the Article 15 and imposed punishment [on 9 Apr 15]. On appeal, uh, the appeal highlighted the inappropriate comment. Um, and in the interim [19 AF/CC] resigned.... that threw 19th into an awful lot of turmoil uh, trying to figure out who was actually going to be the 19th Air Force Commander until they could get a permanent fill.... Uh, and then after him, [interim 19 AF/CC] who had just returned from deployment was put on orders. Um, and I think he was on orders until [permanent 19AF/CC]. So. Because of the turmoil and because of the um, the inappropriate remark, and the turmoil that that created, uh, [AETC/CC] determined it would be better to terminate that Article 15 action ... start over.... [AETC/CC] did not say I'm terminating this, start it over. He terminated it and sent the issue back down to the Wing to make a decision on what to do with it. So uh, it came back down to us. My recommendation to um, [47 FTW/CC] was to reissue the Article 15.... The reason for [AETC/CC]'s uh, termination of the Article 15 procedure had nothing to do with the sufficiency of the evidence. Um, and so based on the sufficiency, I, the evidence was the same. It was still

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sufficient to warrant an Article 15. My recommendation was the 15 and so the 15 was re-accomplished. Uh, this time it was determined that 19th Air Force would not be involved in it. And so uh, [47 FTW/CC], initiated the 15 process. It went to AETC Vice ... as the Article 15 uh, authority. He found uh, that uh, and there was no public appearance requested. But uh, he found that uh, like [previous 19 AF/CC] that uh, (b)(6),(b)(7)(C) had committed the offenses and, and gave, and punished him... (b)(6),(b)(7)(C) appealed and first appellate authority is the Article 15 opposed, the Article 15 authority, so in this case he appealed, first level appeal was Maj Gen Patrick who denied the appeal. Um, and then the next level appeal is the Vice Chief of Staff of the Air Force. So it is at some point between JA and uh, the Vice Chief of Staff. (Ex 52:33-34)

The AETC/SJA and 19 AF/SJA testified similarly to their understanding of AETC/CC's termination of the NJP action following the 19 AF/CC's comment. Although (b)(6),(b)(7)(C) ADC and civilian counsel both took exception to the 47 FTW/CC re-issuing the NJP after AETC/CC "terminated" the first action, believing that the Article 15 action was in effect dismissed at that point, but the command understood AETC/CC's direction merely returned the NJP action to their level to start over. (Ex 52:317-321) 19 AF/CC's remarks raised the potential for perceived error and AETC/CC had the authority to set aside the NJP, serve the best interests of the Air Force, and ensure jeopardy did not attach to the case. AETC/CC's memorandum was reviewed by AFLOA/JAJM, and determined to be legally sufficient. (Ex 52:346)

The 47 FTW/CC offered (b)(6),(b)(7)(C) the second NJP on 12 May 15 based on the original three charges as the 2 Mar 15 NJP, now referring the NJP to the new Article 15 Authority, AETC/CV⁷. (Ex 13:12, Ex 22, Ex 52:157) (b)(6),(b)(7)(C) accepted the NJP and submitted a written response on 20 May 15. On 25 Jun 15, AETC/CV found that (b)(6),(b)(7)(C) committed all three offenses as outlined, and imposed punishment of forfeiture of \$2,250.00 pay for two months and a reprimand, the same punishment as the 19 AF/CC had imposed for the original NJP action. (Ex 52:163, 167) (b)(6),(b)(7)(C) appealed the findings on 6 Jul 15 and AETC/CV denied the initial appeal on 29 Jul 15. The appeal package has been forwarded to AF/CV for final action on appeal and was not final as of this Inquiry.

Administrative Actions

(b)(6),(b)(7)(C) Aeronautical Orders were suspended on 14 Aug 14, citing AFI 11-402, para 3.7.1.6, as authority, with the member notified of the action that same day. (Ex 49:1-2, Ex 14:46) As previously referenced, this paragraph specifically establishes authority for commanders to take suspension actions for "Failure to Maintain Professional Standards," and gives specific guidance for upholding the action until such proceedings as a scheduled court-martial are complete. AFI 11-402 authorizes suspension actions for 180 days, and as such,

⁷ The AETC/CC, a General Officer GCMCA, delegated his powers under Article 15, UCMJ, to his Vice Commander, a principal assistant, pursuant to AFI 51-202, paragraph 2.8. (Ex 13:12), documenting his delegation in the 3 Aug 15 "Delegations of Certain AETC Authority" memorandum. (Ex 22)

AETC/A3V coordinated on and approved an extension on 6 Feb 15 up to the 365-day point, through 13 Aug 15. (Ex 49:3) Once the LOR issued by 47 FTW/CC was finalized on 6 Apr 15, the "proceedings" as defined by AFI 11-402 were complete such that the suspension action was terminated with a permanent disqualification approved by CSAF on 19 May 15, based on "Failure to Maintain Professional Standards." (Ex 49:4-7)

A basic premise of AFI 11-402 is that qualification for aviation service is not a right; it rests within the sole discretion of the approval authority (para 1.8.1). In accordance with AFI 11-402, squadron commanders submit aviation disqualification packages when a rated officer is under investigation for drug abuse (para 1.13 and 3.7). The USAF will disqualify a member from aviation service when he or she is found medically or professionally unqualified to perform aviation (para 1.8.4). (Ex 14:11) Disqualification packages are required to contain the commander's notification letter, justification for disqualification action, ARMS IDS, FHR and/or JHR (as applicable), Individual Training Summary (ITS), the suspension AO, and AF Form 1042, *Medical Recommendation for Flying or Special Operational Duty* (para 1.13.1). (Ex 14:16)

The 47 FTW/CC testified to the decision to permanently suspend or disqualify:

IO: And when was the decision made to permanently suspend? What was the threshold?

47 FTW/CC: We had firm action that there was drug abuse, we started those actions. The temporary suspension was immediate because he was under investigation, again, to mitigate the risk to the individual, to the organization, to the mission and to the Air Force. (Ex 78:34)

The IO reviewed this disqualification package and noted several discrepancies. First, the 47 FTW/CC initiated the suspension action citing AFI 11-402, para 3.7.1.5.2, guidance which applies to suspensions with regard to "Substantiated Drug Abuse." (Ex 14:45) The 47 FTW/CC noted that (b)(6), (b)(7)(C) was issued an LOR for violations of Articles 112a and 133, UCMJ. (Ex 49:4) Once coordinated and approved, the final aeronautical order which permanently disqualified (b)(6), (b)(7)(C) cited AFI 11-402, para 3.7.1.6.2, which is the authority to suspend or disqualify with regard to "Failure to Maintain Professional Standards." (Ex 14:46) It appeared that at some point in the coordination between the 47 FTW, AETC/A3 and AF/A3, the authoritative paragraph was changed from 3.7.1.5.2 (drug use), to 3.7.1.6.2 (professional standards). As both Articles 112a and 133, UCMJ, were cited as the documented misconduct, it would appear either paragraph could be cited as authority to take the action – but the package is inconsistent as currently written.

Second, as a consequence of inconsistently citing the authoritative paragraph for the action, it is not apparent if (b)(6), (b)(7)(C) should have been notified since the reason for the permanent disqualification action was changed between initiation and final action. Although

member notification was made upon initial suspension on 14 Aug 14, there is no evidence of member notification being made during the permanent disqualification action, initiated 10 Apr 15. (Ex 49:4) As the 47 FTW/CC cited AFI 11-402, para 3.7.1.5.2, no member notification should have been required. However, the 19 May 15 aeronautical order which permanently disqualified (b)(6),(b)(7)(C) cited AFI 11-402, para 3.7.1.6.2, which does require the member be notified of this action. Regardless, the notification provides no further procedural or substantive rights, such as the right to respond or submit matters.

This Inquiry recommends command review this disqualification action and the documentation be updated to reflect consistent authorities for the action taken. The IO does not find that updating or changing the paragraph cited in this action should alter the final outcome of the matter, but will correctly reflect the action with regard to the governing regulation.

Regarding separation, (b)(6),(b)(7)(C) had a Voluntary Separation Package (VSP) that was approved prior to this inquiry, and command intends to allow him to separate after all actions are complete. According to the testimonies of the commanders and respective SJAs, much deliberation took place regarding allowing (b)(6),(b)(7)(C) to continue with his previously approved VSP, which will afford both an Honorable discharge as well as a monetary payment, vice an involuntary administrative separation. According to the testimonies, (b)(6),(b)(7)(C) could be separated under a VSP program more expeditiously than through involuntary administrative discharge, which was ultimately more beneficial to good order and discipline than initiating a Show Case Action (SCA) involuntary separation action, which would more than likely take longer to conclude. (Ex 74:35) Therefore, no separation action will be initiated, and his VSP separation will be delayed until (b)(6),(b)(7)(C) Article 15 appeal is final.

(b)(6),(b)(7)(C)

Case Synopsis: OSI Investigation for Possession & Use of Controlled Substance (Molly), LOR; Failure to Obey and Order, LOA; Aeronautical Orders permanently revoked.

Investigation

(b)(5),(b)(6),(b)(7)(A),(b)(7)(C)

(b)(5),(b)(6),(b)(7)(A),(b)(7)(C)

(b)(5),(b)(6),(b)(7)(A),(b)(7)(C)

(Ex 54:3, 21-22) On 11 Aug 14, (b)(6),(b)(7)(C) consented to a urinalysis and provided a sample for drug testing, which was negative for any illegal narcotics. (Ex 54:17) Although it is significant to note that the most recent timeframe of the text message conversation referencing the alleged use or possession of Molly was from July 2014, and the urinalysis was in Aug 2014. According to Air Force Drug

Testing Laboratory, the detection window for Molly is only about 2-3 days. (Ex 59:1) AFOSI also searched (b)(6),(b)(7)(C) residence after the member consented, which disclosed no items of evidentiary value. Based on information obtained through the cell phone evidence, several witnesses were interviewed; witnesses indicated that they did not see (b)(6),(b)(7) possess or use Molly. (Ex 54:18) The AFOSI investigation was completed on 1 Apr 15. (Ex 54:3)

Evidence

The primary evidence indicating potential possession or use of a controlled substance obtained in (b)(6),(b)(7)(C) AFOSI investigation were cell phone text message conversations among (b)(6),(b)(7)(C) other 86 FTS IPs and various civilian personnel. (b)(6),(b)(7)(C) cell phone was obtained through a magistrate-approved search and seizure request on 11 Aug 14. (Ex 43:20-4, Ex 54:15-18) (b)(5),(b)(6),(b)(7)(A),(b)(7)(C)

(b)(5),(b)(6),(b)(7)(A),(b)(7)(C)

Previously, on 8 Oct 13, (b)(6),(b)(7)(C) had a text message conversation with a female civilian where he asked about the availability of Molly, "Do you have any access to Molly? No pressure but I think my experience would totally benefit." (Ex 54:15-16) On 11 Oct 13, (b)(6),(b)(7)(C) had a text message conversation with a different female civilian where he asked about the effects of Molly and how long it would remain in his system, "Cool, I would one day like to try," and then continuing, "Is it out of your system fast?" (Ex 54:95) On 22 Feb 14, (b)(6),(b)(7)(C) had a conversation via text message with a female civilian discussing drug use and the effects different drugs have on someone. During this conversation (b)(6),(b)(7)(C) stated he did not smoke marijuana but he had "no qualms with Molly. That's out of the system fast enough." (Ex 54:15-18) (b)(6),(b)(7)(C) went on to describe the effects of Molly as, "And so happy. Everything feels amazing and you have a big shut eating grin." When asked by the civilian, "how many times have you done it?" (b)(6),(b)(7)(C) replied, "Twice." (Ex 54:15-18) None of the witnesses ever saw (b)(6),(b)(7)(C) possess or use Molly, and one witness stated (b)(6),(b)(7)(C) may have only been joking about using drugs. (Ex 54:8, 9, 10-11, 27) One witness stated that although (b)(6),(b)(7)(C) spoke of drugs in their text message conversations, she never saw him possess or use the drugs, and that he was "curious about different drugs since he could not try them himself." (Ex 54:9) On 5 Aug 14, (b)(6),(b)(7)(C) and a civilian from Austin, TX had a conversation via text message, where (b)(6),(b)(7)(C) asked the civilian if he had any "Molly" or "happy pills." (Ex 54:15-18)

⁸ "Rage" according to the top definition in the Urban Dictionary (<http://www.urbandictionary.com>) is: To party extremely hard: Excessive drinking, taking of pills, boozing or any combination of the three.

Disposition

LOA. Similar to (b)(6),(b)(7)(C) was offered an LOA on 14 Oct 14 by the 47 OG/CC as result of violating an 11 Aug 14 no-contact order given to (b)(6),(b)(7) by the 47 OG/CC. (Ex 56:1) The 14 Oct 14 LOA stated that (b)(6),(b)(7)(C) discussed the ongoing investigation with members outside of his chain of command, expressly forbidden in the no-contact order given by the 47 OG/CC on 11 Aug 14, the day AFOSI interviewed (b)(6),(b)(7)(C). In his 16 Oct 14 response, (b)(6),(b)(7) apologized for the incident, admitting that he had violated the order. (Ex 56:3)

Generally, the IO found the LOA to be in compliance with AFI 36-2907 in that it explained the misconduct, the improvement expected and allowed the member 3 duty days to submit rebuttal documents, and noted the individual's rebuttal would become part of the record. However, the commander did not advise the individual of the final decision within 3 duty days. This delay in final response did not invalidate nor affect the final outcome of the LOA action but is noted as a procedural deviation. Despite this error, the member received due process.

LOR. Due to the nature of the alleged misconduct combined with the extent and nature of the evidence collected by AFOSI, the chain of command and respective SJA offices appeared to deliberate extensively on the proper avenue to address the allegations with regard to (b)(6),(b)(7). Based on the evidence, both the 47 FTW/CC and the 47 FTW/SJA believed that (b)(6),(b)(7) had possessed and used controlled substances by a preponderance of the evidence. However, they concluded that without any evidence to corroborate the text messages, the case would not withstand scrutiny in a court-martial – meaning, the evidence did not meet a “beyond reasonable doubt” evidentiary standard. (Ex 74:29-30, Ex 78:31-33) Based on these discussions and deliberations, the 47 FTW/CC and SJA determined that NJP would not be an appropriate method to address the suspected misconduct. Therefore, on 10 Mar 15, the 47 FTW/CC offered (b)(6),(b)(7)(C) an LOR documenting the suspected misconduct, which read, in part:

Investigation has disclosed substantial evidence that between on or about 8 October 2013 and on or about 11 July 2014, you discussed the use of and you wrongfully used a controlled substance in violation of Articles 112a, Uniform Code of Military Justice (UCMJ) and Article 133, UCMJ. (Ex 57:1)

The 47 FTW/SJA testified as to the deliberations with regard to the evidence in (b)(6),(b)(7)(C) case and what avenues would be available to the command:

(b)(6),(b)(7)(C) is engaging with two or three females over the sum, over the fall of 2013 in which he is talking about and asking for Molly. Then two months later, I think it's Feb of 14, he engages with yet another person, and in a discussion of drug use, admits that he has used the substance he was asking for earlier uh, admits that he used it twice. Not only does he admit that he used it, he admits what he, outlines what the effects are. Um.

And goes even further to say that he's okay with Molly because it filters through the system quickly, which is why he wouldn't smoke pot.... His admissions themselves meet all of the elements of the offense of wrongful use of an illicit drug. The one piece we were missing was a scintilla of evidence to corroborate his admissions. And despite as much uh, effort as OSI put forward, we were not able to find the corroboration. And because we couldn't find a corroboration, those statements would not be able to be used in a courts martial. So putting it on a 15 was, was not an option. I, my position is I'm never going to recommend to a Commander to give an Article 15 for something that the evidence doesn't support from a court martial What do you do with that if you can't offer an Article 15, what do you do with that? The options are nothing, or you address it in some other forum and my recommendation was an LOR.... An LOR documents the misconduct or the alleged misconduct. LOR gives the opportunity to respond um, and it's not unusual.... So this is not an unusual practice. LOR. That was my recommendation.... (Ex74:29-30)

The 47 FTW/SJA continued:

So when a Commander has very good evidence of drug use from someone, a rated officer, an officer that is entrusted not only with multi-million dollar aircraft but is also entrusted to teach young officers who are trying to become pilots. And in that context the Commander has to, in my opinion, it would be irresponsible of a Commander to pretend like nothing happened, to take what is otherwise very good evidence, evidence that is lacking the ability, the corroboration necessary to prosecute or offer an Article 15, it would be irresponsible for him to then just turn around and say, eh, slap on the hand, don't do that again, go back to work. And so my advice to (b)(6),(b)(7)(C) was if you believe that he is using drugs, and I believe that the evidence supports that, from a preponderance of the evidence standard, then an LOR is appropriate. That is the decision he made. (Ex 74:38)

With regard to the reliance on the text messages as the only evidence in (b)(6),(b)(7)(C) case, the 47 FTW/SJA testified:

Would it be different if he had written out a letter and then and, and then provided it? Would that change the nature of the evidence? Or would it matter if he had verbally admitted it to another person who then reported it ... It is an admission....We have evidence in which an individual has admitted to soliciting for a drug and admitted to using a drug. (Ex 74:30-31)

The 47 FTW/CC also testified as to his belief that (b)(6),(b)(7)(C) had both "discussed the use of and you wrongfully used a controlled substance ..." as stated in the LOR:

IO: So the two elements there, you discussed, I don't think anybody will argue that, because the texts are there and everybody can see that and the evidence that was gathered. But it's a strong statement and you obviously strongly believed that in talking, communicating to (b)(6),(b)(7)(C) here, "you wrongfully used a controlled substance."

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47 FTW/CC: Yes.

IO: And all of that context of all the evidence you discussed, you firmly believed that by the standard of evidence of this mechanism would require that he used a controlled substance?

47 FTW/CC: Yes. ...[47 FTW/CC quoting from (b)(6),(b)(7)(C) LOR evidence]] "And so happy. Everything makes you feel amazing, you have a big shit uh, or shit-eating grin." "How many times have you done it?" "Twice." (Ex 78:33)

The 19 AF/CC also testified of his strong belief that (b)(6),(b)(7)(C) both wrongfully discussed the use of, as well as the actual use of the controlled substance:

Well (b)(6),(b)(7)(C) was probably the worst offender of all of them when you take a look at the texts. I mean (b)(6),(b)(7)(C) talked, he had several, I mean I'm not, I would say dozens of emails and texts talking about how, how many times he did it, how it made him feel, would talk about the effects ... If we had had corroborating evidence I would have preferred a court-martial in a heartbeat ... We did not have corroborating evidence... (Ex 77:24)

AFI 36-2907 states that the standard of evidence to issue an LOR is preponderance of evidence; more likely than not that an event occurred. Based on a review of the text messages included in the LOR, a preponderance of evidence existed to conclude that (b)(6),(b)(7)(C) wrongfully used MDMA. In text messages dated 12 Feb 14, (b)(6),(b)(7)(C) stated "[Molly] gets out of the system fast enough" and admitted to using it twice and "everything feels amazing and you have a big shut eating grin" in text messages dated 12 Feb 14. Prior to his admission of use of Molly, on 8 and 13 Oct 13, (b)(6),(b)(7)(C) sent a texts asking whether (b)(6),(b)(7)(C) has access to Molly and asks whether it is out of your system fast; and then states "maybe I'll have to try." (Ex 54:16-17)

On 16 Mar 15 (b)(6),(b)(7)(C) submitted a response to the LOR under the letterhead of his civilian counsel. (Ex 57:24) In his response, (b)(6),(b)(7)(C) denied ever possessing or using any controlled substance, stating that the text messages had been taken out of context, and that they were actually just jokes and banter between friends. (b)(6),(b)(7)(C) further stated that the texts were intended to portray him as more approachable to women, and "not seem like a straight arrow." (Ex 57:24)

After considering (b)(6),(b)(7)(C) response, the 47 FTW/CC upheld the LOR and informed (b)(6),(b)(7)(C) of his decision on 26 Mar 15. (Ex 57:6) In finalizing the action, the 47 FTW/CC also notified (b)(6),(b)(7)(C) the LOR would be filed in an Unfavorable Information File, IAW AFI 36-2907, *Unfavorable Information File (UIF) Program*, 26 Nov 14, paragraph 3.4. (Ex 57:6)

Generally, the IO found the LOR to be in compliance with AFI 36-2907 in that it explained the misconduct, the improvement expected and allowed the member 3 duty days to submit rebuttal documents, and noted the individual's rebuttal would become part of the record. There were two administrative errors noted on the 10 Mar 15 LOR. Specifically, under paragraph 1.a., where the various text messages as evidence supporting the offenses by date, two of the dates as compared to the text message evidence attached to the LOR appear to be in error: "11 October 2013" should read "10 October 2013" and "18 March 2014" should read "17 Mar 2013." (Ex 57:1) These clerical errors do not affect the outcome of the eventual action, as the member was provided the actual evidence indicating the correct dates.

Additionally, the commander did not advise the individual of the final decision within 3 duty days as required by the governing AFI. This delay in final response did not invalidate nor affect the final outcome of the LOR action but is noted as a procedural deviation. Despite this error, the member received due process.

Administrative Actions

(b)(6),(b)(7)(C) Aeronautical Orders were suspended on 14 Aug 14, citing AFI 11-402, para 3.7.1.6, as authority, with the member notified of the action that same day. (Ex 55:1-2, Ex 14:46) As previously referenced, this paragraph specifically establishes authority for commanders to take suspension actions for "Failure to Maintain Professional Standards," and gives specific guidance for upholding the action until such proceedings as a scheduled court martial are complete. AFI 11-402 authorizes suspension actions for 180 days, therefore AETC/A3V coordinated a suspension extension request as (b)(6),(b)(7)(C) Aeronautical Orders action on 6 Feb 15. (Ex 57:3) Once the LOR was finalized on 26 Mar 15 the 47 FTW/CC recommended permanent disqualification on 10 Apr 15, citing AFI 11-402, para 3.7.1.5.2 as authority, "Substantiated Drug Use." However, when the permanent disqualification order was published 19 May 15, it cites AFI 11-402, para 3.7.1.6.2 as the authority, "Failure to Maintain Professional Standards."

Similar to (b)(6),(b)(7)(C) disqualification package, this Inquiry finds that the AFI 11-402 authoritative paragraph is not consistent throughout the disqualification package, therefore it is equally unclear as to the notification requirements or notifications made with regard to disqualification. This Inquiry recommends command review this disqualification action and the documentation be updated to reflect consistent authorities for the action taken. The IO does not find that updating or changing the paragraph cited in this action should alter the final outcome of the matter, but will correctly reflect the action with regard to the governing regulation.

On 7 May 15, the 47 FTW/CC recommended to the Show Cause Authority (SCA) that he initiate involuntary separation action against (b)(6),(b)(7)(C) based on the evidence of his use of a controlled substance, as defined in AFI 36-3206, *Administrative Discharge Procedures for*

Commissioned Officers, 9 Jun 04 (Change 7, 2 Jul 13), paragraph 3.6.3. (Ex 58:1, Ex 11:15)
Regarding his initiation of the SCA action, the 47 FTW/CC testified:

There was only one Show Cause that I felt comfortable at the time with and that was (b)(6),(b)(7)(C) due to the volume of evidence ... I'll call it sufficient evidence to show a period of five months of a decline into the probing and potential experimenting and taking of Molly. (Ex 78:29)

The 47 FTW/CC testified further of his decision to recommend the initiation of SCA action on (b)(6),(b)(7)(C)

IO: Were you part of the recommendation for the Show Cause Action for (b)(6),(b)(7)(C)

47 FTW/CC: Yes, I was.

IO: Okay and what led you to recommend that?

47 FTW/CC: Well, at some point, I believed he did drugs.... I had sufficient evidence to believe he did drugs. I had sufficient evidence to see who he's trying to cultivate relationships with and trying to do things.... At the end of the day, you're like okay, do I want this guy flying our aircraft? No....Do you want a guy like this with secrets, top secrets, secret, or as an officer in the military and uh, at the end of the day it was no. Because his failure to maintain professional standards, you know, the habits, the traits and characteristics that he displayed um, in his communications with people that he was aligning himself with just led me to that conclusion. There was sufficient evidence where I lost faith and confidence in this officer. (Ex 78:36)

The AETC/SJA provided a legal review recommending the initiation of an SCA action (Ex 58:2-4), and also testified to reviewing (b)(6),(b)(7)(C) SCA package:

That's correct, and that's probably the one that I have, that I'm the most familiar with because when, when the Show Cause has to come through the CV. And, and I can tell you when that one hit my desk, because that's when I initially looked at all of the text messages and, and really asked myself and um, I know you guys don't know me, but Ms. (b)(6),(b)(7)(C) does, and I'm, I can be pretty bulldoggish on things. When I asked myself, wow is this really enough evidence? And I can tell you, I looked at it hard and I looked at it long and I mulled over it and had discussions with [19 AF/SJA Office] and ultimately in my heart of hearts, it's, in my eyes, it's more than enough evidence. (Ex 76:23)

As defined by AFI 36-3206, para 1.1, SCA is delegated to the GCMCA for wings not commanded by general officers. (Ex 11:8) The GCMCA for the 47 FTW is the 19 AF/CC, as authorized by Special Order G-15-001, 24 Mar 15. (Ex 21:1) (b)(6),(b)(7)(C) was notified of the initiation of the SCA on 14 May 15 by the 19 AF/CC, the designated SCA. (Ex 58:5-8)

After this SCA action was initiated, (b)(6),(b)(7)(C) status changed due to his time in service, in that he became a non-probationary officer after accruing more than five years of total active federal commissioned service. (Ex 11:49) As a non-probationary officer, IAW AFI 36-3206, (b)(6),(b)(7) became entitled to a Board of Inquiry (BOI). (b)(6),(b)(7)(C) was notified on 14 Aug 15 of his change in status and his entitlement to appear before a BOI. (Ex 58:13) Generally speaking, the BOI entitles the member to additional due process. AFI 36-3206 specifically states, "The BOI gives respondents who face discharge proceedings a fair and impartial hearing, makes case findings, and recommends whether the Air Force should retain or discharge officers." (Ex 11:33) The SCA was terminated by AETC/CC on 14 Aug 15, and as of the time of this inquiry, the revised SCA with BOI rights had not been re-initiated against the member.

In reviewing the documentation with regard to (b)(6),(b)(7)(C) SCA action, it appeared to be procedurally correct IAW AFI 36-3206, in that the action was initiated by the appropriate SCA, 19 AF/CC, the member was appropriately notified, and the action was appropriately terminated once (b)(6),(b)(7)(C) status changed for probationary to non-probationary.

(b)(6),(b)(7)(C)

Case Synopsis: OSI Investigation for Possession & Use of Controlled Substance; Knowledge of UPR; Obstruction; LOR and NJP/Article 15; Aeronautical Orders permanently revoked

Investigation

AFOSI's investigation into the alleged misconduct of (b)(6),(b)(7)(C) began on 11 Aug 14 based on information found from the magistrate-approved search of (b)(6),(b)(7)(C) cell phone on 11 Aug 14. Specifically, AFOSI discovered text message conversation between the two IPs regarding the use and possession of Molly (3,4-methylenedioxy-methamphetamine (MDMA), also known as ecstasy, a Schedule I narcotic, Ex 20:3). (Ex 60:3, 13-17) On 12 Aug 14, AFOSI coordinated a magistrate approved search and seize of (b)(6),(b)(7)(C) cell phone as well. (Ex 60:15-16) The text messages from 10-12 Jul 14 indicated that (b)(6),(b)(7)(C) was asking (b)(6),(b)(7)(C) if he was joining in on the events that night and that "Molly would be present." A second text message discussion related to the two IPs moving in with each other and that they "would die first from alcohol and Molly poisoning." (Ex 60:15-16) Similar to (b)(6),(b)(7)(C) case, of the several potential witnesses AFOSI identified via the text messages, none of the witnesses interviewed by AFOSI stated they had ever seen (b)(6),(b)(7)(C) in possession of, or use, Molly. (Ex 60:4, 6, 7, 11)

Evidence

AFOSI's investigation into the actions of (b)(6),(b)(7)(C) produced text message conversations from both (b)(6),(b)(7)(C) cell phone where the possession and use of Molly was a topic. (Ex 60:3, 13-17) Witness interviews provided no evidence that either of the two IPs had either possessed or used the controlled substance.

(b)(5),(b)(6),(b)(7)(A),(b)(7)(C)

Disposition

LOR. Similar to (b)(6),(b)(7)(C) drug use case primarily depended on the text messages gained from the personal cell phones. No witness statements or specific drug tests (urinalysis or hair sample) corroborated these text conversations. Due to the nature of the alleged misconduct combined with the nature of the evidence collected by AFOSI, the chain of command and respective SJA offices deliberated extensively on the proper avenue to address the allegations; again a similar discussion as with regard to (b)(6),(b)(7)(C) case. (Ex 74:37)

Based on the text message evidence, both the 47 FTW/CC and the 47 FTW/SJA believed that (b)(6),(b)(7)(C) had possessed and used controlled substances. Likewise, both testified that without evidence to corroborate the text messages, the case would not withstand scrutiny in a court-martial's beyond reasonable doubt standard; therefore NJP would not be an appropriate method to address the suspected misconduct since AFI 51-202, paragraph 3.4, indicates that since "proof beyond a reasonable doubt of each element of every offense by legal and competent evidence is a prerequisite to conviction ... [w]hether such proof is available should be considered before initiating action under Article 15, UCMJ." And since NJP is a voluntary proceeding, the member can turn down the NJP and ask for trial by court-martial. (Ex 78:37-38)

The 47 FTW/CC testified to his understanding of the evidence:

47 FTW/CC: I'll go to (b)(6),(b)(7) here. So going into this um, based on the evidence that was presented from (b)(6),(b)(7)(C) phone and from (b) or I'm sorry, (b)(6),(b)(7) (b)(6),(b) phone, that's where we got most of this evidence from. Because (b)(6), (b)(6),(b)(7)(C) the day before or two days before, deleted over 2,000 text messages and

electronic correspondence to, we think, I believe, impede the investigation and cover his tracks. ...

IO: So my question is. I'm assuming the evidence you believed was strong enough to state in his LOR that he wrongfully discussed the use of and used a controlled substance?

47 FTW/CC: Yes. Absolutely. So um, coming to a conclusion who was a, and I'm trying to get to that Letter of Reprimand as we went through this. It was based on the evidence that was collected, the comprehensiveness, the vastness, the, you know, kind of going to the connective tissue of who (b)(6), (b)(7)(C) surrounded himself with, who (b)(6), (b)(7)(C) was, um, interacting with. And that one statement where uh, he's talking with his group of friends, (b)(6), (b)(7)(C) who you know, I believe based on the text messages from the females up in Austin, from the text messages of (b)(6), (b)(7)(C) knowing and asking (b)(6), (b)(7)(C) for Molly and happy pills, and (b)(6), (b)(7)(C) who is the guy who OSI went to his house with local law enforcement and they failed to answer the door and the house is now on the kind of known drug use kind of list in, I think it was, Jacksonville. You know, when he says things like um, and I think either I think it's either (b)(6), (b)(7)(C) starts off the text, hey we're raging at XS, and XS is a rave electronic club in Vegas. And he says with "skuuytts" and skuuytts is kind of like girls on Molly type of thing. And then "USC girls have us some Molly."

IO: So likewise with the (b)(6), (b)(7)(C) case, you would have had a discussion with your SJA regarding the strength of the evidence and whether an LOR or NJP was the appropriate mechanism?

47 FTW/CC: Absolutely, absolutely. ... the entirety of the evidence that you're gathering that points to a pattern and a history of this type of behavior lead a commander to that threshold of sufficient evidence of whether you want this officer flying your aircraft. Whether you want this officer instructing your young pilots. And we already said, philosophically, the most influential people in a young aviator's life are their first instructors. The first people who touch them and instruct them and show them the way, the professionalism, the discipline and the boldness that our rated force needs today in cultivating the future of our Air Force? (Ex 78:37-38)

Therefore, based on SJA advice, discussions with the respective 19 AF/CC and SJA, and the 47 FTW/CC's belief in the strength of the evidence to meet the preponderance threshold for an LOR, the 47 FTW/CC offered (b)(6), (b)(7)(C) an LOR on 10 Mar 15, the same day and with similar wording as the LOR offered to (b)(6), (b)(7)(C) (Ex 62:1) The LOR stated:

Investigation has disclosed substantial evidence that between on or about 28 May 14 and on or about 12 July 2014, you wrongfully discussed the use of and used a controlled substance in violation of Articles 112a, Uniform Code of Military Justice (UCMJ) and Article 133, UCMJ. (Ex 62:1)

(b)(6),(b)(7)(C) submitted a response to the LOR on 17 Mar 15 after a request for an extension past the original 13 Mar 15 suspense that 47 FTW/CC had approved. (Ex 62:6) (b)(6),(b)(7)(C) response consisted of a statement from his civilian attorney, his own response, his past drug testing results, and several witness statements as well as several documents pertaining to one of the weekend trips to a Las Vegas dance club alluded to in the text messages. (Ex 62:9-42) (b)(6),(b)(7)(C) attorney's main point in his response to the 47 FTW/CC was that the allegations within the LOR were not legally supportable, and that the LOR was a "backdoor" to make the "allegations stick that would, otherwise, fail judicial scrutiny." (Ex 62:9-12) The attorney's response continued that the references to Molly by his client were merely jokes that borrowed from pop culture such as Miley Cyrus song lyrics. (Ex 62:11)

On 3 Apr 15, the 47 FTW/CC notified (b)(6),(b)(7)(C) that he upheld the LOR in a memorandum that included additional evidence. (Ex 62:4-5) Although unusual to provide an explanation for upholding, in whole or in part, an LOR, 47 FW/CC's comments did not violate AFI 36-2907.

AFI 36-2907 states that commanders should use the preponderance of the evidence standard in administrative disciplinary actions such as LORs (i.e., that it is more likely than not an event occurred). In reviewing the LOR issued to (b)(6),(b)(7)(C) and the associated evidence, the IO did not find that the preponderance of the evidence supported the conclusion that (b)(6),(b)(7)(C) wrongfully used Molly [3,4-Methylenedioxymethamphetamine known as MDMA]; the IO also did not find there was "substantial" evidence as indicated in the LOR with regard to the Article 112a offense. Although the 47 FTW/CC and advising SJA testified to their belief that the evidence supported the offenses as listed in the LOR, the IO did not find the evidence as cited in the LOR, or as found in AFOSI ROI, to meet a preponderance of evidence threshold to indicate that (b)(6),(b)(7)(C) violated Article 112a, UCMJ. The IO found the text messages did not sufficiently support the elements of Article 112a, specifically, the possession or actual use of the controlled substance, Molly [3,4-Methylenedioxy-methamphetamine known as MDMA]. The IO finds that the preponderance of the evidence does not support the statements from the LOR with regard to (b)(6),(b)(7)(C) actions, "you used 'molly'" and "your wrongful intended use of Molly."

However, it is reasonable to conclude, by a preponderance of the evidence, that the text messages sent by (b)(6),(b)(7)(C) to a variety of individuals discussing Molly compromised (b)(6),(b)(7)(C) standing as an officer and thereby violated Article 133, UCMJ (Conduct unbecoming an officer and gentleman). The LOR, as written, did place (b)(6),(b)(7)(C) on notice that, not only his alleged drug use was being addressed, but also his actual discussion of the wrongful use of illegal drugs in a manner which connoted his approval of such illegal conduct. Such conduct is contrary to Article 133, UCMJ.

Procedurally, beyond the evidentiary issue of the Article 112a offense, the IO found the LOR to be in compliance with AFI 36-2907 in that it explained the misconduct, the improvement expected and allowed the member 3 duty days to submit rebuttal documents (an extension was requested and approved), and noted the individual's rebuttal would become part of the record, with one exception. The commander did not advise the individual of the final decision within 3 duty days. This delay in final response did not invalidate nor affect the final outcome of the LOR action but is noted as a procedural deviation. Despite this error, the member received due process.

The IO recommends removing the language which is set out in support of the Article 112a offense from the 10 Mar 15 LOR. The IO further recommends that the 47 FTW/CC consider the appropriateness of retaining the LOR based on the Article 133 offense alone. If the 47 FTW/CC elects to modify the LOR as recommended and remains convinced that the LOR is appropriate to address the Article 133 offense, such an action would be supported by the preponderance of the evidence standard and would be upheld.

NJP. On 23 Apr 15, the 47 FTW/CC offered NJP Article 15 punishment to (b)(6),(b)(7)(C) which included the following charges: Conspired to violate AETCI 36-2909 in encouraging concealment of a UPR; False Official Statement; Failure to report a UPR; and, Obstruction in deleting incriminating text messages. (Ex 63:4) (b)(6),(b)(7)(C) responded to the Article 15 on 28 Apr 15 under a cover letter from his civilian attorney. (Ex 63:5-6) This response package included a memorandum from (b)(6),(b)(7)(C) as well as his training record and an Officer's call meeting record, which (b)(6),(b)(7)(C) cited as the 47 FTW/CC's briefing on UPR reporting requirements, which was held the day before his AFOSI interview. (Ex 63:7-13) On 6 May 15, the 47 FTW/CC notified (b)(6),(b)(7)(C) that the Article 15 authority had changed and that (b)(6),(b)(7)(C) could once again decide on whether to accept Article 15 proceedings or demand a trial by court-martial.⁹ (Ex 63:13) (b)(6),(b)(7)(C) indorsed the 6 May 15 memorandum on 11 May 15, accepting the Article 15 proceeding under the new Article 15 Authority. (Ex 63:13)

If commanders are changed before the NJP proceeding is complete, the member must be informed of the change and be given another opportunity to accept NJP or demand trial by court-martial, IAW AFI 51-202, para. 3.10. (Ex 13:16-17) This procedure also applies if there is a change of superior commanders. Although unusual, (b)(6),(b)(7)(C) was provided three different notices as to the change in commanders as required by AFI 51-202, and he elected to continue with the NJP proceeding with each notice. Although this was an unusual set of circumstances, upon review, they were determined to be procedurally correct and IAW the

⁹ The Article 15 authority changed due to the inappropriate comment made by the previous 19 AF/CC on 9 Apr 15. With the resignation of the 19 AF/CC, and the 19 AF/CC was not a General Officer, the Article 15 Authority became the AETC/CV.

Article 15, UCMJ procedures and processes found in the Manual for Courts-Martial (MCM) and AFI 51-202.

On 29 Jun 15, the Article 15 action was re-offered to (b)(6),(b)(7)(C) reflecting the change of command of the 47 FTW/CC as well as the now in-place 19 AF/CC as the Article 15 Authority. (Ex 63:16) (b)(6),(b)(7)(C) accepted the Article 15 proceeding and submitted a cover memo to his previously submitted response from 28 Apr 15. (Ex 63:16, 24) On 23 Jul 15, the 19 AF/CC determined that (b)(6),(b)(7)(C) committed the offenses as outlined in the Article 15 and punished (b)(6),(b)(7)(C) with a reprimand and forfeiture of \$1,367.00 pay per month for two months with one month suspended through 22 Jan 16. (Ex 63:20, 23) (b)(6),(b)(7)(C) acknowledged the final determination on 27 Jul 15 and appealed on 30 Jul 15, based on (b)(6),(b)(7)(C) previously submitted response. (Ex 63:20-21, 25) The 19 AF/CC denied the appeal on 11 Aug 15 and forwarded the appeal to the AETC/CV for appellate consideration, consistent with AFI 51-202, para 4.2, that a member may appeal Article 15 punishment to the next superior authority of the commander who imposed the punishment. On 19 Oct 15, the AETC/CV denied the appeal as the final appellate review authority, as supported by an AETC/SJA legal review dated 7 Oct 15, IAW AFI 51-202. (Ex 63:26-39) This NJP action appears to be in compliance with MCM, Part V, and AFI 51-202.

Administrative Actions

(b)(6),(b)(7)(C) Aeronautical Orders were suspended on 14 Aug 14, citing AFI 11-402, para 3.7.1.6, as authority, with the member notified of the action that same day. (Ex 61:1-2, Ex 14:46) As previously referenced, this paragraph specifically establishes authority for commanders to take suspension actions for "Failure to Maintain Professional Standards," and gives specific guidance for upholding the action until such proceedings as a scheduled court martial are complete. AFI 11-402 authorizes suspension actions for 180 days, therefore AETC/A3V coordinated a suspension extension request on 6 Feb 15. (Ex 61:3) Once the LOR was finalized on 26 Mar 15, the 47 FTW/CC recommended permanent disqualification on 10 Apr 15, citing AFI 11-402, para 3.7.1.5.2 as authority, "Substantiated Drug Use." (Ex 61:4) However, when the permanent disqualification order was published 19 May 15, it cited AFI 11-402, para 3.7.1.6.2 as the authority, "Failure to Maintain Professional Standards." (Ex 61:7)

Similar to (b)(6),(b)(7)(C) disqualification package, this Inquiry finds that the AFI 11-402-referenced authoritative paragraph was not consistent throughout (b)(6),(b)(7)(C) disqualification package; therefore it is equally unclear as to the notification requirements or notifications made with regard to his disqualification. Additionally, in light of the previous analysis with regard to adequate preponderance of evidence of (b)(6),(b)(7)(C) Article 112a offense as documented in the LOR, this Inquiry suggests command reassess the aeronautical disqualification package, specifically with regard to the basis of the disqualification, e.g., "drug use" versus "professional standards." The IO does not find that updating or changing the

paragraph cited in this action should alter the final outcome of the matter, but will correctly reflect the action with regard to the governing regulation.

According to the 47 FTW/SJA, once the NJP action for (b)(6),(b)(7)(C) is finalized (appellate review complete and decision to place of file in Officer Selection Record), a Show Cause Action decision will be made with regard to (b)(6),(b)(7)(C) Ex 74:39)

(b)(6),(b)(7)(C)

Case Synopsis: Wrongful use of Percocet; NJP set aside by 19 AF/CC; LOA for violation of no-contact order; Promotion Propriety Action to delay promotion.

Investigation

This AFOSI investigation was initiated on 11 Aug 14, based on information found during the search of (b)(6),(b)(7)(C) cell phone during the previously described investigation of his alleged drug use. (Ex 65:3) Specifically, text messages were discovered sent from (b)(6),(b)(7)(C) which indicated he was using Percocet. On 11 Feb 14, (b)(6),(b)(7)(C) sent a text message to (b)(6),(b)(7)(C) stating "P. S. I'm enjoying some percocet :)" to which (b)(6),(b)(7)(C) responded, "Haha Nice." Subsequently, (b)(6),(b)(7)(C) text messaged (b)(6),(b)(7)(C) stating, (b)(6),(b)(7)(C) just texted me that he's on Percocet" and "I'll try to get some good quotes." (Ex 65:8) On 11 Aug 14, AFOSI interviewed (b)(6),(b)(7)(C) and, subsequent to Article 31 rights advisement, he verbally stated he remembered sending a text message or a voice mail to (b)(6),(b)(7)(C) about using Percocet as a joke and denied using Percocet while in the military. Lt (b)(6),(b)(7)(C) did not recall texting (b)(6),(b)(7)(C) concerning the use of Percocet and stated he had (b)(5),(b)(6),(b)(7)(A),(b)(7)(C) (b)(5),(b)(6) (Ex 65:4) After answering several questions during the interview, (b)(6),(b)(7)(C) requested legal counsel and AFOSI terminated the interview. (Ex 65:4)

On 11 Aug 14, a search of (b)(6),(b)(7)(C) cellular phone was conducted based on a magistrate approved search authority. (Ex 65:16-18) Text messages between (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) from 7 Feb 14 thru 13 Feb 14 indicated (b)(6),(b)(7)(C) stated he had strep throat and was placed on quarters for 72 hours. On 10 Feb 14 (b)(6),(b)(7)(C) sent a text to (b)(6),(b)(7)(C) stating "P.S. I'm communicating under the influence ☺." Approximately an hour later, (b)(6),(b)(7)(C) sent another text message stating, "We should probably wait until I'm done with the Percocet... because I always over react on this drug, but it reduces the pain enough to drink water." (Ex 65:19-25) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

Evidence

Through properly executed military magistrate search and seizure authorizations, text message evidence was obtained from three separate cell phones, those of (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) which showed that a conversation took place indicating (b)(6),(b)(6),(b)(7) was taking Percocet. (b)(6),(b)(7)(C) medical records indicated he did not have a prescription for Percocet but was seen for sore throat symptoms. (Ex 65:8-25)

During his AFOSI interview, on 11 Aug 14, (b)(6),(b)(7)(C) was told his personal cell phone was subject to a magistrate approved search and seizure. According to the documentation in the AFOSI report, the approval was obtained verbally on 11 Aug 14, with the associated AF IMT 1176 signed by the military magistrate on 12 Aug 14. Apparently, according to the 47 OG/CC, (b)(6),(b)(7)(C) did not give up his cell phone, and AFOSI coordinated with 47 FTW/SJA for command intervention. (Ex 79:31-32) The 47 OG/CC eventually ordered (b)(6),(b)(b)(6),(b)(7)(C) to surrender his cell phone to AFOSI in compliance with their search authorization, and testified accordingly:

So I escorted him (b)(6),(b)(7)(C) over to OSI and dropped him off, as I did with the other guys. Some period of time later I got a call from [AFOSI Agent] that he said words to the effect of, sir, I need you to come over here, I'm about to handcuff (b)(6),(b)(7) and physically take that phone from him by force.... So I went over and I was escorted into the interview room with (b)(6),(b)(7)(C). I very clearly remember asking just to make sure, you have a warrant for this cell phone or magistrate, I would have used the term warrant. And the OSI [Agent] replied yes. So when I went into the interview room with (b)(6),(b)(7)(C) I tried to relate to him, you know, (b)(6),(b) I know you, I like you, we are both family men. The OSI agents have a warrant to seize your cell phone. They had asked him to leave it outside of the interview room but he kept it with him. And I said, (b)(6),(b)(7) you need to give the cell phone to OSI. They have a warrant for the phone. And somewhere in there I, and I don't remember if he just didn't reply to me or if I then just escalated it on my own. But I said (b)(6),(b) these guys have a warrant for your phone. I'm giving you a direct order to turn your phone over to OSI, and he did. (Ex 79:31-32)

Given the appropriately authorized search and seizure documentation for searching (b)(6),(b)(6),(b)(7)(C) cell phone, the IO finds that both AFOSI and the 47 OG/CC acted appropriately and within their authorities to order (b)(6),(b)(7)(C) to surrender his cell phone.

Disposition

LOA. Similar to the cases of (b)(6),(b)(7)(C) was issued an LOA on 15 Oct 14 by the 47 OG/CC for violating a no contact order. According to the OG/CC, he escorted (b)(6),(b)(7)(C) to the AFOSI facility on 11 Aug 14 for his subject interview. (Ex 79:31-32) Upon completion, the 47 OG/CC gave (b)(6),(b)(7)(C) an order not to discuss the

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details of the AFOSI interview, with anyone except his chain of command or his ADC. According to the 47 OG/CC, he learned that (b)(6), (b)(7)(C) had discussed the details of the AFOSI interview with members of his squadron not in his chain of command. After considering (b)(6), (b)(7)(C) response, the 47 OG/CC upheld the LOA. (Ex 67:1, 3)

Although the IO could only obtain a partial copy of this LOA package (the final LOA as upheld by the 47 OG/CC and an unsigned copy of the member's response), the IO found the LOA to be in compliance with AFI 36-2907, in that it explained the misconduct and the improvement expected and noted the individual's rebuttal would become part of the record. (Ex 67:1-3) The IO could not verify that the member was afforded 3 duty days to submit rebuttal documents. However, in reviewing the member's response (which, although unsigned, was provided to the IO by (b)(6), (b)(7)(C) who verified this was his actual response), (b)(6), (b)(7)(C) did not explicitly deny that he violated the order, and he cited the circumstances which led to his apparent violation of the order. The final LOA as issued appeared consistent with this response and appeared consistent with the requirements in AFI 36-2907. (Ex 67:1-3)

NJP. Based on the evidence obtained during the AFOSI investigation with regard to (b)(6), (b)(7)(C) alleged wrongful use of a controlled substance (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) statement in regards to same, the 47 FTW/CC recommended the 19 AF/CC offer (b)(6), (b)(7)(C) NJP Article 15 proceedings on 8 Jan 15. (Ex 68:6) After requesting an extension prior to responding, (b)(6), (b)(7)(C) accepted the Article 15 and submitted a written response on 22 Jan 15. (Ex 68:5, 6, 18) (b)(6), (b)(7)(C) also requested a personal appearance before the Article 15 authority, 19 AF/CC, and that the appearance be public. (Ex 68:6) The 47 FTW/SJA testified as follows to the evidence and deliberations:

... my advice to the Command was we had admissions to drug use in his text messages and an admission, you know. Whether the individual writes it down on a piece of paper, whether they verbalize it to another person or whether it's in text message, it is an admission. He admitted to using Percocet, admitted using Percocet, a drug that he did not have a prescription for. That is wrongful use under Article 112a.... My advice to the Command was um, we have corroboration for his admission.... So in this case, (b)(6), (b)(7)(C) said that he was taking Percocet for the purpose of a sore throat. He had a sore throat. He had strep. He had severe strep, so uh, that was the corroboration for his admission that he had taken, he had wrongfully taken Percocet. So my advice to the Command was uh, this is sufficient evidence to take to court martial if you wanted to. I didn't believe that a court martial was the right forum for this. So the Command was trying to make a determination between an LOR and an Article 15. In the end, an Article 15 was determined to be the best forum because that gave the, that gave (b)(6), (b)(7)(C) the opportunity, if he so chose, to turn it down and fight it in court. It also uh, gave him an opportunity for a response, which the LOR would have as well but the Article 15 gave him that ex, extra added layer that he would be able to turn it down and go to court if he wanted to. (Ex 74:28)

(b)(6),(b)(7)(C) appeared before the 19 AF/CC on 11 Feb 15 for his public appearance and offered his response to the charges. The 19 AF/CC testified that he found (b)(6),(b)(7)(C) to be credible in his testimony and terminated the Article 15 proceedings. (Ex 77:21) The 19 AF/CC testified that he believed (b)(6),(b)(7)(C) could be a "part of the solution" to recovering the 47 FTW from the multitude of disruptive investigations:

(b)(6),(b)(7) stated that he was just joking around so that he could fit in. He had not taken Percocet since he was 15 prior to go to a mission trip... (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

that hearing that's where I, as the convening authority, had to make a determination was this individual lying and to continue with the Article 15, or was he telling the truth and was he trying to fit in.... (b)(6),(b)(7)(C) and he's lying to cover himself. But there's an equal chance that he's telling the truth. And there is going to be bad that's going to happen on social media no matter what but that isn't what matters. What matters is the unit.... He agreed to being part of the solution and as it turns out he has been part of the solution to the attack both this sexual culture and also the drug culture within his unit. (Ex 77:21-22)

Administrative Actions

IAW AFI 11-402, para 3.7.1.6, (b)(6),(b)(7)(C) Aeronautical Orders were suspended on 14 Aug 14, with the member notified of the action that same day. (Ex 66:1-2) On 6 Feb 15, an extension was coordinated and approved to continue the suspension beyond the 180 day point. (Ex 66:3) At the conclusion of (b)(6),(b)(7)(C) NJP action, he was returned to flight and instructor status IAW AFI 11-402, para 3.6.3.12, which states that a suspension may be terminated once "the commander determines that the basis for the suspension has been resolved." (Ex 14:40) Neither the 47 FTW HARM office, AETC/A3 nor AF/A3 had any records indicating the coordination of the termination of his suspension action. In that (b)(6),(b)(7)(C) NJP action had been terminated, the termination of his suspension appeared consistent with the governing regulation. (Ex 14:40)

Prior to the Article 15 proceedings, (b)(6),(b)(7)(C) had been selected for Captain with a projected pin on date of (b)(6),(b)(7)(C) but his promotion was delayed through a Promotion Propriety Action until the resolution of the alleged misconduct. (Ex 69) Per AFI 36-2501, then (b)(6),(b)(7)(C) was notified that his promotion would be delayed until 30 Oct 15 because an investigation uncovered evidence that he had wrongfully used a controlled substance, violating Article 112a, UCMJ, paras. 5.3., 5.3.1, 5.4. (Ex 8:34, Ex 69) Based on evidence from the investigation, (b)(6),(b)(7)(C) was offered an Article 15, which was subsequently terminated after Maj Gen Keltz received (b)(6),(b)(7)(C) Article 15 rebuttal and personal appearance, determining that (b)(6),(b)(7)(C) did not commit the alleged offense. (Ex 68) Based on the termination of the Article 15, 47 FTW/CC terminated (b)(6),(b)(7)(C)

promotion delay indicating that "an investigation that resulted in a finding that the allegations were unsubstantiated and no disciplinary action of any kind was taken against the officer." (Ex 8:35, Ex 69)

Student Pilots

Over an 18-month period starting in May 2014 AFOSI investigated a total of five IPs and seven SPs also stationed at Laughlin AFB for involvement in alleged UPRs. Additionally, during this period, five IPs stationed at Laughlin AFB were investigated for alleged use of controlled substances, one of whom was already under investigation for alleged UPRs, for a total of nine IPs investigated by AFOSI. Of the seven SPs having been identified as being involved in the UPRs in violation of AETCI 36-2909, six of those were identified as subjects of misconduct, and based on the evidence, some level of administrative disciplinary action or NJP was taken against them. One of the SPs had no action taken against her as the evidence did not support a violation of AETCI 36-2909 on her part. (Ex 23:19-21) One additional SP was identified as a victim, specifically the SP who was the target of the alleged abusive sexual conduct in the (b)(6),(b)(7)(C) case, discussed in more detail on page 29.

Of the six SPs against whom action was taken, five were initially offered NJP Article 15 proceedings for violating AETCI 36-2909. Three of the NJPs were upheld by 19 AF/CC, one was reduced to an LOR, and one reduced to an LOC. (Ex 23:19-21, Ex 73) One SP was given a verbal counseling. (Ex 23:21) In that the IO was only able to obtain partial packages for these actions, and based on a review of the previously presented evidence and testimony, the actions taken appeared to be consistent with Article 15, UCMJ, AFI 51-202, AFI 36-2907, and AETCI 36-2909.

This Inquiry did find one administrative error within the SP administrative actions, specifically with (b)(6),(b)(7)(C) NJP documentation. (Ex 73:5-8) The NJP was issued for alleged violations of Article 92, 133 and 134 on 21 Oct 14. The first specification incorrectly cites the date of the AETCI 36-2909 as 2 Dec 14 instead of 2 Dec 13, and this supplement has not been republished since Dec 13. (Ex 73:6) This appears to be a typographical error and since (b)(6),(b)(7)(C) was on notice as to the offense and there is no other applicable AETCI supplement, this administrative error does not appear to have affected her rights under NJP.

The 47 FTW/CC testified as to why the female SPs were treated as subjects (as opposed to victims) during the deliberation of each of the cases:

That was always a delicate balance. ... some of the young ladies were very clear, I am not a victim, I made the decision, I take full responsibility for my actions. There were others that um, kind of hemmed and hawed and may have lied and added to uh, it detracted from being a victim and put it more into the lines of a subject with trying to conspire against. But at all times, you know, especially where it was troublesome was

with [SP female] who was the one who heard of this ... There was an allegation against (b)(6),(b)(7) which was. He was found not guilty of, doesn't mean you're innocent, just not guilty of, aggravated sexual conduct, contact. ... But in the back of our minds we were always trying to weigh ... Were they full subjects or were they victimized? (Ex 78:9)

The 19 AF/CC testified as to why the female SPs were treated as subjects (as opposed to victims) during the deliberation of each of the cases:

We had a very intense discussion with that, and in consultation both with Air Force, uh, legal office, and also with our SJAs both at the AETC level, and also the 19th Air Force level, and the wing level.... While this may have been an environment that appeared to be permissive because there were so many instructors that were turning their, their, they basically were not following [AETCI 36-2909], that people could view this as, well, they were just kinda culled into it and lulled into it. Well frankly, they were willing participants. And they knew it was wrong. And in two cases, the pilots, I mean, the instructors were married, and I believe two of the instructors' wives were pregnant while it was going on. And the females knew exactly what they were getting into because we do extensive [AETCI 36-2909] instruction in the beginning of the first phase of pilot training. So they knew exactly what was going on. And then through the evidence that we gained both from witness statements, and also from electronic means, they were actively coached on how to cover up the relationships, and in certain cases even used burner phones for those kind of relationships. So we made the determination and I as the commander was able to concur with that recommendation coming from the wing commander, and in corroboration with the legal offices that we determined that they were subjects of an investigation, and subject to punishment or discipline underneath the UCMJ. (Ex 77:9)

The 19 AF/CC was also asked to compare the Basic Military Training (BMT) environment with the UPT environment, with regard to unprofessional relationships and the roles of the female trainees or students within those relationships:

IO1: ... Could you compare and contrast just one more time the difference between, as you're familiar with, that basic training environment, and those potential enlisted victims, those initial trainees, with the UPT environment, and the different status or how you would interpret the victim versus subject relationship or characterization with the student pilots?

19 AF/CC: That is a fascinating case study. But candidly as we take a look at it, it's also the difference between the rated world officers, and enlisted training. When we took a look at some of the MTIs [Military Training Instructors] at BMT [Basic Military Training], they were using coercion and fear to gain sexual favor with students who felt like I am not either strong enough to go ahead and resist them, or this is great, I've got my drill instructor covering for me, all I have to do is have sex with him. Whereas in the cases with the officer relationships, with the exception of the one, uh, second lieutenant,

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uh, one lieutenant female, she was obviously a victim, and that was, um, [SP victim] I believe her name was. ... All the other ones were willing participants in these unprofessional relationships in spite of knowledge that it was the wrong thing to do. The BMT issue is a little different. The BMT was more coercive and there was an element of force involved. Whether or not it was mental force or actual force.

IO2: Sir, could you kind of explain what authority the instructor pilot has over the student pilot versus looking at a BMT instructor over a trainee?

19 AF/CC: Uh, it, it's very similar except that it, it is more subjective. Whereas the student trainee, a student, a basic trainee at let's say BMT is a very regimented enclosed environment. The pilot training environment is a lot more open because they're considered officers, and is not considered a BMT portion. Um, the, they have squadron parties for squad-, you know, for squadron morale. Um. And it's basically a steppingstone to operational units in their relationship. So it's a little bit more open. And therefore, we have to be even that much more vigilant against the unprofessional relationships that happen because it could become insidious as we saw in this case, and pervasive to an incredible extent. (Ex 77:9-10)

Case Summary

Command Authority/Responsibility

Commanders have an inherent responsibility to maintain good order and discipline within those organizations they are charged to command. The following is a review of applicable standards that define that responsibility.

AFI 1-2, paragraph 3.2 directs commanders to "lead people." Part of that direction is for commanders to "enforce the Air Force cultural standards on conduct, performance, and discipline...." Further, "commanders will establish and maintain a healthy command climate which fosters good order and discipline, teamwork, cohesion and trust." (Ex 2:2-3) Paragraph 3.2.2 further states, "Commanders must cultivate a culture of compliance and accountability while promoting unit and mission pride...." (Ex 2:3) Part and parcel to maintaining good order and discipline is to administer discipline in a temperate and just manner.

Disciplinary Considerations

RCM 306 provides guidance about appropriate considerations when deciding upon command actions in response to alleged misconduct. Subparagraph I provides for four options in the disposal of offenses: 1) No action; 2) Administrative action; 3) Non-judicial punishment; and 4) Disposition of charges." (Ex 5: II-25) Expansion to this guidance as to whom should act to dispose of offenses is found in RCM 306. Subparagraph (a), in relevant part, reads:

Each commander has discretion to dispose of offenses by members of that command. Ordinarily the immediate commander of a person accused or suspected of committing an offense triable by court-martial initially determines how to dispose of that offense. A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. (Ex 5: II-25)

AETCI 36-2909, *Recruiting, Education, and Training Standards of Conduct*, 2 Dec 13, further defines the commander's responsibilities in the unique AETC environment:

1.1.1. Commanders and leaders at all levels will ensure that all applicants, recruits, trainees, cadets, and students are treated with dignity and respect. The success of AETC's mission depends largely upon the trust these individuals place in our recruiters, faculty, and staff. Conduct that erodes this trust detracts from the mission and will not be tolerated....

1.1.3. Commanders. One of the most important and fundamental responsibilities of command is maintaining good order and discipline within the unit. This responsibility is not delegable and commanders are held to a high standard in this area.

1.1.3.1. The recruiting, education, and training environments present unique challenges in maintaining good order and discipline, particularly in the areas of sexual misconduct, unprofessional relationships, trainee abuse, hazing, and academic integrity. Commanders must be particularly vigilant in order to successfully dissuade, deter, and detect these threats.

1.1.3.2. Violations of standards must be addressed proactively, consistently, and at the appropriate level. (Ex 16:4)

The documentary evidence revealed the 19 AF, 47 FTW and 47 OG Commanders utilized all these options in addressing the misconduct of both the IPs and SPs.

AFI 51-202 reinforces the guidance contained in RCM 306. Paragraph 3.1, in relevant part, reads, "The commander's action must be temperate, just, and conducive to good order and discipline." (Ex 13:3) Paragraph 3.1 of AFI 51-202 discusses the need for the commander to be temperate and just, and RCM 306 discusses a disposition that is warranted, appropriate, and fair. The discussion section under the Policy paragraph (RCM 306) discusses the fact that each case is unique and should be assessed independently.

The 47 FTW/CC testified to his responsibility as commander and when it becomes appropriate for a commander to take disciplinary action:

This no kidding is Commander's business... If you can make these calls as the Wing Commander because you have lost trust and faith in your officer corps and your rated manning.... What is the threshold for when a commander or the Command loses faith and confidence in a rated officer? Or when does the misconduct of rated officers meet

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the threshold of a failure to maintain professional standards where it clearly resides in the command chain, the rated command chain, that do you want these officers one, flying military aircraft and two, teaching our young sons and daughters? Or three, in some cases, you know, being officers. ... Not only do we have officers that have a history of some misconduct. Not only do we have officers that I really don't like how they talk to each other or about people or females. I have officers that are using drug uh, vernacular. The lexicon of the people who use drugs. We have officers that are seeking out places where drugs might be. We have officers who are talking to people that we know do drugs. We have officers who are rooming with people who have access to drugs. We have officers who are asking those people that now they know have access to drugs for drugs. We have officers who are probing, you know, the, the, the um, effects, how it makes you feel, does it get out of your system? Those are very, very awkward things for a commander to see. Those are things that a commander would not expect from his commissioned officers, his commissioned rated officers, his commissioned instructor pilot rated officers. (Ex 78:32)

The 47 FTW/SJA summarized the commander's responsibilities as follows:

Commanders have to maintain good order and discipline.... They have several tools.... The military justice system is not the only venue that a Commander has to ensure and maintain good order and discipline. And the Commander has an administrative avenue as well. And so for a whole host of reasons, evidentiary, uh, resource management, good order and discipline from a timing standpoint, Commanders often make, and I would dare to say make every day across the enterprise, make decisions to not take criminal misconduct through the judicial process. Instead they use the administrative process. Because they have both venues available to them and they as Commanders need to determine which is the best way to address allegations of misconduct that take in all of those other things, good order and discipline, efficient use of resources, all of those things...(Ex 74:38)

The three levels of command and their respective SJAs testified while they did discuss the similarities of actions from case-to-case, they discussed the differences in each case and that in the end, each action in each case stood on its own merits based upon the evidence that supported each action.

AETC Environment

The fact that these cases all took place within AETC added further context to the adjudication of the individual cases. Each of the levels of command were asked why being in AETC may add a different context to the cases. The 19 AF/CC testified:

AETC does look at it a little differently, and they have to for the integrity of the instructor force and the, um, credibility of all the Air Education and Training Command. And you, you will hear the, um, the statement that AETC is the First Command, every

airman that comes into the Air Force, I don't care whether or not you're, uh, enlisted or an officer, you actually come through AETC before you get to your first unit. So our credibility rests firmly upon the good instruction and credibility of the instructor force that's out there. And so we take, uh, AETC regulation [AETCI 36-2909] very seriously, especially when it comes to unprofessional relationships. And having had that, um, incredibly debilitating, uh, episode with the, uh, with the drill sergeants ... out at Lackland where we had just gotten through that, and I had gotten that, uh, AETC at the end of that. We focused on the basics, and that was the professional credibility of our instructors, and the corrosive effect of unprofessional relationships between instructors and students. And there, there's a big difference because let's say, for instance, you're a student pilot going through pilot training, as opposed to being a brand new second Lieutenant F-16 pilot that shows up in a combatant command, such as ACC or USAFE or PACAF. That relationship between an instructor and a student is a little bit different because that individual already has their initial skills training, and is qualified in that. Whereas in AETC, that does not exist yet, and this is their very first exposure to the Air Force, their very first exposure to their future career field, and therefore we have higher standards that are more stringent, uh, within AETC when it comes to unprofessional sexual and unprofessional relationships, period. (Ex 77:6)

The 47 FTW/SJA testified to the AETC environment as follows:

These UPRs are unique because of the AETC training environment. . . . Typically unprofessional relationships um, are not dealt with in this venue because outside of AETC you don't have a trainee, uh, a instructor/trainee environment. So in unprofessional relationships if you read [AFI] 36-2909 uh, the recommendation is that, that those UPRs when they come to light are held, are dealt with at the lowest level. Um. In a training environment that is different. Uh. Obviously from the BMT scandals that came out, the disparity in power between an instructor and a student, uh, makes an unprofessional relationship in the training environment significantly more serious. (Ex 74:12)

The 47 FTW/SJA added the following clarification with regard to the commander's responsibilities in the AETC environment with regard to the controlled substances IP allegations:

So when a Commander has very good evidence of drug use from someone, a rated officer, an officer that is entrusted not only with multi-million dollar aircraft but is also entrusted to teach young officers who are trying to become pilots. And in that context the Commander has to, in my opinion, it would be irresponsible of a Commander to pretend like nothing happened ... it would be irresponsible for him to then just turn around and say, eh, slap on the hand, don't do that again, go back to work. And so my advice to Col (b)(6),(b)(7)(C) was if you believe that he is using drugs, and I believe that the evidence supports that, from a preponderance of the evidence standard, then an LOR is appropriate. That is the decision he made. (Ex 74:38)

Finally, within the unique context of AETC, the 47 OG/CC added additional context to the deliberations based on the specific environment and culture that had existed at Laughlin:

We determined that a lot of our, the Ops Group officer misconduct, some of it either started or was exacerbated by alcohol... So we started modifying some of the policies at the Officer's Club about drinking and wearing uniforms and what not. And then kind of in the middle of this, a Comm Squadron Airman was hit and killed by a drunk driver. He himself was drunk. Not too far from the gate, and that sent kind of a, you know, just a, that was a stark dramatic moment. We had within our flying world, certainly within the (b) the. We've had a series of maintenance problems that we uncovered were partly due to misconduct on some of the maintainers doing things incorrectly.... Dereliction and failure to follow TO's. I had, you know, a significant number of my instructors that were becoming nervous about the airplanes they were flying. At one point, on a (b)(6),(b)(7)(C) somebody had written on an airplane parked overnight, had written in, like, axle grease "fuck you" on the door, so (b)(6),(b)(7)(C) got after that, and they said wow, is this some hate from maintenance? Is this a maintainer telling me this? ... We had, uh, a subsequent case, an FEB... They went out to a club, this Lieutenant got drunk, ended up in a fight, got beat up, awoke to find himself in a hospital with a citation for being drunk and disorderly, public intox, something like that. Had a head wound, was given an MRI for his head wound. Eventually sobers up, checks himself out of the hospital, goes back to the airplane in the morning, goes to the airplane, does all the pre-flight, takes off, and halfway through the flight tells his Flight Commander, oh, hey, by the way here's what happened to me last night. A violation of so many different safety protocols and rules, as you all are probably aware with aviators, especially when you've got a suspected head injury.... I had a drunk Lieutenant wandered into somebody else's house on base, scared the crap out of the occupants, who also, the husband happened to work for me as one of my NCOs. Got out, during a subsequent investigation the next day lied about whether he participated in it, and tried to pin it on some other student.... If you look back through the annals of time there have been a series of things at Laughlin, whether it's misconduct, scandals, etc. I think fostered in part because of this remote and isolated location, and I would, you know, if you all ever have the chance to drive out there you'll see it has, it's geography alone, uh, prompts some interesting behaviors because some of the youngsters out there tend to rely on alcohol as a form of entertainment and that lends itself to them getting in trouble. And a previous command climate in the Wing and in that Squadron, in particular, I think fostered a sense of, I'm not going to say party atmosphere, but a sense of maybe less than strict adherence to a lot of the personal conduct norms and rules that set some of these things in motion ... So there's this kind of, there was an ongoing malaise there, that we realize that as the Commander, certainly you want folks to have, when accused of misconduct, you want them to have every legal avenue available to them to defend themselves. I absolutely, firmly believe that, and support that, and in all of these cases encouraged that. But I also have the responsibility as the Commander for the overall discipline and welfare of the unit as a whole. And where folks know that there is active misconduct going on, we as Commanders have an obligation to not necessarily make an example of people, but sometimes, yeah, sort of. You have to let it be known that you are not going to tolerate misconduct in any form. And so finding the

appropriate avenue and level of holding them accountable, I think that is a challenging part, and certainly is one of the facets of the investigation that you have been tasked to do, that folks may have disagreed with what or how we did it. But, again, in my mind, it was absolutely appropriate and necessary based on the scope and scale of what we had uncovered mostly within one Squadron. (Ex 79:38-39)

As this inquiry reviewed the actions taken with regard to the nine IPs and six SPs, the evidence and the testimony of the respective commanders and SJAs indicated that a deliberate examination of the merits of each case led to the action taken against each of the officers. With specific regard to the cases of (b)(6),(b)(7)(C) at face value the cases seem very similar, yet each produced different outcomes. Upon closer examination, each case presented unique circumstances for consideration.

Nonjudicial Punishment Considerations

AFI 51-202, paragraph 1.3 reads, "The officer exercising general court-martial jurisdiction supervises all NJP within the command." (Ex 13:2) As to the issuance of Article 15s, guidance contained in AFI 51-202 established the 19 AF/CC was within his authority to take that action, as the 19 AF/CC is a GCMCA. In addition to AFI 51-202, AETC has published more specific guidance on who can impose NJP on officers within *AETC Guidance Memorandum for Command and the Administration of Military Justice*, 19 Feb 14:

3.1. Officer Nonjudicial Punishment. Officer nonjudicial punishment actions imposed on AETC officers, and administered through AETC channels, will be imposed by no lower than the first AETC general officer in the offender's chain of command. This paragraph does not limit the authority of non-AETC host commanders to exercise their concurrent nonjudicial punishment authority under AFI 51-202, paragraph 2.4. Officer nonjudicial punishments imposed on non-AETC officers pursuant to AETC host command jurisdiction will be imposed by no lower than the first AETC general officer in the host chain of command. (Ex 19:3)

Other Administrative Actions (LOAs/LORs)

Additionally, guidance contained in AFI 36-2907 established that the 19 AF/CC, 47 FTW/CC, and 47 OG/CC were within their authority to issue LOAs and LORs to address alleged misconduct. Paragraph 3.1 of AFI 36-2907 reads, "Commanders, supervisors, and other persons in authority can issue administrative counseling, admonitions, and reprimands." (Ex 10:29)

Command Actions

With regard to (b)(6),(b)(7)(C) case, he was a more senior flight instructor with experience in a previous aircraft, i.e., he was not a first assignment IP (FAIP). The specific evidence in his case included text messages with several different individuals across a broader timeframe, and involved evidence indicating wrongful use of three different controlled

substances. Although the evidence indicated three different conversations regarding three separate substances, the breadth of the evidence was not as expansive as some of the other cases. AFOSI also discovered medical record evidence to corroborate the case (Ambien). Additional evidence indicated that (b)(6),(b)(7)(C) had violated a no-contact order, had knowledge of UPRs he had not reported, and had deleted incriminating evidence from his cell phone. (b)(6),(b)(7)(C) alleged wrongful use of controlled substance and conduct unbecoming charges were addressed in an LOR and the additional charges in the Article 15. (b)(6),(b)(7)(C) also received an LOA for violating the no contact order.

In (b)(6),(b)(7)(C) case, (b)(6),(b)(7) with a strong record of performance and according to testimony and documentary evidence, a generally well thought of officer. Although no corroborating evidence was found to support the cell phone text messages which indicated the alleged misuse of a controlled substance (MDMA, or "Molly"), the command and SJAs all commented on the depth and breadth of the text message evidence, which they all considered extensive (5000 pages of total text message evidence). (b)(6),(b)(7)(C) was also found to have violated a no contact order. (b)(6),(b)(7)(C) alleged wrongful use of a controlled substance and conduct unbecoming charges were addressed in an LOR and the no contact violation in an LOA.

With regard to (b)(5),(b)(7)(C)
(b)(6),(b)(7)(C) (b)(6),(b)(7)(C)
(b)(6),(b)(7)(C) Similar to (b)(6),(b)(7)(C) case, the primary evidence of wrongful use of a controlled substance was the text messages. (b)(6),(b)(7)(C) was also found to have knowledge of UPRs he had not reported, conspired to cover up said UPR, and had deleted incriminating evidence from his cell phone. (b)(6),(b)(7)(C) unlawful use of a controlled substance and a related conduct unbecoming charge were addressed in an LOR and the remaining allegations of misconduct were disposed of through an Article 15.

(b)(6),(b)(7)(C) and according to 19 AF/CC, appeared to be repentant for his actions (sending an inappropriate text) while offering credible defense in his public hearing. Although the evidence against (b)(6),(b)(7)(C) alleged misuse of a controlled substance (Percocet) consisted of a single text message conversation, the possible wrongful use of the controlled substance was (b)(6),(b)(7)(C) Evidence also indicated (b)(6),(b)(7)(C) violated a no contact order. (b)(6),(b)(7)(C) alleged controlled substance misconduct was addressed in an Article 15 which was terminated after his public appearance. The violation of the no contact order was addressed in an LOA.

Deliberative Process Regarding the Alleged Illegal Substance Abuse

The 47 FTW/SJA testified to the deliberations in determining the actions for each with regard to controlled substance misconduct:

So when a Commander has very good evidence of drug use from someone, a rated officer, an officer that is entrusted not only with multi-million dollar aircraft but is also entrusted to teach young officers who are trying to become pilots. And in that context the Commander has to, in my opinion, it would be irresponsible of a Commander to pretend like nothing happened, to take what is otherwise very good evidence, evidence that is lacking the ability, the corroboration necessary to prosecute or offer an Article 15, it would be irresponsible for him to then just turn around and say, eh, slap on the hand, don't do that again, go back to work. And so my advice to [47 FTW/CC] was if you believe that he is using drugs, and I believe that the evidence supports that, from a preponderance of the evidence standard, then an LOR is appropriate. That is the decision he made. (Ex 74:38)

...

My job as an SJA is not to get convictions. My job as an SJA is not to say yes to whatever the Commander says. My job as an SJA is to do justice. And if that means uh, not prosecuting a case because the evidence isn't sufficient then that is what my job is.... Each one of those actions was based on the evidence and the available forums. So each one, the only way, the only consideration from one case to another was okay, what was the forum for similarly situated uh, misconduct for which the evidence supports; i.e. (b)(6),(b)(7)(C) for UPR related stuff. But the idea that we chose to give LORs for drug, for the drugs because (b)(6),(b)(7) his Article 15 was rescinded is ludicrous. It, it, I know him. I understand how somebody can paint that picture... But the LORs were based on evidence and evidence alone. (Ex 74:43-44)

The testimonies of the three levels of command (47 OG/CC, 47 FTW/CC and 19 AF/CC) and respective SJAs (47 FTW/SJA, 19 AF/SJA and AETC/SJA) were consistent in describing the process of determining the appropriate action for each of these cases, specifically in weighing the evidence. The 47 FTW/CC testified to the level of conversation and deliberation up and down the various organizational levels:

IO: How about early on, you know, similarly with the other cases, the conversations as the evidence was building, OSI was delivering their report, did you have similar conversations up and down the chain of command, crossways?

47 FTW/CC: Absolutely. We always had these conversations. You know, okay, what do we have, what are the levels and the thresholds? ... Do we have the preponderance of the evidence to support going from an Article 15 that someone's turned down and then it goes to a court-martial. So those, those conversations were also being held. The conversation of is this legal in UCMJ or is this command authority things [were] going on, because we were already blending administrative plus UCMJ, plus court-martial type of stuff, plus, you know, policy and rated force management [AFI] 11-402. And those decisions were also being discussed. Because ultimately if you take, if you take operational commander action to manage the rated force, you don't have to have a preponderance of evidence, you have to have sufficient evidence. So the threshold for sufficiency of the evidence is slightly, or the burden of proof, I hate to say burden of

proof, but it's slightly less than is required for a court-martial, but there still needs to be a level of sufficient evidence for command to take action. (Ex 78:22)

The 19 AF/SJA testified to the consideration given to the specific evidence in each case, and what action that evidence would support:

First, are the offenses, you know, worthy of pursuing in a court-martial, or are they not? And it's just a gross cut. And we've kind of already made that cut, as I explained to you, we're sort of triaging that. And then that question comes back rearing its head again when you've got, excuse me, when you've got evidence of drug use. And now we're talking are we going to do, is this court-martial worthy or not? At least nominally, it would seem that drug use, you know, on the first blush, if it can be, if there's significant, sufficient evidence, would be something you take to court-martial. But then the second question to all of that is even though all of those offenses may or may not, you know, or should be addressed by a court-martial. The second question is whether or not the evidence is going to get you to the end of the day where you want to be. If the answer is you want to be at a court-martial, then we have to establish proof beyond a reasonable doubt. So, then, of course. The third question to all of that is, you know, is all of this proper with respect to the individual and the offense? (Ex 75:15-16)

With regard to relying on text messages as evidence, the 19 AF/SJA testified:

We've had several cases, and not just drug cases wherein the media, the evidence is text messages. And text messages are evidence just as strong as any other evidence. In fact, they're, in some cases, more reliable evidence because they're written, actual written statements as opposed to a recounting of what somebody may have said by a witness in a court-martial setting. So, I mean, there are actual written statements and no kidding evidence that can be, you know, either attacked or not, credibility wise, etc. So, in the face of apparently credible evidence, yeah, we've had plenty of cases, not just in the 19th Air Force, I mean, there are plenty of cases that rely heavily on text evidence. (Ex 75:20-21)

The 19 AF/CC testified to the deliberations between AETC, 19 AF and 47 FTW levels:

IO1: And so as you deliberated on that non-judicial punishment Article 15, you mentioned you got legal advice, I'm assuming that was from your 19th Air Force SJA?

19 AF/CC: Not only at 19th Air Force SJA, but also the AETC SJA. So through all three levels from the AETC down to the NAF, down to the wing. And also they were talking with the Air Force legal, uh, agency up in the, they were talking about the JAG up in, uh, Washington D.C. We all got, uh, pretty much the thumbs up saying yes, this is legally sufficient, this is the right thing to do. (Ex 77:12)

Based upon the preponderance of the evidence, the IO found that the 47 FTW/CC, 19 AF/CC and 47 OG/CC weighed the evidence obtained through numerous AFOSI investigations as well as the context of the misconduct within a training environment to determine the appropriate action for each case consistent with RCM 306. If text message evidence was corroborated with other evidence, either NJP or GCM was considered. If the subject of the misconduct was a supervisor or senior IP, the misconduct was considered more serious given the higher expectations for such an officer. Breadth of evidence was considered – some cases had thousands of lines of text messages discussing the controlled substances – others had a single conversation. Legal advice was sought and considered at all levels. The MAJCOM, NAF and Wing SJA offices all deliberated and gave advice with regard to the disposition of each case.

Finally, based on the preponderance of evidence (documentation and testimony), the IO concluded that appropriate due process rights were afforded each subject in each NJP, LOR, and LOA action. Based on responses and presentations, one NJP was terminated, one NJP was reduced to an LOR, one LOR was reduced to an LOA, and one LOR containing three elements of misconduct was reduced to one element.

With the exception of minor administrative errors as cited earlier in this Report, and specifically the evidentiary concerns on (b)(6), (b)(7)(C) Article 112a offense, the administrative and disciplinary actions taken with regard to the IPs and SPs as result of the AFOSI investigations followed appropriate MREs, regulation, AF and AETC Instructions, were generally administered in a procedurally correct manner, and taken with regard to the appropriate command authority of each action. The IO concluded, based upon a preponderance of evidence, upon reviewing the systematic process used and the regulatory guidance contained in RCM 306, AFI 36-2907, AFI 51-202, AFI 11-402 and AETCI 36-2909, the 19 AF/CC, 47 FTW/CC and 47 OG/CC acted within their authority granted when they took administrative and disciplinary actions against the IPs implicated in the AFOSI investigations.

The promotion propriety actions taken on (b)(6), (b)(7)(C) were properly initiated. However, as mentioned earlier in the Report, (b)(6), (b)(7)(C) promotion delay termination was not properly terminated and needs to be processed by the command in order to have the statutorily required SECAF action to legally promote (b)(6), (b)(7)(C) adjust the effective date of his promotion, or to remove (b)(6), (b)(7)(C) from the major's promotion list. The ultimate decision rests solely with the Service Secretary in his case.

Generally, the Aeronautical Orders suspensions were properly processed for all IPs. However, as noted above, the packages for the three IPs who were permanently disqualified did not reference the AFI 11-402 authoritative paragraphs consistently. As a consequence, it is indeterminate if the proper notifications were made to the members once the permanent disqualification actions were initialized. The IO recommends command review all three of these packages for consistency and intent. Furthermore, as the basis for (b)(6), (b)(7)(C) permanent

disqualification was the LOR for which one aspect was found to be deficient, the IO recommends command reassess this action with specific regard to the basis of disqualification.

VII. SUMMARY.

AFOSI Investigation

In conclusion, this inquiry reviewed the actions taken against nine IPs and six SPs as a result of several AFOSI investigations beginning in Jul 2014 at Laughlin AFB. All of the cases began with a May 2014 CDI based on allegations of a single UPR between an IP and an SP. In Jul 2014, the case was referred to AFOSI based on evidence indicating that a sexual UPR may have taken place, IAW AFI 71-101. Based on witness statements and text message evidence gathered in the initial AFOSI investigation that followed, four more investigations into alleged UPRs between IPs and SPs were initiated. (b)(5),(b)(6),(b)(7)(A),(b)(7)(C)

(b)(5),(b)(6),(b)(7)(A),(b)(7)(C)

Search & Seizure of Cell Phones

Five private cell phones were seized and searched for evidence of drug-related misconduct. Through the UCMJ MRE 314, the President has granted certain commanders the power and authority to search persons and locations subject to military jurisdiction and to seize and search items upon a determination of probable cause. These commanders and their delegates are referred to as military magistrates. As in civilian jurisdictions, probable cause to search exists when there is a reasonable belief that evidence of a crime is located on the person or in the location to be searched. A military magistrate makes a probable cause determination after reviewing the facts presented by the investigating agent and receiving legal advice. In accordance with this authority and these procedures, a military magistrate granted search authorization for each of the five cell phones seized and subsequently searched. The respective AFOSI reports contained copies of each AF IMT 1176 documenting the details of each seizure and signed and approved by the appropriate magistrate.

The five cell phones belonged to the subjects of the five AFOSI investigations into alleged possession or use of controlled substances, specifically Molly. Although several witnesses consented to their cell phones being searched during the course of these investigations, none of the five seizures of the subjects' cell phones was based on consent of those individuals. The preponderance of the evidence indicated that each cell phone was seized and searched pursuant to a valid search authorization granted by a military magistrate and based on probable cause to believe that each cell phone contained evidence of a crime.

Two members were ordered to surrender their cell phones to AFOSI agents who had obtained magistrate-approved search and seize documentation for these specific phones (b)(6), (b)(7)(C). When examined, the documentation for these searches appeared procedurally correct and specific to each search. The IO found it reasonably within a commander's authority to order an individual to comply with a properly authorized search and seizure action.

One subject, (b)(6), (b)(7)(C) initially refused to provide the password for his cell phone. Once ordered to provide the password, he complied, and AFOSI was able to execute the search of his phone, as prescribed by the magistrate approved search and seizure documentation. Although (b)(6), (b)(7)(C) contends this action was illegal and violated his constitutional rights, this remains unsettled in the legal system and is a larger issue to be resolved outside the context of this Inquiry. With regard to (b)(6), (b)(7)(C) case, the policies and procedures in place at the time of the search and seizure were followed.

Additional information was properly obtained from witness interviews and two individuals' medical records, corroborating the text message evidence in the two cases.

Of the five cases of alleged illegal drug use, one case is still pending through a probable GCM action that has not taken place as of the time of this Inquiry, and involved allegations of illegal drug use and UPRs. Of the four remaining cases, two of the cases of suspected drug use were based on text message evidence – (b)(6), (b)(7)(C). Two additional cases were supplemented with medical record evidence as well as witness testimony – (b)(6), (b)(7)(C).

Command Determinations as to Disciplinary Actions

Based on the evidence and context of each individual case, the 47 FTW/CC was the command authority determining the appropriate actions in each case. Although primarily advised by the 47 FTW/SJA, the 47 FTW/CC also consulted with the 19 AF/CC and SJA, as well as the AETC/SJA in determining the appropriate adjudication of the cases. As each of these levels of command and SJAs testified, the AETC training environment brings an additional level of scrutiny to cases involving the misconduct of those with instructor or trainer responsibilities. As such, both the 47 FTW/CC and 19 AF/CC weighed the evidence for each case, with the legal advice of temperance and justice for each, and determined a course of action for each unique case. In the case of non-judicial punishment, AETC policy mandates that a wing commander at the O-6 level must recommend such actions to the Article 15 authority in his chain of command, which in the 47 FTW case is the 19 AF/CC. Witness testimony confirmed that there was a deliberate conversation between these two levels of command to determine the ultimate action in each case.

Witness testimony supported that detailed discussions and deliberations occurred with regard to the evidence in each case, and specifically, in regard to the text message evidence in the drug use cases. In those cases where a lack of corroboration of evidence did not support NJP or possible GCM process, the administrative action of an LOR or LOA was pursued. Witness testimony was clear in that the standard of proof for both NJP and GCM processes should meet "beyond reasonable doubt" versus that of administrative disciplinary action, which requires only a "preponderance of evidence."

Although the use of text messages alone as evidence was deliberated extensively, the command and advising attorneys concluded that the specificity, depth, and breadth of the text message evidence met the preponderance of evidence standards for the actions taken with regard to (b)(6), (b)(7)(C). With regard to (b)(6), (b)(7)(C) case, the command believed there was enough corroborating evidence (medical records) to support the beyond reasonable doubt threshold for NJP. Beyond the actions taken as direct result of the cell phone text message evidence, several actions were taken against the four IPs for conspiracy, obstruction, false official statements, violating a direct order, and not reporting known UPRs that were all supported by additional evidence, primarily witness statements. The IO found that the commanders and attorneys interviewed testified consistently that they believed the actions taken in these cases were supported by the evidence.

Precedent

With regard to precedent cases that relied on text message evidence to support administrative or NJP actions, the recent 20 AF missileer cheating scandal of 2014, which eventually implicated 98 individuals, was based primarily on text message evidence discovered through AFOSI investigations. Although many of these individual cases were also supported with witness testimony and some self-admissions of guilt, eventually 19 individuals received NJP, 44 received LORs and 23 received LOAs. A SAF/IG inquiry into this case determined by a preponderance of the evidence that the 20 AF/CC used a deliberative approach in determining the actions taken, and administered discipline in a fair and just manner, with some minor administrative errors noted and reported to the originating authority.

LIST OF EXHIBITS

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Conclusion

Procedural correctness was reviewed for all actions. The processes for administering NJP, administrative disciplinary actions, Aeronautical Orders, Promotion Propriety Actions, and Show Cause Authority actions were reviewed. Several minor administrative errors were noted but no substantive procedural errors were found, except in (b)(6),(b)(7)(C) case with regard to the Article 112a offense.

The preponderance of the evidence also supported that due process rights of the individuals were respected. This conclusion is supported by a review of the various responses and appeal channels and decisions – several of the actions were either terminated or reduced to a lesser action.

Overall, the actions taken against the nine IPs, and specifically the four cases involving the alleged use and/or possession of controlled substance, based on the preponderance of evidence, were taken within the authority of the each of the commanders who took the respective actions. As discussed previously in this report, some of the actions taken, to include the Promotion Propriety Action for (b)(6),(b)(7)(C) and the permanent aeronautical orders disqualification packages for (b)(6),(b)(7)(C) (b)(6),(b)(7) should be reviewed for correctness and consistency within each package. Finally, although some of these actions are either not final or pending appellate review, the actions that were taken were within the discretionary authority of the respective commanders, and the non-substantive procedural errors noted do not affect the final outcome of those individual actions.

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

GS-15, USAF

Investigating Officer

I have reviewed this Report of Inquiry, and I concur with the IO's conclusions and recommendations.

(b)(6),(b)(7)(C)

GREGORY A. BISCONI
Lieutenant General, USAF
The Inspector General

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