

**REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS**

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

**SECTION I - APPOINTMENT**

Appointed by Commander, USFOR-A/ISAF  
(Appointing authority)

on 25 February 2011 (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6)  
(Date)

**SECTION II - SESSIONS**

The (investigation) (board) commenced at Camp Arifjan, Kuwait at 1200  
(Place) (Time)

on 27 February 2011 (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

- LTG William G. Webster - Investigating Officer
- Dr. (b)(3), (b)(6) - Assisting Investigating Officer
- CO (b)(3), (b)(6) - Assistant Investigating Officer
- CO (b)(3), (b)(6) - Legal Advisor
- LTC (b)(3), (b)(6) - Assistant Legal Advisor

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at approximately 1430Z on 25 March 2011  
(Time) (Date)  
and completed findings and recommendations at approximately 2100Z on 5 April 2011  
(Time) (Date)

**SECTION III - CHECKLIST FOR PROCEEDINGS**

A. COMPLETE IN ALL CASES		YES	NO <sup>1</sup>	NA <sup>2</sup>
1 Inclosures (para 3-15, AR 15-6)				
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)				
a.	The letter of appointment or a summary of oral appointment data?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Copy of notice to respondent, if any? (See item 9, below)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c.	Other correspondence with respondent or counsel, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d.	All other written communications to or from the appointing authority?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	Privacy Act Statements (Certificate, if statement provided orally)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g.	Information as to sessions of a formal board not included on page 1 of this report?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h.	Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

FOOTNOTES: <sup>1</sup> Explain all negative answers on an attached sheet.  
<sup>2</sup> Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

	YES	NO <sup>1/</sup>	NA <sup>2/</sup>
2 Exhibits (para 3-16, AR 15-6)			
a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3 Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)</b>			
4 At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Was a quorum present at every session of the board (para 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Was each absence of any member properly excused (para 5-2a, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)</b>			
9 Notice to respondents (para 5-5, AR 15-6):			
a. Is the method and date of delivery to the respondent indicated on each letter of notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Was the date of delivery at least five working days prior to the first session of the board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Does each letter of notification indicate —			
(1) the date, hour, and place of the first session of the board concerning that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) the matter to be investigated, including specific allegations against the respondent, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) the respondent's rights with regard to counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) the name and address of each witness expected to be called by the recorder?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) the respondent's rights to be present, present evidence, and call witnesses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Was the respondent provided a copy of all unclassified documents in the case file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
a. Was he properly notified (para 5-5, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 Counsel (para 5-6, AR 15-6):			
a. Was each respondent represented by counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name and business address of counsel:			
(If counsel is a lawyer, check here <input type="checkbox"/> )			
b. Was respondent's counsel present at all open sessions of the board relating to that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12 If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
a. Was the challenge properly denied and by the appropriate officer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Did each member successfully challenged cease to participate in the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13 Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Examine and object to the introduction of real and documentary evidence, including written statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Object to the testimony of witnesses and cross-examine witnesses other than his own?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Call witnesses and otherwise introduce evidence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Testify as a witness?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14 If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15 Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>FOOTNOTES:</b> 1/ Explain all negative answers on an attached sheet. 2/ Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.			

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The (investigating officer) (board) , having carefully considered the evidence, finds:

- a. No evidence suggests that U.S. military personnel assigned to CSTC-A/NTM-A, including those assigned to, or engaged in, Public Affairs operations, were ordered to conduct, or actually conducted, PSYOP/MISO and/or IO intended to influence individual or groups of U.S. citizens, foreign officials or dignitaries, or other distinguished US or foreign visitors to the Headquarters or its organizations.
- b. CSTC-A/NTM-A officers did order U.S. military personnel to prepare detailed information packets including profiles on both U.S. and foreign distinguished visitors. No evidence suggests that CSTC-A/NTM-A presented DVs with inaccurate or untruthful information or that information presented was manipulated to influence audiences inappropriately.
- c. CSTC-A/NTM-A's DV SOP and DV packets are nearly identical to similar packets and SOPs of other strategic headquarters.
- d. No PSYOP/MISO forces were assigned to CSTC-A/NTM-A. A five person Information Operations Field Support Team, led by LTC (b)(3), (b)(6) was assigned. LT (b)(3), (b)(6) as a qualified IO officer; he was not a PSYOP-trained FA 37 officer. Employment of the IOFST team was inconsistent with their specified training and doctrinal purpose because, as a training command, CSTC-A/NTM-A didn't have an IO mission. As a training command, CSTC-A/NTM-A informed and educated. Neither LT (b)(3), (b)(6) or his team served in PSYOP billets. Neither LT (b)(3), (b)(6) or his team were ever tasked to conduct PSYOP on DVs by anyone in the Command, nor did they do so.
- e. Neither C (b)(3), (b)(6) or anyone in CSTC-A/NTM-A, ever tasked LT (b)(3), (b)(6) conduct an "IO Campaign" with respect to DV visits. Through multiple verbal instructions and one written order, LT (b)(3), (b)(6) incorrectly perceived that his team was being asked to use "IO skills" on DVs.

(b)(3), (b)(5), (b)(6)

- g. The initiation of the AR 15-6 investigation approved by Chief of Staff, CSTC-A/NTM-A on 18 May 10, and the resulting adverse action, was not in any way motivated or influenced by the fact that LT (b)(3), (b)(6) and/or M (b)(3), (b)(6) may have previously questioned whether CSTC-A/NTM-A's DV preparation amounted to conducting IO on U.S. persons. Both actions were appropriate under the circumstances.
- h. No evidence suggests that LT (b)(3), (b)(6) released classified material of an operational nature to any journalists.
- i. No violations of law or impermissible use of IO personnel or resources occurred.
- j. LTC (b)(3), (b)(6) did not violate any laws, regulations, policies or orders when he prepared and released either the response to Mr. (b)(3)(6) Rolling Stone inquiry or the 26 February 2011 email entitled "Statement." (See continuation for a more detailed response)

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the (investigating officer) (board) recommends:

- a. CSTC-A/NTM-A should follow up to ensure that the final corrected GOMOR is officially filed in MA (b)(3), (b)(6) MPPF and that the initial GOMOR was, in fact removed.
- b. CSTC-A/NTM-A should review movement control policies for discrepancies, inconsistencies and confusing parts; and align this policy, where possible, with ISAF movement policy.
- c. CSTC-A/NTM-A and ISAF should inquire into the remaining allegations from people we interviewed. Consider the application of Afghan Hands and the policies covering utilization and employment of personnel in this program, to ensure that CSTC-A/NTM-A deviations from policies now in effect at ISAF are fully considered. Related to this, there were a number of allegations made—not addressed in this investigation—to problems with command climate, specifically related to the employment of AF/PAK Hands (see statements from C (b)(3), (b)(6) (b)(3), (b)(6) and Lt (b)(3), (b)(6) while CSTC-A/NTM-A has a unique mission and may have more restrictive movement control policies than ISAF, this should be a deliberate decision.
- d. Commanders review where personnel assigned to PAO, IO, IE, MILDEC, and PYSOP/MISO continue to work in close proximity to one another with the risk of being re-missioned into other tasks. DoD schools should to begin training all personnel with identical legal training on the statutes listed in section "i" of the attached detailed findings and recommendations. There will, therefore, be a standard view of what is legal and what is not legal.
- e. The command should review its records to locate, if possible, the IOFST NCOs' awards. If the awards cannot be located, that CSTC -A/NTM-A take action to ensure the IOFST NCOs are properly recognized, if their performance merits.

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

  
William G. Webster, LTG, U.S. Army  
(Investigating Officer) (President)

\_\_\_\_\_  
(Recorder)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure \_\_\_\_\_, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

SEE ENCLOSED ACTION APPROVAL MEMO

\_\_\_\_\_  
David H. Petreaus, GEN, U.S. Army

**Continuation Sheet, DA Form 1574, Sections IV and V – Background, Findings and Recommendations**

1. (U) On 25 February 2011, the Commander, U.S. Forces – Afghanistan (USFOR-A) appointed me to inquire into the facts and circumstances surrounding allegations of misconduct or misuse of military resources and/or personnel reported within 23 Feb 2011 *Rolling Stone* magazine article, “Another Runaway General: Army Deploys Psy-Ops on U.S. Senators”. He followed up with a written appointment memorandum on 28 February 2011. (Enclosure 3)

2. (U) The investigative team and I interviewed 34 witnesses during the course of the investigation. We also reviewed over 200 documents including prior investigations, newspaper and magazine articles, regulations, statutes and policy memoranda. By a preponderance of the evidence, I found that no law was broken and no retaliation occurred.

3. (U) FACTS: On 23 February 2011, LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) made headlines when *Rolling Stone* magazine published an article entitled, “Another Runaway General: Army Deploys Psy-Ops on U.S. Senators.” The article accuses LTG Caldwell and Combined Security Transition Command – Afghanistan (CSTC-A)/National Training Mission – Afghanistan (NTM-A) (hereinafter CSTC-A/NTM-A) of performing psychological operations (PYSOP) or Information Operations (IO) on visiting Congressional Delegations (CODELs) and distinguished visitors (DV), including Foreign Dignitaries. The article alleges that when LTC (b)(3), (b)(6) questioned the legality of these actions, LTG Caldwell retaliated against both officers by investigating them and eventually filing General Officer Memorandums of Reprimand (GOMORs) in each of their official military personnel files (OMPFs) for unrelated minor misconduct.

a. (U) The 71<sup>st</sup> Information Operations Team, Texas Army National Guard, was assigned to CSTC-A in November 2009 in response to Request for Forces (RFF) 1006. RFF 1006 assigned a single Information Operation Field Support Team (IOFST) to CSTC-A. No PSYOP/MISO forces were assigned to CSTC-A. RFF 1006, dated 1 June 2009, originated long prior to LTG Caldwell’s assumption of command of CSTC-A/NTM-A in November 2009. The IOFST arrived the same month as LTG William Caldwell’s assumption of command in NOV 2009. The IOFST consisted of five personnel: LTC (b)(3), (b)(6) as Team Chief; MAJ (b)(3), (b)(6) as Deputy; MSG (b)(3), (b)(6) NCOIC; SFC (b)(3), (b)(6) and SSG (b)(3), (b)(6) Team Members. The team’s employment was inconsistent with their specified training and doctrinal purpose. Their purpose was to provide CSTC-A/NTM-A Information Operations planning capability. However, the command’s unpublished policy from LTG Caldwell’s arrival until June 10 was that CSTC-A/NTM-A did not conduct Information Operations. This policy statement was published by the Chief of Staff on 15 June 2010; however, it also was stated verbally throughout LTG Caldwell’s tenure. Testimony revealed that Chief of Staff, COL (b)(3), (b)(6) expressed this policy to LTC (b)(3), (b)(6) in

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December 2009 and Communications Director, Marine Corps Col (b)(3), (b)(6) said the same to LTC(b)(3), (b)(6) in January 2010. CSTC-A/NTM-A's policy after LTG Caldwell's arrival was to inform and educate with full transparency.

b. (U) LTG Caldwell initiated myriad changes upon his assumption of command. These changes included the determination that CSTC-A/NTM-A, a training command rather than an operational command, had no viable Information Operations mission. While this policy conflicts with the purpose stated in the RFF in June 2009, the document which drove the 71<sup>st</sup> IOFST's deployment, the change was clearly within LTG Caldwell's command authority. CSTC-A/NTM-A's staff manning levels were also a fraction of the command's authorized numbers. A steady stream of 16-36 official visiting groups were arriving per month; and LTG Caldwell insisted on fully staffed, professionally presented information engagements to inform and educate distinguished visitors. Therefore, COL (b)(3), (b)(6) in conjunction with CJ5, COL (b)(6) (UK), re-missioned the 71<sup>st</sup> IO team to assist with duties as part of a new cross functional working group, stood up after LTG Caldwell's arrival. That working group, termed the Information Engagement Working Group (IEWG), included members from each staff directorate. It was first supervised by the Chief of Staff, but was later transferred to the leadership of the Communications Director, Col (b)(3), (b)(6) who was succeeded by COL (b)(6) (UK). The IEWG met weekly to synchronize the efforts of the Joint Visitors Bureau (JVB), the Public Affairs Office (PAO), and the Commander's Action Group (CAG).

c. (U) Initially, this arrangement seemed satisfactory; LTC(b)(3), (b)(6) and his team contributed in developing products for the command's visitors. They routinely performed research to determine the interests and potential questions of CSTC-A/NTM-A's visitors, in order to ensure that visits were effective in informing and educating these individuals or groups. From early December 2009 through late February 2010, LTC(b)(3), (b)(6) supervised the IOFST's NCOIC, MSG(b)(3), (b)(6) as he assisted in the preparation of over 100 official visits to CSTC-A/NTMA, hosted by various CSTC-A/NTM-A general officers, including LTG Caldwell. The IOFST, in conjunction with the Commanders Action Group and others, researched biographies, public voting records, committee membership duties, and background articles. They also performed general research to ensure that the products presented during visits were tailored to the interests of each visitor. (Enclosure 4, attachments 1-9)

d. (U) On 31 January 2010, approximately two weeks after assuming duties as Communications Director, Col (b)(3), (b)(6) had a meeting with LTC(b)(3), (b)(6). That meeting marked the first time LTC(b)(3), (b)(6) expressed reservations about the legality of the mission he was being asked to perform, although LTC(b)(3), (b)(6) testified that he was uncomfortable with generating

**Continuation Sheet, DA Form 1574, Sections IV and V – Background, Findings and Recommendations**

themes, messages, and talking points prior to that date, and had expressed concern the IOFST he led was not doctrinally employed. Testimony confirms LTC(b)(3), (b)(6) continued to perform duties associated with DV preparation throughout the winter of 2010, which leads to the conclusion that he had no strenuous objection to those duties (Exhibit Q, Day 1, page 67). Additionally, Col (b)(3), (b)(6) stated that, at this initial meeting, he re-emphasized directly to LTC(b)(3), (b)(6) that no IO mission existed in CSTC-A/NTM-A. This was the second time a superior had informed LTC (b)(3), (b)(6) of this fact. The first notification occurred when COL(b)(3), (b)(6) re-missioned the IOFST to the Communications Directorate in early December 2009. At the January 2010 meeting, LTC (b)(3), (b)(6) attempted to present Col(b)(3), (b)(6) with a doctrinal explanation of an IOFST's capabilities. Col(b)(3), (b)(6) responded that doctrine did not apply in a command without an IO mission. From this point, the relationship between Col (b)(3), (b)(6) and LTC(b)(3), (b)(6) seemed to deteriorate, although throughout the month of February 2010, LTC (b)(3), (b)(6) and the IOFST continued to support the IEWG and DV missions. However, the necessity for IOFST support to the IEWG lessened in early March 2010 with the addition of MAJ (b)(3), (b)(6) a Congressional Liaison Officer, and MAJ (b)(3), (b)(6) a Public Affairs Officer brought in from LTG Caldwell's former staff at the Combined Arms Center.

e. (U) On 22 March 2010, the day prior to Col(b)(3), (b)(6) departing for TDY/R&R leave, a second disagreement took place, this time between LTC(b)(3), (b)(6) and Air Force Maj (b)(3), (b)(6) (b)(3), (b)(6) who was tasked to supervise the IEWG in (b)(3), (b)(6) absence. Acting on guidance from Chief of Staff, COL (b)(3), (b)(6) (who succeeded COL (b)(3), (b)(6) and conveyed through Director of Staff Wing Commander (UK) (b)(6) Maj(b)(3), (b)(6) wanted to improve the IEWG's output with assessments of the previous week's engagements. In an email, Maj (b)(3), (b)(6) requested support from LTC(b)(3), (b)(6) team. LTC(b)(3), (b)(6) responded that the IOFST was not set up to do assessments and that his team's focus was on the enemy and the Afghans. The evidence suggests this was a miscommunication that turned on the word *assessments*. In testimony, Col (b)(3), (b)(6) WG CDR (b)(6) and Maj (b)(3), (b)(6) when interviewed separately, expressed a common understanding that *assessments* in this context meant the same thing as an after action review of previous visits, along with open source determination of the visit's effectiveness. WG CDR (b)(6) stated that "(b)(3), (b)(6) was simply being asked to read the paper". (Exhibit II)

f. (U) LTC(b)(3), (b)(6) conveyed a different understanding of this term, although it is difficult to pin down exactly what he thought at the time. At various times in testimony, he described assessments as "effects assessments," an IO mission related to taking stock of the beliefs of indigenous populations. (Exhibit Q, Day 1, page 19) Ostensibly to clarify, he stated "When you say the word 'assess' in the IO realm, you lead into not just what happened but what to do about it. Where you need to go in order to change or reinforce or achieve the effect that you've

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identified that you want to achieve”. (Exhibit Q, Day 1, page 28) Still later, LTC(b)(3), (b)(6) affirmed that the *assessments* he was asked to perform agree in nature with the definitions offered by Col (b)(3), (b)(6) Maj (b)(3), (b)(6) and WG CDR (b)(6) however, he stated that while that activity was not illegal or improper, the fact that the IOFST was performing these activities violated the law. (Exhibit Q, Day 2, pages 26-27) Despite the disagreement over the use of the term *assessments*, ultimately the question of whether the order was illegal becomes moot for two reasons. First, CSTC-A/NTM-A’s Chief of Military Justice, MAJ (b)(3), (b)(6) conferred with Maj(b)(3), (b)(6) and determined that the information requested was all open source, and that the IOFST was simply being asked to do staff work, not anything in the IO realm. Second, in testimony, LTC(b)(3), (b)(6) himself acknowledged that “nothing illegal happened with regard to IO and PSYOP or whatever influence operations you want to call it. We didn’t allow illegal things to happen”. (Exhibit Q, Day 1, page 67) LTC(b)(3), (b)(6) lawyer sums this up by stating, “the system worked”. (Exhibit Q, Day 1, pages 10-11)

g. (U) The 23 March 2010 exchange between MAJ (b)(3), (b)(6) and Maj (b)(3), (b)(6) with Deputy Staff Judge Advocate (SJA), COL(b)(3), (b)(6) also in attendance, was a seminal event for this investigation. During this conversation, Maj (b)(3), (b)(6) mentioned potential misconduct to MAJ (b)(3), (b)(6) and COL(b)(3), (b)(6) including unauthorized wear of civilian clothes and an inappropriate relationship. Maj (b)(3), (b)(6) testified that she was “aware of them [LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) violating GO-1” because of comments LTC(b)(3), (b)(6) made to her related to consumption of alcohol (Exhibit P, pages 9-10), and because of an instance in which LTC(b)(3), (b)(6) complained of a hangover during a planning meeting. (Exhibit P, page 11) COL(b)(3), (b)(6) (b)(5)

(b)(5) (b)(3), (b)(6) (b)(3), (b)(6) He testified that Maj (b)(3), (b)(6) prepared a sworn statement of the allegations (Exhibit G, page 7). On COL (b)(3), (b)(6) orders, MAJ (b)(3), (b)(6) emailed Col (b)(3), (b)(6) then on TDY/R&R leave, to ascertain whether he concurred with recommending COL (b)(3), (b)(6) initiate an investigation. Col (b)(3), (b)(6) responded that if improprieties and misconduct were reported, they should probably be investigated. (Exhibit W, attachment 2) Subsequently COL (b)(3) forwarded the allegations to COL (b)(3), who determined that an investigation under the provisions of Army Regulation 15-6, *Procedures for Investigating Officers and Boards of Officers*, (hereinafter AR 15-6) was warranted, and appointed LTC (b)(3) from the Directorate of Programs, CJ8, as the Investigating Officer (Enclosure 5). The investigation substantiated misconduct, which led to LTC (b)(3) and MAJ (b)(3) being issued GOMORs. That AR 15-6 investigation and subsequent adverse administrative action led to the current retaliation claims, which are unfounded.

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4. (U) FINDINGS:

a. (U) Whether U.S. military personnel assigned to CSTC-A, other than those assigned to, or engaged in, Public Affairs operations, were ordered to conduct, or actually conducted, what amounted to psychological operations (PSYOPS) and/or information operations (IO) intended to influence: (1) Individual U.S. citizens, or groups of U.S. citizens. If so, you will determine whether this involved any violation of: U.S. law; Executive Order; DoD, USCENTCOM, USFOR-A, ISAF, or any separate U.S. military service directive, regulation, or other guidance; or, any other applicable legal authority; (2) Foreign officials, foreign dignitaries, or other distinguished foreign visitors to the Headquarters, CSTC-A or CSTC-A organizations. If so, you will determine whether this involved any violation of: U.S. law; Executive Order; DoD, USCENTCOM, USFOR-A, ISAF, or separate U.S. military service directive, regulation, or other guidance; or, any other applicable legal authority: No evidence suggests that U.S. military personnel assigned to CSTC-A/NTM-A, including those assigned to, or engaged in, Public Affairs operations, were ordered to conduct, or actually conducted, psychological operations and/or information operations intended to influence either individual U.S. citizens, groups of U.S. citizens, or foreign officials, foreign dignitaries, or other distinguished foreign visitors to the Headquarters, CSTC-A/NTM-A or CSTC-A/NTM-A organizations.

(1) (U) While LTC (b)(3) has stated multiple times that he believed he and his team were being asked to improperly use their IO skills in the DV process, he has also stated that he and his team did not actually ever perform or conduct information operations against any CODEL or DV. (See Finding *e* for a full discussion of the orders given to LTC (b)(3) and how both LTC (b)(3) and the command interpreted those orders).

(2) (U) Additionally, a CSTC-A legal opinion that specifically looked at the tasks LTC (b)(3) and his team were asked to perform (b)(5)

(See Finding *f* for a full discussion of the legal opinions rendered in connection with command's orders). Notably, the command never did the counseling.

b. (U) Whether any CSTC-A officers ordered U.S. military personnel to prepare detailed profiles or information packets regarding U.S. and/or foreign distinguished visitors (DVs)? If so, what information was, or was to be, included in these profiles? Were any limitations expressly placed on the source or type of information to be included in these profiles? (1) You will specifically recover and evaluate any profiles or information packets

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prepared for HQ, CSTC-A visits of U.S. Senators John McCain, Joseph Lieberman, Jack Reed, Al Franken, and Carl Levin; U.S. House of Representatives member Steve Israel; The Chairman of the Joint Chiefs of Staff; the Czech Republic's Ambassador to Afghanistan; the German Minister of Interior; and, any other persons who could have been expected to influence the policies and actions of the U.S. and/or foreign national governments. (2) You will specifically note whether, in your judgment and experience, any of these DV packets fundamentally differed from the products typically used by senior military officers to prepare for DV visits. If so, how and to what extent did such fundamental differences occur: CSTC-A/NTM-A officers did, in fact, order U.S. military personnel to prepare detailed information packets including profiles on both U.S. and foreign distinguished visitors.

(1) (U) Informational presentations and supporting materials were recovered from visits by Senators McCain, Lieberman, Franken, Reed and Levin; Admiral Mullen; Congressmen Israel; Ambassador H.E. Jiri Nekvasil, Czech Republic Ambassador to Afghanistan; and Dr. Thomas de Maiziere, German Minister of the Interior. In addition, we recovered a number of other CODEL and NATO DV informational packets dating from November 2009-September 2010. Evaluation of these materials, all of which were unclassified despite being stored on the CSTC-A/NTM-A secure portal, reveals that these packets are nearly identical to similar packets—in some cases for the same CODELs—from CENTCOM, USFI, CFC-Korea, and ARCENT. Further, these packets are fundamentally no different from each other, varying only slightly as statistics and numbers were updated over time.

(2) (U) CSTC-A/NTM-A HQ hosted, from November 2009 through the present, an average of 16-36 DV events per month; in February of 2010 alone, the HQ hosted 36 DVs. No evidence suggests that CSTC-A/NTM-A presented DVs with inaccurate or untruthful information. Neither does evidence suggest that information was manipulated in these presentations to influence audiences inappropriately.

**c. (U) How CSTC-A would prepare to host DVs. Include a full description of the staff processes used and include relevant examples of any written products and preparatory meetings required by CSTC-A's Chief of Staff, Deputy Commander, or Commander:** CSTC-A/NTM-A developed a fairly detailed standard operating procedure (SOP) to prepare for and execute DV engagements and established a cross-functional working group, the Information Engagement Working Group (IEWG), the sole purpose of which was to synchronize the activities required for each visit.

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(1) (U) The CSTC-A/NTM-A DV SOP corresponds with similar SOPs present in the joint visitors bureaus of other strategic headquarters. The activities of the working group, which included rehearsals, taskings, and the production of a tailored command brief for each visit, are common to headquarters frequented by CODELs and other DVs. The information in these packets was limited to open source material, easily obtainable from unclassified internet searches, transcripts of speeches, and official biographies. (Exhibit D, pages 26-27; Exhibit Q, attachment 9; Exhibit W, attachment 2) While it is not clear whether limitations were expressly placed on the source or type of information to be included in these profiles, the substance of the materials was—with the exception of one State Department cable that covered the No Neighbor policy generated by AMB Holbrooke—all open source.

(2) (U) The Director of Communications held weekly meetings attended by representative staff from all directorates to prepare for these visits by delineating tasks to directorates for logistics, escort, and presentations designed to educate and inform the audiences. Members of the Commanders Action Group, later the Commander's Initiatives Group, were primarily responsible for preparing versions of a command briefing that the CG, CSTC-A/NTM-A would personally provide. On occasion, responsibility for these briefings was delegated to one of the Deputy Commanders. These briefings were tailored to each specific DV. Considerations for how each briefing was tailored included the DV's or his party's interests. Taken into account for CODELs was membership in specific congressional committees, recent speeches, sponsorship of specific legislation and, in some cases, voting records—all information available through open source materials. For military DVs, consideration was given to branch of service and/or troop contributions, as well as interest in specific Afghan National Security Force components. For example, NATO flag officers from countries with forces training Afghanistan National Army Forces would receive briefings that focused on training missions being carried out by those forces. Similarly, visiting dignitaries or elected officials from other countries were shown how their troop contributions were being applied and the results they were achieving. In all cases, consideration was given to previous visits for returning DVs. The philosophy of the CG, CSTC-A/NTM-A consistently remained that these briefings were to inform and educate audiences on the command's efforts. No evidence suggests that CSTC-A/NTM-A presented DVs with inaccurate or untruthful information. Neither does evidence suggest that information was manipulated in these presentations to influence audiences inappropriately. While the commander clearly was concerned with gaining additional trainers and staff, no evidence suggests that the need for resources took priority over presentation of truthful and accurate reporting by CSTC-A/NTM-A's Chief of Staff, Deputy Commander, or Commander.

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d. (U) Whether any PSYOPS or IO units, teams, or elements were specifically assigned to, or were under the control of, CSTC-A from CY 2009 onwards? If so, provide a description of any such team's stated mission, organization, and constituent personnel. (1) Were any PSYOPS or IO teams employed in a manner inconsistent with their specified training, expertise, and doctrinal purpose? (2) Was any guidance issued by the CSTC-A Chief of Staff or other CSTC-A leaders concerning IO conducted by CSTC-A personnel? (3) Was LTC (b)(3), (b)(6) an IO or PSYOPS-trained officer and was he serving in either an IO or PSYOPS billet (by line and paragraph or unit assignment or mission) at the time he claims to have been tasked to conduct what amounted to psychological operations (PSYOPS) and/or information operations (IO) intended to influence?: No PSYOP /MISO forces were assigned to CSTC-A/NTM-A. A five person Information Operations unit was assigned to CSTC-A/NTM-A. The Request for Forces (RFF) Serial 1006, dated 011915ZJUNE09 from CENTCOM assigned a single Information Operation Field Support Team (IOFST) to CSTC-A. The RFF originated well prior to LTG Caldwell's assumption of command in November 2009. The RFF requested a multifunctional team capable of Information Operations planning, targeting, and execution at the tactical and operational levels.

(1) (U) This IOFST arrived in November of 2009 and LTG Caldwell's assumption of command was on 21 November 2009. The IOFST consisted of five personnel from the 71<sup>st</sup> Theater Information Operations Group (TIOG), which is part of the Texas Army National Guard. The personnel were: LTC (b)(3), (b)(6) Team Chief; MAJ (b)(3), (b)(6) Deputy; MSG (b)(3), (b)(6) NCOIC; SFC (b)(3), (b)(6) and SSG (b)(3), (b)(6) Team Members.

(2) (U) Employment of the IOFST team was inconsistent with their specified training and doctrinal purpose in four ways. First, the team was employed under the CJ5 section to train the Afghan Ministry of Defense (MoD) and Ministry of Interior (MoI) in how to conduct strategic communications (STRATCOM). This is not a traditional IO role and it was eventually taken over by the CSTC-A/NTM-A PAO staff after LTC (b)(3) team departed. MAJ (b)(3) spent most of her time on this mission. LTC (b)(3) also worked on this mission. Second, the IOFST team was tasked to assist with all aspects of DV preparations under the Chief of STRATCOM. It was this aspect of the mission that LTC (b)(3) eventually questioned as illegal. MSG (b)(3) LTC (b)(3) and, on occasion, MAJ (b)(3) and SSG (b)(3) performed this role. Third, portions of the team were fully occupied as force protection/movement escorts for movements off Camp Eggers, but it is not clear what staff element they worked for. Both SFC (b)(3) and SSG (b)(3) spent a lot of time on this mission. Fourth, LTC (b)(3) and his team took miscellaneous CJ5 missions. LTC (b)(3) stated he taught all incoming personnel

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at CSTC-A/NTM-A a two hour history class. Additionally, Maj (b)(3) remembers that LTC (b)(3) and MAJ (b)(3) were in several OPG planning groups.

(3) (U) The inconsistent employment of the team arose because, as a training command, CSTC-A/NTM-A didn't have a pure IO mission for the team to fulfill. COL (b)(3), the Chief of Staff in November 2009, stated that he was not involved in writing the Request for Forces for the IOFST because that was done prior to July 2009. (Exhibit GG, page 4) When asked about what MG Formica (the prior CSTC-A CDR) was going to use the IOFST team for, COL (b)(3) stated "Quite honestly that was part of the confusion because it was around that same time that USFOR-A split out [from CSTC-A]. And they stood up and we were still trying to figure out how we were going to align a lot of the folks and how they were going to move over because I was sitting on a number of folks that were supposed to be sitting over at USFOR-A and we were going round and round with their G1/J1, back and forth about how to align folks. ... So I just knew that the J5 told me 'Hey, I've got this group that's just coming in. We're still trying to figure out what we're going to do with them. We can initially give them some help to stand up this organization [the IEWG].'" (Exhibit GG, pages 5-6)

(4) (U) LTC (b)(3) stated that he first learned about his IO FST mission a week before he went to combat readiness center (CRC) by talking to Navy (b)(3). (Exhibit Q, Day 1, page 20) LTC (b)(3) and CDR (b)(3) both agree that CDR (b)(3) was the only other IO officer on CSTC-A staff when LTC (b)(3) arrived in November 2009. (Exhibit X, page 4) CDR (b)(3) was in the CJ5 staff and his job was mentoring, teaching and coaching the Afghans in planning and sometimes PAO tasks, but not in terms of doing IO for CSTC-A/NTM-A. (Exhibit X, page 4) Remarkably, even though CDR (b)(3) was only at CSTC-A/NTM-A from September 2009 to March 2010, he noted that "there was no IO at NTM-A." (Exhibit X, page 3)

(5) (U) CDR (b)(3) stated that "the idea was that we knew we were going to get the five people from the Texas Army National Guard, the IO Field Support Team was what we were calling them and that they were going to take over any IO strategic communication ... there was such a gap in information operations through the Ministry of Defense and Ministry of Interior that that [National G]uard team was going to put a training track in place so there would be a parallel information operations integrating function from the MoD and MoI similar to what IJC [ISAF Joint Command] would have and that was about a year long project to stand that up and get those billets filled, train those people and get them executing IO and parallel via the ANA [Afghan National Army] and ANP [Afghan National Police] in support of IJC's efforts. That was the 12 month idea. There were also plans drafted, ministry development plans, that kind of had the milestones for marching toward that path and that's what the five person team from the

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Texas Army National Guard was going to do and at that time I figured my job was then I could go back to being just a J5 planner...” (Exhibit X, pages 4-5)

(6) (U) According to LTC (b)(3), CDR (b)(3) was the one who told LTC (b)(3) that the team would be teaching Afghans. (Exhibit Q, Day 1, page 21) When LTC (b)(3) team arrived, CDR (b)(3) told him the team was going to teach Strategic Communications (STRATCOM). CDR (b)(3) apparently did not have the authority to assign a mission to LTC (b)(3) team, but LTC (b)(3) liked the idea and stuck to it. LTC (b)(3) stated that he was given a stack of documents, written 8-9 months prior by COL (b)(3), (b)(6), the outgoing CJ5. COL (b)(3) was departing in days but had worked to get a STRATCOM capability for the MoD and MoI developed. According to LTC (b)(3), COI (b)(3) told him that the Public Affairs team was supposed to do the training, but he wasn't happy with their product. So, COL (b)(3) took the RFF and changed it from effects assessment to STRATCOM. (Exhibit Q, Day 1, page 21)

(7) (U) On arrival in late November 2009, LTC (b)(3) and his team started on the plan to teach the Afghans, but they soon found out the students weren't available until New Tashkeel, the solar new year, which started around 17 March 2010. So, the team needed something to do. (Exhibit Q, Day 1, page 21) COL (b)(3) however, stated that he never assigned LTC (b)(3) the mission to train MoD or MoI personnel in how to use Information Operations or Strategic Communications. From COL (b)(3) perspective, it was just one of the things that he had discussed to do with the team, “but they weren't going to get into that until after we finished with the first thing that we did with them [meaning the IEWG]”. (Exhibit GG, page 11)

(8) (U) CDR (b)(3) recalled that “initially it didn't look like the Afghans were going to fill the billets that they needed to fill to have IO in the Ministry of Defense and the Ministry of Interior. Initially, he [LTC (b)(3)] spent the first month kind of plugging into IJC and to ISAF [International Security Assistance Forces – Afghanistan] and to all the organizations that were doing communications, including the civilian ones, including [President] Karzai's spokesmen through GIROA [Government of Islamic Republic of Afghanistan]. He spent a good deal of time with his deputy [MAJ (b)(3)] getting networked in and encouraging the Afghans to fill their billets for that FY [fiscal year] so that he would have folks to train at the ministry level, whether it was going to be five or eight or ten. It didn't look like he was getting a lot of traction with that, getting those billets filled so that he would be able to build that parallel organization and then shortly before I left [in March 2010] is when [LTC (b)(3)] team was starting to move over toward—out of the J5 and toward General Caldwell's staff to do the CODEL/DV work.” (Exhibit X, page 5)

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(9) (U) LTC (b)(3) stated that initially COL (b)(3) was identified as his rater and the team fell under him for both administrative and tactical control. LTC (b)(3)'s senior rater was not identified because COL (b)(3) was leaving in 30-60 days and CSTC-A/NTM-A was going through a massive reorganization at the directorate level. (Exhibit Q, Day 1, page 21)

(10) (U) LTC (b)(3) stated that he went to COL (b)(3) and volunteered to help work with the DVs and CODELs in terms of setting up chairs, doing background information and behind the scenes work. LTC (b)(3) stated he had conversations with COL (b)(3) on what was an appropriate use of the team and what was not and COL (b)(3) accepted that. (Exhibit Q, Day 1, page 21)

(11) (U) However, COL (b)(3) has a different take. He remembers tasking LTC (b)(3) and LTC (b)(3) not being happy about it. COL (b)(3) stated that about November/December 2009 LTG Caldwell, who had recently taken command (within about 3 weeks), tasked him to stand up the IEWG in order to improve Strategic Communications. (Exhibit GG, pages 4-5) COL (b)(3) said he was looking for available personnel to staff the IEWG and "we pulled those folks who were working over in the J5 [meaning LTC (b)(3) team] out to come to be the nucleus of it." (Exhibit GG, page 5)

(12) (U) COL (b)(3) noted that his initial impression was, "He [LTC (b)(3)] was not pleased with where we put him. When they got there as we were trying to stand up – we were short-handed to say the least in the staff and this was a hot button for General Caldwell. So he [LTC (b)(3)] made it known to me on I guess one occasion that they should be doing something else. And I just told him until I've got the people he was going to have to work there." (Exhibit GG, page 6) COL (b)(3) stated "I told him this is a short term fix: You're only going to be doing this 60-90 days. As soon as I get some other people in we will change you out and then we'll figure out what we're going to do with you, whether we're going to move you into USFOR-A or get you on another mission." (Exhibit GG, page 10) Notably, 60-90 days lined up perfectly for LTC (b)(3) and his team because that was when the Afghan MOD and MoI would have had the students available for the STRATCOM classes that (b)(3) wanted to teach. LTC (b)(3) said he initially left MAJ (b)(3) on the IO training mission [the Afghan mission] and focused MSG (b)(3) on the DV mission, to include the *GOOGLE* scrubs. (Exhibit Q, Day 1, page 22)

(13) (U) CSTC-A/NTM-A's policy from LTG Caldwell's arrival in November 2009 was that the command did not conduct IO because it was a training command. LTG Caldwell's

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vision was that CSTC-A/NTM-A informed and educated, striving for total transparency. During this investigation, LTG Caldwell's senior staff reiterated during the interviews that this was the verbal policy, and it was widely known. CSTC-A/NTM-A's Chief of Staff, COL (b)(3) published this policy on 15 June 2010 after it became clear that LTC (b)(3) team did not understand this verbal policy. (Exhibit F, page 6)

(14) (U) During our interviews, Col (b)(3) was adamant that LTC (b)(3) knew that CSTC-A/NTM-A did not conduct IO. Col (b)(3) told LTC (b)(3) that he would never ask him "to do anything that was unethical, immoral or illegal. We're not doing IO in this command. The tasks that you're doing have nothing to do with IO, but I need you to get them done. You need to let go of the IO mission, because that has ended, based on the commander's guidance, and move on to the new task." (Exhibit D, page 24) Col (b)(3) stated that even though LTC (b)(3) was an IO officer, "There's nothing that he can't do, other than do Information Operations against Friendly Forces, against the American Public. We weren't asking him to do that. We were tasking him to do administrative duties within the staff, like we would task any other individual augment as a part of our Headquarters, and I just needed him to get his duties done." (Exhibit D, page 26)

(15) (U) Col (b)(3) stated the same thing in an email to MAJ (b)(3) on 30 March 2010 after MAJ (b)(3) had issued a legal opinion (b)(5) (b)(3) Col (b)(3) email stated "LTC (b)(3) works for me. I will direct his duties as required. He is assigned as a STRATCOM team member as directed by the CG. He is not working IO as that function is being done by ISAF. Since we don't do IO in this command his duties have been realigned to where they are required. He is to prep all of the visitor packages for the IEWG." (Exhibit W, attachment 2). Notably, LTC (b)(3) was not courtesy copied on this email but it does show that in March 2010, Col (b)(3) knew CSTC-A/NTM-A didn't conduct IO.

(16) (U) However, as a member of a Texas Army National Guard Information Operations Team on a RFF to CSTC-A/NTM-A, LTC (b)(3) had a different opinion. LTC (b)(3) stated in testimony the team continued to train the Afghans on STRATCOM until COL (b)(3) put out the June 15, 2010 memo stating that CSTC-A doesn't do IO: "the only time that I saw anything or heard anything that said we don't do IO was the memo that COL (b)(3) produced on the 15<sup>th</sup> of June." Even then, LTC (b)(3) points out that his end of tour OER lists him as the team chief of an IOFST team. (Exhibit Q, Day 1, page 24)

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(17) (U) Notably, even though CDR (b)(3) was only at CSTC-A/NTM-A from Sept 09 to Mar 10, he noted that “there was no IO at NTM-A.” (Exhibit X, page 3)

(18) (U) Neither LTC (b)(3) nor his team was ever serving in a PSYOP billet of any type. Neither LTC (b)(3) nor his team was ever tasked to conduct PSYOP on DVs by anyone in the Command.

(19) (U) The command and LTC (b)(3) had differing opinions on whether or not LTC (b)(3) and his team were serving in an IO billet at the time he claims to have been tasked to conduct IO intended to influence DVs. In essence, the command believed that it completely re-missioned the IOFST from an IO team to a PA team in early March 2010, such that they were no longer an “IO team” with an “IO Mission.” LTC (b)(3) believed that the IO team retained its character as an IO team but was tasked to do something illegal – use an IO team and IO skills to influence American CODELs – which is not supported by evidence.

(20) (U) Col (b)(3), (b)(6) recalled that sometime in March 2010, LTG Caldwell asked Col (b)(3) staff, which included Public Affairs, to assist the JVB because they were overwhelmed. (Exhibit D, page 4) At that time, LTG Caldwell also agreed that the 71<sup>st</sup> IO FST could be re-missioned to work directly for Col (b)(3) Director of STRATCOM, because there was not an information operations mission at CSTC-A/NTM-A. (Exhibit D, page 5)

(21) (U) CDR (b)(3) stated in testimony that “I think the J5 was simply told by the Chief of Staff [COL (b)(3)] who was aware that this team was there, that he was taking them...I believe there was a good bit of discussion and some pushing and pulling between the Chief of Staff and the J5 but it wound up that they were—that they get to reside under the J5 but they were going to work for General Caldwell’s staff directly, his immediate staff.” (Exhibit X, page 7)

(22) (U) CDR (b)(3) noted that the IOFST team “was concerned that they weren’t answering the RFF that they came to fill. It was not what they were going to do ...” (Exhibit X, page 8) CDR (b)(3) stated that the team thought it was “more not their expertise [as opposed to illegal]. We’re not here to do this. We came with a skill set to do something and now we’re being asked to do this. I don’t think the job was particularly onerous. I think they were very busy. They seemed to take it on and at least certainly from the enlisted side they took it on and did a very thorough and good job with it as far as I know.” (Exhibit X, page 8)

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(23) (U) Once again, Col (b)(3) understood the IOFST team to have been completely re-missioned because that is how he described it in a 30 March 2010 email to MAJ (b)(3), who had issued a legal opinion confirming that Col (b)(3)'s order was legal, but that LTC (b)(3) needed to be counseled to ensure he understood. Col (b)(3) stated “[LTC (b)(3)] is assigned as a STRATCOM team member as directed by the CG. He is not working IO as that function is being done by ISAF. Since we don't do IO in this command his duties have been realigned to where they are required. He is to prep all of the visitor packages for the IEWG.” (Exhibit W, attachment 2) Notably, LTC (b)(3) is not copied on this email but it does show that in March 2010, Col (b)(3) believed the team was completely re-missioned.

(24) (U) LTC (b)(3) stated that Col (b)(3) never told him to stop training the Afghans; it was “I don't want you to stop training the Afghans, but I want this [CODEL/DV Support] too.” (Exhibit Q, Day 1, page 24) LTC (b)(3) stated “in reality, for DV visits and media type stuff and putting information out, I got my direction from Col (b)(3). But I was absolutely working for COL (b)(3) when it comes to working with the Afghans and doing another – we haven't discussed this but I was also teaching the history class for all the new arrivals to NTM-A. I was teaching two hours of Afghan history and that was run by the CJ5 shop.” However, CDR (b)(3) recalled that LTC (b)(3) saw it [the re-missioning] as a change of duty, not a collateral duty. (Exhibit X, page 8)

(25) (U) At the time of Col (b)(3)'s email order, the command believed the IO team had been re-missioned to do a more PAO focused mission. However, LTC (b)(3) stated that he believed, and still believes, that he was IO (and PSYOP integration trained) and that he and his team were still serving in an IO billet. During our interview with LTC (b)(3), he pointed out that both his OER and MAJ (b)(3)'s OER reflect that they were serving on an IO Team.

(26) (U) In reviewing LTC (b)(3) and MAJ (b)(3) OERs, LTC (b)(3)'s OER for November 2009 to August 2010 has his duty title as “Team Chief” and his significant duties states “As Team Chief, serves as Information Operations Supervisor for team. Develop and coordinate information operations initiatives in support of the missions of NTM-A/CSTC-A. Coordinate and deconflict with STRATCOM Divisions of NTM-A, the United States Embassy, Afghanistan, NATO International Security Assistance Force – Afghanistan (ISAF) and ISAF Joint Command (IJC). Participate in ISAF Force Reintegration Cell coordination meetings. Provide mentoring to Afghan Ministry of Defense and Ministry of the Interior STRATCOM Teams. Develop and instruct a two-hour block of instruction on Afghan History to incoming staff and mentors at NTM-A/CSTC-A.” MAJ (b)(3)'s OER has similar language. There is no mention of the CODEL/DV mission in either OER.

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(27) (U) At about the same time that LTG Caldwell approved the re-missioning, Col (b)(3) issued an email order to LTC (b)(3) to support the IEWG. The email provoked LTC (b)(3) to question the legality of Col (b)(3) order – as opposed to questioning the re-missioning of the team to solely PAO functions. Perhaps this is because LTC (b)(3) never viewed his IO team as re-missioned completely from an IO team to a PAO team. He viewed it as taking an IO Team tasked to work with the Afghans and adding to that another task: asking the IO team to apply IO skills to CODELs.

(28) (U) In the end, the preponderance of the evidence is that LTC (b)(3) was serving on an IO team but, once the team arrived, there was not a true IO mission at CSTC-A/NTM-A for them. So, LTC (b)(3) and his team were not actually serving in an IO billet. In a telephonic interview, COL (b)(3) affirmed that he and LTC (b)(3) had agreed that capacity building in the MoI/MoD was a viable mission, but he reaffirmed that (b)(3)'s first priority was to support the Directorate of Communications. (Exhibit B) Due to the lack of space in the Communications Directorate, the team retained a group location in the CJ5 section but, as to mission, it was broken apart to perform at least four different non-IO functions (Training Afghans, DV/CODEL Prep, force protection/movement control, and miscellaneous CJ5 planning activities). Even in their capacity as instructors of Strategic Communications at the Afghan Ministries of Interior and Defense, LTC (b)(3) and his team were engaging in activities more along the lines of civil affairs/foreign internal defense, rather than information operations. In fact, that mission was eventually taken over by the PAO office. However, confusing this issue is the fact that LTC (b)(3) and his team deployed on an Information Operations RFF and both LTC (b)(3) and MAJ (b)(3), (b)(6) end of tour OERs state they were members of an IO team.

(29) (U) LTC (b)(3) was a qualified Information Operations officer and he had also completed a PSYOP integration course. He was not a PSYOP-trained FA 37 officer.

(30) (U) LTC(b)(3), (b)(6)enlisted in the Texas Army National Guard in 1985 as a 19D Cavalry Scout in the SMP program so that he could do ROTC at the same time. Upon graduation in 1987, he was commissioned as an active duty Infantry officer and assigned to the 10<sup>th</sup> Mountain Division until he resigned in 1992. From there he joined the Army National Guard as an Infantry officer, eventually commanding a National Guard Infantry company in 1997 in Florida. Afterward, he transferred to Military Intelligence (MI), taking the MI transition course for six or eight weeks in 2002. LTC(b)(3), (b)(6)held a number of military intelligence jobs in the National Guard as well as teaching at the Ft. Huachuca, Joint Intelligence Combat Training Center from January 2006 to September 2007. In 2003, he transferred to the Texas

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Army National Guard. From there, he deployed to Kosovo in 2004 in an intelligence billet as the targeting officer, and Iraq in 2005 as the intelligence liaison officer to Multi-National Division – Southeast. He became FA 30 (IO) qualified in October 2008 via a Combined Arms Center (CAC) course that required six months correspondence work and a two week residency course at Fort Leavenworth, Kansas. (Exhibit Q, Day 2, pages 2-4) Prior to deploying to CSTC-A, he also completed the Psychological Operations Integration course (40 hours) in October 2009 and the Military Deception Planner's course (also 40 hours) in Oct 2009, taught by the 1<sup>st</sup> IO Command. (Exhibit Q, attachments 14 and 15) He acknowledged in testimony that he was not qualified as a FA 37.

(31) (U) The 1st IO Command provides operationally focused training to prepare 1st IO Command teams to deploy in support of designated missions. More precisely, 1st IO Command offers IO training to internal and external audiences IAW AR 525-20, Para 2-18.d., and personnel from other Commands, Services, and Agencies do participate on a space available basis. Responsibility for training readiness of Theater IO Group personnel belongs to TIOG Commanders and 1st Army. The 1<sup>st</sup> IO Command provided the following training to LTC Holmes and members of his team:

(a) (U) Information Operations Capabilities, Application and Planning (IOCAP) Course. The IOCAP is an 80-hour course designed to train personnel on the fundamentals of planning, coordinating, executing, and assessing full-spectrum Information Operations (IO) in support of Army and joint operations. The focus is the application of full-spectrum IO as a member of an Army IO cell in planning and operational environments." MAJ (b)(3) completed this course in August 2006.

(b) (U) Psychological Operations Integration Course (POIC) (now called the MISO Integration Course). "The POIC is a 40-hour course designed to provide IO planners the knowledge, skill and ability to integrate, synchronize, and coordinate Psychological Operations (PSYOP) efforts with the other elements of IO and related activities." LTC (b)(3) and MSG (b)(3) completed this course in October 2009.

(c) (U) Military Deception Planners' Course (MDPC). "The MDPC is a 40-hour course designed to train individuals on the fundamentals of Military Deception planning in support of land component commanders." LTC (b)(3) completed this course in October 2009. MAJ (b)(3) completed this course in January 2007.

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(d) (U) Operations Security (OPSEC) Planners' Course. "This is a 40-hour course designed to provide the knowledge and methodology needed to effectively conduct OPSEC planning and related responsibilities." MAJ (b)(3) completed this course in May 2007.

(e) (U) Basic Computer Network Operations Planners' Course (BCNOPC). "The BCNOPC is an 80-hour course designed to familiarize planners with the unique requirements to build CNO CONOPS, authority and legal considerations, and how to integrate and synchronize CNO with other IO functions." MAJ (b)(3) completed the 1-week course in September 2007 and the two-week ASI-granting course in September 2009.

(f) (U) RC FA30 (IO) Course. "The FA30 Qualification Course (Reserve Component) is a one year, 3 phase course covering Information Engagement Operations. Phase I (IO 101) is approximately 40 hours of self-paced web based distance learning. Phase II is 6 months of IDT in a virtual classroom. Phase III is a 15 day resident exercise held at Ft. Leavenworth in conjunction with the active duty's FA30 course. Field grade officers are eligible for qualification in Functional Area 30. Graduates receive an Information Operations Proponent diploma and DA Form 1059 (Academic Evaluation Report) to document their completion of the course. The course is designed for field grade officers who are assigned or will be assigned as strategic-level IO planners (division, corps, theater, etc.) It develops FA30 officers to successfully serve their commands on staffs at brigade through corps level." MAJ (b)(3) completed this course in October 2008.

**e. (U) The nature and extent of any orders, whether written or verbal, issued by Col (b)(3), (b)(6) to LTC (b)(3), (b)(6) with respect to DV visits. Determine whether Col (b)(3) directly tasked LTC (b)(3) to conduct an "IO campaign" with respect to DV visits. If so, what was intended, or understood, by Col (b)(3) use of the phrase "IO campaign?":** The preponderance of the evidence is that Col (b)(3) never directly tasked LTC (b)(3) to conduct an "IO Campaign" with respect to DV visits. However, through multiple verbal instructions and one written order, LTC (b)(3) perceived that his team was being asked to use their "IO skills" on DVs. The discussion below recounts the various orders LTC (b)(3) received and what Col (b)(3) stated he actually said. In the end, Col (b)(3) needed routine PAO work. Of relevance to this discussion is Chairman's Memorandum (CM) 2077-04, Policy on Public Affairs Relationship to Information Operations, 27 September 2004 which states "[a]lthough both PA and IO conduct planning, message development and media analysis, the efforts differ with respect to audience, scope and intent, and must remain separate. However, PA and IO entities must be aware of each other's activities for maximum effect and to achieve success in both operational areas." Additionally, "while organizations may be inclined to create

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physically integrated PA/IO offices, such organizational constructs have the potential to compromise the Commander's credibility with the media and public." Finally, CM-2077-04 states that Public Affairs officers should work directly for the Commander and supporting PA personnel should be organized under the PAO." (Enclosure 11) The discussion below seems to illustrate the exact point being made by the Chairman's Memo – that IO teams should not be integrated with PAO.

**(1) (U) Incident #1 with Col (b)(3) - Verbal Orders.**

(a) (U) LTC (b)(3) worked on the DV packets prior to Col (b)(3) arrival under the direction of COL (b)(3). LTC (b)(3) didn't have any issues with what COL (b)(3) had him doing. LTC (b)(3) stated that he started receiving pressure to do things he thought were too close to illegal only after Col (b)(3) came on board in mid-January 2010. LTC (b)(3) recalled the pressure this way, "I know that (b)(3) was ... being looked at as "Okay, you're the [new] STRATCOM guy so what do we got to tell him? What does he need to know? What do we need to do?"

(b) (U) Prior to Col (b)(3) becoming the STRATCOM Director, CSTC-A/NTM-A didn't use the position of Director of STRATCOM. Additionally, prior to Col (b)(3) arrival, while LTC (b)(3), (b)(6) was working for COL (b)(3), (b)(6) with the CODEL/DV preparation (November 2009 to mid January 2010), LTC (b)(3) stated he had been in the preparation meetings with LTG Caldwell and his senior staff. Once Col (b)(3) arrived in mid-January 2010, LTC (b)(3) stated he was no longer in those meetings with LTG Caldwell because Col (b)(3) had taken them over. Nonetheless, LTC (b)(3) stated the environment of the meetings were "very much this strategy session of General Caldwell and his trusted advisors. 'Okay, so we've got Senators Levin and Franken showing up next week and where are they coming from?' and 'What's their point of view?' and "Where have they been?" and "I know this guy." And "I don't know this guy," and "What's he going to want from us?" and "What do we need to tell him in order to get what we want out of him?" (Exhibit Q, Day 1, page 29) LTC (b)(3) viewed his presence in this room from the perspective that he was assigned to an IO team. LTC (b)(3) stated, "And, again, that's perfectly fine [that the staff was discussing the perspectives of the upcoming DVs]. I can be in the room for that but I think I start crossing the line when I say [to the group], 'You probably want to tell him this and go this way and here's the effect we want to achieve.' ... by asking me to be a part of that or asking me to provide input into that, that's where I started seeing that I was crossing the line or could cross the line. So I know what Col (b)(3) was being asked [for] because he took the position. He took that job. He was the one presenting the packets that I now prepared and gave to him and having to answer those questions. And I

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know that there was pressure there to provide an answer, “What do we have to do to influence this guy?” (Exhibit Q, Day 1, page 29) “Legally, I felt when I started providing themes and messages, and that’s what he was asking for, themes and messages, the theme of NTM-A is do this, the message we need to achieve that theme, the effect we want to achieve is...that is, I mean that is IO.” (Exhibit Q, Day 1, page 30)

(c) (U) “And when he [Col (b)(3)] turned right around to me ... that’s when the pressure really began. It’s uncomfortable enough sitting in a room with a three star...It’s even more uncomfortable when that’s getting translated down to you now by your boss and there’s nobody between you and him but six inches of space and he’s screaming and you’re feeling like, “Okay, seriously, I can’t do this. Remember, I told you I wrote down the definitions – enemy oriented, friendly oriented, usurp, degrade, disrupt, educate, inform.” [And Col (b)(3) said] ‘I don’t care. Give me what I need.’ He wants the pain to stop and the only one he’s looking at is me.” (Exhibit Q, Day 1, Page 20)

(d) (U) Col (b)(3) stated he never tasked LTC (b)(3) to conduct an “IO campaign” with respect to DV visits. Col (b)(3) stated that he told LTC (b)(3) that he would never ask him “to do anything that was unethical, immoral or illegal. We’re not doing IO in this command. The tasks that you’re doing have nothing to do with IO, but I need you to get them done. You need to let go of the IO mission, because that has ended, based on the commander’s guidance, and move on to the new task.” (Exhibit D, page 24) Col (b)(3) stated that even though LTC (b)(3) is an IO officer, “There’s nothing that he can’t do, other than do Information Operations against Friendly Forces, against the American Public. We weren’t asking him to do that. We were tasking him to do administrative duties within the staff, like we would task any other individual augment as a part of our Headquarters, and I just needed him to get his duties done.” (Exhibit D, page 26)

(2) (U) **Incident #2 with Col (b)(3) – Meeting in COL (b)(3) Office.**

(a) (U) LTC (b)(3) recalled an incident around 21 January 2010 in COL (b)(3), (b)(6) (b)(3), (b)(6) office with MAJ (b)(3) MAJ (b)(3) maybe LTC (b)(3) and maybe Maj (b)(3) present where Col (b)(3) verbally directed LTC (b)(3) to do things that he thought were illegal. (Exhibit Q, Day 1, page 45)

(b) (U) LTC (b)(3) stated that Col (b)(3) was laying down expectations and he started out “okay, I have just come from the boss. I am tired of getting my face ripped off about, you know, these DV visits and about this press thing.” LTC (b)(3) stated Col (b)(3) was in a

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“foul mood” and continued “here is what I need everybody to do” and he started pointing fingers. LTC (b)(3) stated Col (b)(3) got to LTC (b)(3) and he said, “And I need you to provide me themes and messages, and I want to know what we have got to tell these people to get them to understand what we are trying to get across here.” (Exhibit Q, Day 1, page 45) LTC (b)(3) stated he said, “Sir, we have talked about this. I can’t do that. That is outside my lane. (Exhibit Q, Day 1, page 45) He told Col (b)(3) “Sir, I can’t do that. That’s illegal. That’s crossing the line.” LTC (b)(3) recalled that Col (b)(3) yelled, “I don’t care. You’re not IO if I say you’re not IO and if I say it’s not illegal, it’s not illegal.” LTC (b)(3) testified that COL (b)(3), (b)(6) said to Col (b)(3) , “Hey, (b)(3) , he is trying to tell you—what he is telling you is right. He is IO. They don’t do that. That is not what they are supposed to be doing here.” (Exhibit Q, Day 1, page 47) LTC (b)(3) stated that Col (b)(3) told COL (b)(3) “Shut Up. I got this.” (Exhibit Q, Day 1, page 47)

(c) (U) MAJ (b)(3) recalled the meeting essentially the same way as LTC (b)(3) . She stated “I was present at one meeting at the end of January at some point where--I don’t remember exactly what it was that Col (b)(3) had asked him to do, but LTC (b)(3) believed that we should not be doing it, and LTC (b)(3) told Colonel (b)(3) that if he says it’s not illegal, it’s not illegal. . . . I don’t believe it [the meeting] was about the IEWG. I believe it was concerning CODEL visits, I believe.” (Exhibit V, page 10)

(d) (U) LTC (b)(3) states that the type of things Col (b)(3) was asking him for were “themes and messages and talking points and pressure points that we could provide to influence these people.” (Exhibit Q, Day 1, page 12) LTC (b)(3) stated, “LTG Caldwell nor anybody else on the staff ever directed me to use any deception or lie. What I was directed to do, and I thought improper, was to provide influence advice on the operation and coordination in planning on the U.S. population...In my mind it was absolutely clear I was being asked to influence them.” (Exhibit Q, Day 1, page 47)

(e) (U) From that point on, LTC (b)(3) stated he actively tried to resist the verbal orders to provide that type of information. (Exhibit Q, Day 1, page 13) LTC (b)(3) stated, “It’s not just suddenly Col (b)(3) takes charge and I’m being asked to do illegal stuff. It’s “I want more, I want more, I want more, I want more, I want to feed the beast.” So as it starts in the early days in January up to about the 31<sup>st</sup> [later clarified as the 21<sup>st</sup>] when I had that screaming match with him – well, not a screaming match, he screamed, I didn’t – it is this is really dumb, this is going to look bad if this gets out, we really shouldn’t be doing this. You know, I’ll do it for you. I’m providing you what you ask, but you’re starting to ask me things that I’m really uncomfortable with...” (Exhibit Q, Day 1, page 31)

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(f) (U) Neither Col (b)(3) MAJ (b)(3) , nor COL (b)(3) recalled any unprofessionalism on Col (b)(3) part in this incident. MAJ (b)(3) , who was assigned as LTG Caldwell’s personal PA representative, remembers the meeting in COL (b)(3), (b)(6) office differently. “I don’t remember it as a CODEL focused visit, Sir. I remember that meeting. It was in COL (b)(3) office. It was to put together a Strategic Communication plan for the command and Col (b)(3) wanted that done.” (Exhibit C, page 6) MAJ (b)(3) recalled that Maj (b)(3) , LTC (b)(3) and MAJ (b)(3) were all present and that Col (b)(3) was “trying to get us all online to form a single plan.”

(g) (U) MAJ (b)(3) stated there wasn’t necessarily disagreement in the meeting as much as “a misunderstanding or confusion about whose role it was to do what and who was going to be in charge of putting together the Strategic Communication plan for the command and who was supposed to draft it up and why it needed to be done on such short suspense.” (Exhibit C, page 6) “The piece of the pie that I held in that was the comms proposed Information Engagement strategy and I wasn’t willing to publish that until General Caldwell had blessed off on it because I didn’t want people to think they were his confirmed ideas when they were just my ideas. So I was holding that and there was some consternation from Colonel (b)(3) for me holding that and not wanting to make that public.” (Exhibit C, page 6) MAJ (b)(3) does not recall Col (b)(3) asking LTC (b)(3) for themes, messages, talking points or pressure points. She does not recall Col (b)(3) yelling “it was only illegal if he said it was illegal.” MAJ (b)(3) stated, “No, Sir. I’ve never witnessed Col (b)(3) yelling at anyone. I’ve just heard second or third hand if he would yell at someone or be upset with them.” (Exhibit C, page 7)

(3) (U) **Incident #3 with Col Breazile – Email Orders.**

(a) (U) On 22 March 2010, around the time that LTG Caldwell had approved re-missioning the IO team, Maj (b)(3) , a USAF PAO officer, sent LTC (b)(3) an email requesting that he assist the IEWG (Information Engagement Working Group) with developing “strategic messaging” for the DV visits. (Exhibit Q, attachment 2) She complained to LTC (b)(3) that she got no help from his team “developing any type of strategic messaging.” (Exhibit Q, attachment 2) After LTC (b)(3) stated to her that he was Information Operations and could not “message US or Coalition Partners,” Maj (b)(3), (b)(6) specifically told LTC (b)(3) that he was not being requested “to do IO with them” (Exhibit Q, attachment 2) LTC (b)(3) further stated to Maj (b)(3) in email that his team was “not set up (at all!) to do assessments – nor should we assess the effects of information engagements on US or Coalition allies. We are

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focused on the adversary, and on the Afghan population – by both joint doctrine and US law.” (Exhibit Q, attachment 2)

(b) (U) In discussing why he refused to assist Maj (b)(3) LTC (b)(3) stated, “What I’m trying to say here by that is they’re looking at us ... as if well, you’re IO and you can get them to do things. You can make them. By the stuff you’re doing here you can make them do these other things. I’m trying to tell them, no, listen, anything we do in this realm, you guys already have the tools and assets and the talents to be able to do. You just need to task yourselves more efficiently to do that. I have other things that I have to do. My primary job here, according to everything I’ve been told, is to go out and train the Afghans and the time has now arrived. I need to go and train the Afghans. You’ve got an NCO, you’ve got a couple of NCO’s who are doing this kind of work already. It’s no extra thing off of your back. There’s no IO magic to actually going out and scrubbing the list and finding out what the public pronouncements were. So instead of trying to ask us to do something we think is illegal and that is double tasking us or tasking us away from training the Afghans, which again is primary mission, use the people you have to do this and you’ll avoid everything.” (Exhibit Q, Day 2, page 30)

(c) (U) After LTC (b)(3) told Maj (b)(3) in an email that he would not support the IEWG, Col (b)(3) issued a written email order to LTC (b)(3). On 22 March 2010, the day Col (b)(3) departed for his TDY/R&R trip (Exhibit D, page 31), Col (b)(3) sent LTC (b)(3) an email ordering him to do “the assessment piece for the IEWG” as well as “preparing the context and developing the package for each visit.”(Exhibit Q, attachment 3) He told LTC (b)(3) that the IEWG mission would take priority over the Afghan MoD mission.

(d) (U) By the assessment piece, Col (b)(3) stated that he meant “our assessments were on our own performance in the visits: how did the visit go; what do we need to do better next time; you know, take lessons learned and try to fix it so we have a check and balance in there. There were a lot of moving parts in these visits, between the Protocol, the JVB, down to the Security Teams, down to getting people through the gate. You know, the whole nine yards: the chow hall being set up; the conference room having nametapes and enough visitor packages printed.” (Exhibit D, page 27) Col (b)(3) noted that LTC (b)(3) “didn’t understand that after every visit we needed to do lessons learned from the visit, and so: what did we do right, what did we do wrong, and what corrective action do we need to take for the next one, so that we don’t get it wrong the next time. That’s what we’re talking about in assessing the visit. He continually tries to push this ‘I’m an IO officer, I can’t do these activities,’ but that is the type of assessment that I need done.” (Exhibit D, page 29)

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(e) (U) By preparing the package, Col (b)(3), (b)(6) meant that LTC (b)(3), (b)(6) would prepare the visitor package, which included printing biographies of the visitors: “who were the visitors, what have they written about this mission or talked about this mission lately, and what likely will they want to know about from our command when they visit.” (Exhibit D, page 16) It included any testimony on the Hill or “anything regarding our mission, so we could understand the context of what they were going to come in with and ask us about. We’re trying to anticipate the questions, so we have the information prepared prior to the visit.” (Exhibit D, page 31)

(f) (U) LTC (b)(3), (b)(6) however, understood the order differently. LTC (b)(3), (b)(6) stated “Understand that I’ve got all these conversations now in the past several months in my head about themes, messages, talking points, you know, and what’s the effect we want to achieve and that’s what I’m getting out of it [ - themes, messages, talking points, pressure points.]...” So seeing through the lens I now have a written order that says, “okay, you are now no longer focused on working with the Afghans. You’re going to focus on the U.S. and our allies and you’re going to give us an assessment of what we have to do in order to get them to do what we want to do. This is what’s going through my head as I’m reading this.” (Exhibit Q, Day 2, Page 31)

(g) (U) In testimony, LTC (b)(3), (b)(6) stated that he never had an issue providing things like “biographies, voting records, positions on the war, publicly available information, really what we got from Google and condensing it and putting it in for a briefing packet. The same kind of thing you see every day.” (Exhibit Q, Day 1, page 12) He stated that he tasked MSG (b)(3), (b)(6) with this as his primary task for about four months. (Exhibit Q, Day 1, page 12)

(h) (U) LTC (b)(3), (b)(6) interpreted the request for themes and messages as a request to target the DVs. He stated: “But very quickly, and certainly as soon as Col (b)(3), (b)(6) came on board in...[mid]-January...I began to be asked for more information. And I began to be asked for themes and messages and talking points and what pressure points we could provide that would influence these people.” (Exhibit Q, Day 1, page 12) LTC (b)(3), (b)(6) stated that he was uncomfortable with being tasked to develop themes, messages, talking points, and pressure points. (Exhibit Q, Day 1, page 30)

(i) (U) As an example, LTC (b)(3), (b)(6) defined a theme as “the theme would be manning, instructor manning or it could be dollars, we need a particular resource. So the theme could be again dollars, manning or capabilities”...“What is it that we want to talk to them about?” (Exhibit Q, Day 2, page 19) LTC (b)(3), (b)(6) defined message as, for example, “We need

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more instructors in order to train the Afghans effectively” and stated that IO officers shouldn’t be used to come up with messages for American leadership to hear. (Exhibit Q, Day 2, page 20) He stated “the difference between theme and message is the scale and perspective. The theme is overall topic, the message is what you want to address about that topic.” (Exhibit Q, Day 2, page 20)

(j) (U) LTC(b)(3), (b)(6) also objected to developing talking points. He defined talking points, using the instructor example, “We are 75% short of instructors, we need instructors in this particular area, if we don’t have instructors, we won’t meet mission...it’s almost exactly like an outline that you write for a paper. The theme would be the topic area. The message would be what you want, overall, to accomplish for that theme, and then the talking points would be the sub-bullets underneath for the specifics.” (Exhibit Q, Day 2, page 20) He stated an IO officer should not develop talking points because “that speaks directly to influence. When you come up with themes and messages and talking points, you’re doing that to achieve an effect.” (Exhibit Q, Day 2, page 20). When asked what an IO officer can do in this arena that is above what a normal staff officer can do, LTC(b)(3), (b)(6) discusses this, “We’re looking at it from the point of view of “What is the effect that you want to achieve? Well, I want more instructors.” What do I have to do to get more instructors? Well, I can say these things, and that may be persuasive for sure. But what is my target? Who is actually the decision maker that’s involved there? Is it Representative Richardson? Is it Representative Richardson’s constituency? Is it the sphere of influence that she touches?” (Exhibit Q, Day 2, page 20) “It’s the mental models and processes of actually thinking about where that message is going, what is that message going to do and where is it going to end up? Really and truly it is the other way around. If I want to – If I know that she is on the subcommittee for Homeland Defense and I think that there is some Homeland Defense equity that we may be able to leverage for NTM-A, then I am going to craft a message that she can then, as the vector, go to Homeland Defense and deliver to them that will either make them want to or consider doing something for us.” (Exhibit Q, Day 2, page 20) LTC(b)(3), (b)(6) stated it was all about the process, “we’re looking at this from the perspective of the boss tells me he wants more instructors, who can effect that change? Who are the decision makers who can make that happen, okay? What do I have to tell those decision makers in order to get them to give the boss what he wants? What’s the message that will make them want to do that? How do we influence to, again, give the boss what he wants? So you start from the end point and then work your way backwards in a chain of logic.” (Exhibit Q, Day 2, page 20)

(k) (U) When asked what LTC(b)(3), (b)(6) meant by pressure points, he stated “a pressure point was not a doctrinal term at all. A pressure point is –think of it the same way as you would ‘hot buttons.’ “What are the sensitive areas for that individual that we can use in

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order to get them to understand and deliver that message? So for instance, and I'm going off the cuff here but I'm trying to think of areas that we could have used. Laura Richardson came from the Long Beach, California area. That's her area. She's got a lot, a lot of union support . . . What opportunity does that pressure point provide us in order to get her to support what we want to do? Maybe none. But it's an area that we can exploit. And again this was just part of the process. What are the area's pressure points? What are the areas that we can exploit and target in order to influence them to do what we want them to do? It's very Machiavellian. (Exhibit Q, Day 2, page 21). When asked if the word pressure point was used by the folks in the room when General Caldwell was having his briefings – LTC(b)(3), (b)(6) stated, "I honestly think that's where I got the term. I don't think I knew it before." He stated that "when you hear words used in context you get the idea of how that is meant to be..." "It's not a term that I picked up in training anywhere but they were using, I believe, the term pressure point as a way to pressure somebody into doing something that we wanted them to do..." (Exhibit Q, Day 2, page 21). LTC (b)(3), (b)(6) stated, "I can't say that I ever remember General Caldwell specifically saying 'pressure point' but it was possible that someone else in the group used the word." (Exhibit Q, Day 2, page 21)

(l) (U) MAJ (b)(3), (b)(6), LTG Caldwell and Dr. Kem's PA representative from November 2009 to December 2010, stated that "I've never heard in my time at NTM-A, the phrase 'pressure points' by anyone in the command at any level. I do know that there were discussions about – and debates within that group because Maj. (b)(3), (b)(6) and I would argue and discuss it about creating themes and messages and just trying to decide if they were quarterly or monthly or if it was linked to decision points within the operation and so there was a healthy academic discussion in that regard and I know Col(b)(3), (b)(6) wanted themes and messages because he wanted to promulgate them throughout the command." (Exhibit C, page 7)

(m) (U) When asked to define what was inappropriate in the visitor packets, LTC (b)(3), (b)(6) stated he was uncomfortable that one of the members of his team had provided the "BLUF STRATCOM Assessment" for GEN Conway and also for Sen. McCaskill (Exhibit Q, attachments 34 and 35) because he thought assessments may have been involved.

(n) (U) The STRATCOM Assessment for Sen. McCaskill stated "Sen. McCaskill's signature issue is contractor oversight, and especially pay differences between contractor companies and ANSF wages. This may bleed over into the pay difference between Counterdrug pilots and ANAAC pilots as well. All members of the CODEL support POTUS Afghanistan policy, but will want to know how we are implementing it. Sen. Merkley was skeptical about the need for additional 30K troops vs. our goals and the cost. You might focus him on our 'bang for

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the buck' value of trainers v. trigger pullers. They are also interested in reintegration and operational logistics.”

(o) (U) LTC(b)(3), (b)(6) stated that his issue with Col (b)(3), (b)(6) order to do assessments is “When you say the word ‘assess’ in the IO realm, you lead into not just what happened but what to do about it. Where you need to go in order to change or reinforce or achieve the effect that you’ve identified that you want to achieve. And again going from this is after four months of long and contentious conversation about what was going on there, when I read that order what I saw was, ‘You need to assess, provide feedback,’ which, knowing what again going in my head, we want to know what we have to do going forward....” (Exhibit Q, Day 1, page 28)

(p) (U) So, to resolve the issue, LTC(b)(3), (b)(6) went to the SJA office. Upon reaching the SJA office next door, LTC(b)(3), (b)(6) stated “I walked in and I said I’ve got a question on Information Operations and law and who do I need to talk to?” (Exhibit Q, Day 2, page 32). LTC(b)(3), (b)(6) stated a noncommissioned officer at the desk directed him to Air Force Capt(b)(3), (b)(6) who wasn’t in right then. LTC(b)(3), (b)(6) stated he was unclear as to whether he returned to talk to Capt(b)(3), (b)(6) person first and then sent him an email, or whether he sent the email and followed up with an in person visit. Later, LTC(b)(3), (b)(6) recalled he sent the email first.

(q) (U) Whichever is correct, LTC(b)(3), (b)(6) did forward Col (b)(3), (b)(6) email to the SJA office to Capt (b)(3), (b)(6) on 23 March 2010 at 11:01 am and he did ask for specific advice. (Exhibit Q, attachment 4). In terms of what LTC(b)(3), (b)(6) thought Col (b)(3), (b)(6) was asking him to do, in his email to Capt(b)(3), (b)(6) LTC(b)(3), (b)(6) stated that he believed Col (b)(3), (b)(6) was “directing me to conduct Information Assessments of our visits with US and Coalition DV’s and CODEL’s (and as a result, making recommendations on how to proceed in order to achieve our desired Information Effects). ...my question is based on the legality of specifically tasking an Information Operations team to provide feedback and recommendations on how to influence a U.S. or Coalition Target Audience. This is heightened by the fact that most of the individuals we are tasked with providing this feedback and advice on are either our political or military leaders, ie.: Admiral Mullen CJCS, German Min of Interior, DEA Administrator, CODEL Reed, Czech Ambassador to Afghanistan, and GEN Johns, AMC. These are the visitors coming to NTM-A that I am asked to provide Information Assessments on, and guidance on what we should discuss with them, and how best to get them to give us what we want. To my mind, none of these are appropriate Target Audiences for an Information Operations Team.” (Exhibit Q, attachment 4).

(4) (U) These three incidents demonstrate that the primary issue was the tasks that the IOFST was being asked to complete. The dispute revolves around the definitions of terms. LTC

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(b)(3) understood the terms *assessments*, *themes* and *messages* as terms of art from an information operations perspective. Col (b)(3) and Maj (b)(3) meant them in a more general way. The confusion that resulted led to LTC (b)(3) seeking clarification from the legal office.

**f. (U) The source, nature, and extent of any legal advice regarding the controlling legal authorities for, and distinctions between, PSYOPS or IO, and Public Affairs that may have been provided to: Col (b)(3) CSTC-A leaders, and LTC (b)(3), to the extent allowed by regulation and applicable Rules of Professional Responsibility. (1) You will specifically address any advice provided by members of the CSTC-A Office of the Staff Judge Advocate (OSJA-A), including any verbal or written legal advice offered by Captain (b)(3), (b)(6) (b)(3) to LTC (b)(3), or any other person assigned or attached to CSTC-A. (2) You will promptly inform my Staff Judge Advocate, Colonel (b)(3), (b)(6), if any member of your investigation team believes there may be a possibility that legal advice may have been rendered contrary to any applicable Rules of Professional Responsibility (e.g., issues associated with the establishment of an attorney-client relationship):** The Office of the SJA, CSTC-A\NTM-A, provided two primary legal opinions by two different attorneys regarding the use of IO for Public Affairs purposes. The first email opinion from Capt (b)(3) to WG CDR (b)(6) provided the same general information to the command that Capt (b)(3), (b)(6) earlier provided orally to LTC (b)(3), (b)(6) as to the proper use of IO in general. When it became clear to Capt (b)(3), (b)(6) that LTC (b)(3), (b)(6) was asking about personal liability, Capt (b)(3), (b)(6) properly referred LTC (b)(3), (b)(6) to Trial Defense Service (TDS). The preponderance of the evidence suggests Capt (b)(3), (b)(6) complied with all applicable Rules of Professional Responsibility. The second email opinion from MAJ (b)(3), (b)(6) to Col (b)(3), (b)(6) and Maj (b)(3), (b)(6) was sent to the command unsolicited after LTC (b)(3), (b)(6) defense counsel asked the COL (b)(3), (b)(6) the DSJA, to take a look at whether the command was asking LTC (b)(3), (b)(6) to perform actions that violated DODD 5240.01. The SJA office researched the issue. Therefore, the second opinion reviewed the actual tasks LTC (b)(3), (b)(6) was being asked to perform in comparison to two DOD Directives and determined that the command's orders were not illegal but that LTC (b)(3), (b)(6) needed to be counseled in writing to clarify to him what was being asked of him, and to explain it was legal and further refusal would be a violation of the UCMJ. LTC (b)(3), (b)(6) was never counseled and never provided the second email opinion. Instead, MAJ (b)(3), (b)(6) provided a summation to CPT (b)(3), (b)(6) LTC (b)(3), (b)(6) defense counsel, who forwarded to LTC (b)(3), (b)(6). LTC (b)(3), (b)(6) interprets the email as evidence the command had modified the order and was then only asking him to provide facts – with no analysis. This is not true, but the command never corrected LTC (b)(3), (b)(6) impression.

(1) (U) Capt (b)(3), (b)(6) doesn't remember ever seeing the 23 March 2010 stand alone email from LTC (b)(3), (b)(6) Capt (b)(3), (b)(6) members talking with LTC (b)(3), (b)(6) in person, instead. (Exhibit

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CC, pages 5-6) Capt (b)(3), (b)(6) recalled that LTC (b)(3), (b)(6) came in and was discussing his issue with several attorneys at once but ended up with Capt (b)(3), (b)(6) helping him. He recalled that LTC (b)(3), (b)(6) approached it as though it were a command issue that LTC (b)(3), (b)(6) was working with WG CDR (b)(6) to resolve. He also recalled that LTC (b)(3), (b)(6) only asked a general question concerning how IP could be used. (Exhibit CC, page 6) Capt (b)(3), (b)(6) recalled that LTC (b)(3), (b)(6) wanted him to talk to WG CDR (b)(6) and COI (b)(3), (b)(6) so, with LTC (b)(3), (b)(6) present, Capt (b)(3), (b)(6) made phone calls to both individuals but couldn't reach them. LTC (b)(3), (b)(6) admitted that what Capt (b)(3), (b)(6) was ruling on was LTC (b)(3), (b)(6)'s interpretation of what was being tasked: conducting IO on DVs, not the details of the specific tasks LTC (b)(3), (b)(6) had been given.

(2) (U) Given that the office knew Capt (b)(3), (b)(6) was assisting LTC (b)(3), (b)(6) with this issue, when WG CDR (b)(6) emailed MAJ (b)(3), (b)(6) on the same question two days later on 25 March 2010, MAJ (b)(3), (b)(6) initially directed WG CDR (b)(6) to Capt (b)(3), (b)(6) as well. MAJ (b)(3), (b)(6) also cited the general rule that "we do not, and cannot, do information ops on our own people." (Exhibit W, attachment 1) When Capt (b)(3), (b)(6) saw an email from WG CDR (b)(6) he assumed that WG CDR (b)(6) was following up on LTC (b)(3), (b)(6) contact. Capt (b)(3), (b)(6) assumption appears reasonable given that LTC (b)(3), (b)(6) originally requested Capt (b)(3), (b)(6) called WG CDR (b)(6) two days earlier and LTC (b)(3), (b)(6) sat there while Capt (b)(3), (b)(6) attempted to reach WG CDR Todd. Therefore, Capt (b)(3), (b)(6) sent the same general answer that information operations could not be used on domestic audiences to WG CDR (b)(6) courtesy copying LTC (b)(3), (b)(6) In that email, Capt (b)(3), (b)(6) was consistent in that he stated, "My understanding is that you are working with LTC (b)(3), (b)(6) regarding the scope of IO's functions and the possible use of psychological / info operations on our own people/DVs." (Exhibit Q, attachment 5) Capt (b)(3), (b)(6) stated understanding corroborates his interview statements that LTC (b)(3), (b)(6) was only asking general questions and that LTC (b)(3), (b)(6) created the perception that he was working with WG CDR (b)(6) on this issue.

(3) (U) LTC (b)(3), (b)(6) now states he was surprised to see Capt (b)(3), (b)(6) emailing WG CDR (b)(6) because he thought there was some confidentiality attached to his conversation with Capt (b)(3), (b)(6) (Exhibit Q, Day 1, page 11) This is the basis of LTC (b)(3), (b)(6) current assertion that he was retaliated against for making a protected communication. In essence, he implied that he had what amounted to a client-attorney relationship with Capt (b)(3), (b)(6) He pointed to the confidentiality statement on the bottom of the email as the basis for this belief. LTC (b)(3), (b)(6) further stated he was surprised that the Chief of Staff's Deputy (meaning WG CDR (b)(6) was looking into the same issue. (Exhibit Q, Day 1, page 11) However, there is no confidentiality statement on the bottom of Capt (b)(3), (b)(6) 25 March 2010 email to WG CDR (b)(6) (Exhibit Q, attachment 5) In fact, there are no confidentiality statements on any of the emails from Capt

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(b)(3), (b)(6) that were provided by LTC (b)(3), (b)(6). Thus LTC (b)(3), (b)(6) assumption does not appear reasonable given that Capt (b)(3), (b)(6) had no confidentiality statement on his emails; he sent no emails to LTC (b)(3), (b)(6) prior to the 25 March 2010 email to WG CDR (b)(6) and LTC (b)(3), (b)(6) conversation at the SJA office was not in confidence, but involved multiple people as well as attempted phone calls to WG CDR (b)(6) and COL (b)(3), (b)(6). Additionally, in our second interview with LTC (b)(3), (b)(6) he also confirmed that he was the person who asked for a meeting with WG CDR (b)(6) and it had been set up for 25 March at 1630. (Exhibit Q, Day 2, page 33). Therefore, no evidence suggests Capt (b)(3), (b)(6) any attorney violated an attorney-client relationship or any applicable Rules of Professional Responsibility.

(4) (U) After LTC (b)(3), (b)(6) received Capt (b)(3), (b)(6) email to WG CDR (b)(6) he replied to it by asking what his personal liabilities were if he followed these orders? (Exhibit Q, attachment 6) Capt (b)(3), (b)(6) replied on 25 March at 3:59 pm directly to LTC (b)(3), (b)(6) and cc's three other attorneys in the SJA office. Capt (b)(3), (b)(6) email referred LTC (b)(3), (b)(6) to the senior defense counsel at Bagram Air Field (BAF) if Col (b)(3), (b)(6) persisted in ordering LTC (b)(3), (b)(6) to "use IO to influence our own folks." This email corroborates Capt (b)(3), (b)(6) testimony that he understood LTC (b)(3), (b)(6) questions to be general in nature. In the email Capt (b)(3), (b)(6) does not discuss the specific details of what LTC (b)(3), (b)(6) was being asked to do, arguably because LTC (b)(3), (b)(6) had not shared those details when he asked for the opinion.

(5) (U) Very shortly after the in-person conversation and these emails, Capt (b)(3), (b)(6) was informed that his request to extend his tour at CSTC-A/NTM-A had been disapproved and he was ordered to leave within days. Ultimately, this may explain why Capt (b)(3), (b)(6) never read LTC (b)(3), (b)(6) first email. It also explains why Capt (b)(3), (b)(6) stopped advising the command on this issue and MAJ (b)(3), (b)(6) took over. (Exhibit CC, page 9).

(6) (U) LTC (b)(3), (b)(6) stated he then had the meeting with WG CDR (b)(6) on 25 March 2010. (Exhibit Q, Day 2, page 33-34). LTC (b)(3), (b)(6) stated that he had not received or read Capt (b)(3), (b)(6) referral to TDS at the time he went into the meeting. (Exhibit Q, Day 2, page 33) LTC (b)(3), (b)(6) stated that his purpose in going to the meeting with WG CDR (b)(6) was: "I want to let you know that I've got a problem with this order, a legal problem with this order and I'm asking for an opinion on this... So can we come to some common ground here? I'm not trying to be a jerk but I don't want to either do something illegal myself or get the command in danger." (Exhibit Q, Day 2, page 33) LTC (b)(3), (b)(6) stated the conversation with WG CDR (b)(6) was "a pretty unhelpful conversation"..."I got the strong impression that he said you're just going to have to carry on and do it." ... "It wasn't a very long meeting and he was polite but I don't think he was really listening"..."I think he was going to go back and talk to his boss and see if there

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was something he could do but in the meantime I had to carry on.” (Exhibit Q, Day 2, pages 33, 35) When asked if LTC(b)(3), (b)(6) brought up Capt(b)(3), (b)(6) email to WG CDR (b)(6) he stated that he did. He stated WG CDR (b)(6) conveyed that he would ask the boss, but you’ve got an order. You are going to have to figure out how to come to terms with it. (Exhibit Q, Day 2, page 35)

(7) (U) Two days later, on 27 March 2010, LTC(b)(3), (b)(6) emailed CPT(b)(3), (b)(6) the senior defense counsel at BAF. (Exhibit Q, attachment 7). He told CPT(b)(3), (b)(6) that despite Capt(b)(3), (b)(6) assistance with the Deputy Chief of Staff, (WG CDR (b)(6) he was “still under written orders to proceed” and the officer who gave the written orders (Col(b)(3), (b)(6) was on leave. (Exhibit Q, attachment 7). With LTC(b)(3), (b)(6) permission, on 28 March 2010, at 10:58 am, CPT(b)(3), (b)(6) emailed the SJA, COL (b)(3), (b)(6) and the DSJA, COL(b)(3), (b)(6) courtesy copying LTC (b)(3), (b)(6) CPT(b)(3), (b)(6) asked the SJA to ensure the command was complying with the law and notably, CPT(b)(3), (b)(6) expressed “I am admittedly not a SME in this area, but I do not believe this is authorized by DoD Directive 5240.01.” This email set the playing field for how the SJA office analyzed the issue.

(8) (U) On 28 March 2010, COL(b)(3), (b)(6) replied to CPT(b)(3), (b)(6) that he would “get with Col(b)(3), (b)(6) on this to ensure no rules are violated.” (Exhibit Q, attachment 8). This is important because COL (b)(3), (b)(6) guidance meant that the more specific advice was not initially given to WG CDR (b)(6) or Col(b)(3), (b)(6) CPT Pond then told LTC(b)(3), (b)(6) that the SJA “will clarify the legalities and ensure this COA complies with applicable US Law and DoD Policy. I recommend you save this email chain. If this issue ever blows up in the future, it will be your ‘get out of jail free’ card.” (Exhibit Q, attachment 8).

(9) (U) Upon receiving CPT(b)(3), (b)(6) email, on 28 March 2010 at 11:02 am, COL(b)(3), (b)(6) the DSJA forwarded it to MAJ (b)(3), (b)(6) MAJ (b)(3), (b)(6) was normally the Chief of Justice at CSTC-A/NTM-A but she also was acting as the Chief of Administrative Law while the actual Chief, MAJ(b)(3), (b)(6) was on R&R. COL(b)(3), (b)(6) requested that MAJ (b)(3), (b)(6) ‘look into the DOD Directive” referenced by CPT(b)(3), (b)(6) and “let’s discuss” (Exhibit W, attachment 3). MAJ (b)(3), (b)(6) read the directive and, since Col(b)(3), (b)(6) was on R&R, called Maj(b)(3), (b)(6) to the SJA office to find out what specific guidance had been given to LTC(b)(3), (b)(6) MAJ(b)(3), (b)(6) also read DoD 5240.1-R and DoDI 5240.01.

(10) (U) When the SJA office called Maj(b)(3), (b)(6) in to find out what tasks LTC(b)(3), (b)(6) had been given, Maj(b)(3), (b)(6) informed them that LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) may have been committing other misconduct. There were initially three allegations, any one of which would typically require an investigation. The allegations were: an inappropriate relationship between a

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senior and subordinate that was interfering with work; drinking off post; and going off post in civilian clothes without the appropriate permissions. (Exhibit W, attachment 2) This prompted the SJA office to inform the Chain of Command that misconduct had been reported and an investigation into the facts and circumstances of the misconduct might be appropriate. The scope of this revelation and the subsequent investigation is discussed in Finding g, below.

(11) (U) On 29 March 2010, at 9:32 am, CP**(b)(3), (b)(6)** received a follow-up email from MAJ **(b)(3), (b)(6)**. She did not send the same legal opinion that she provided to the command the next day, but she did tell CPT**(b)(3), (b)(6)** I clarified the order Col**(b)(3), (b)(6)** gave to LTC**(b)(3), (b)(6)** to collect, analyze, and share information. LTC**(b)(3), (b)(6)** is not being asked to conduct ‘intelligence gathering’ or ‘info ops’ on anyone. He is simply being asked to gather ‘publicly available’ information, as defined by DoD 5240.1-R, analyze it, then share his analysis, which is legal. DoDD 5240.01 doesn’t apply to his situation. I’d appreciate it if you could communicate to your client that the order he received was lawful. Even if it was ambiguous, he still disobeys it as his own peril. Now that the order has been clarified, it is “unambiguously” lawful.” (Exhibit Q, attachment 9)

(12) (U) MAJ **(b)(3), (b)(6)** then issued a legal opinion, on 30 March 2010 at 9:19 am, in email to Col **(b)(3), (b)(6)** and Maj **(b)(3), (b)(6)** courtesy copying COI**(b)(3), (b)(6)** (Exhibit W, attachment 2) MAJ **(b)(3), (b)(6)** told both parties that COL**(b)(3), (b)(6)** requested she conduct a legal review of the order to LTC**(b)(3), (b)(6)** about “collecting,” “analyzing” and “sharing” information about DVs and CODELs. The preponderance of the evidence suggests that this terminology came from the directive that CPT**(b)(3), (b)(6)** sent to the SJA office. MAJ **(b)(3), (b)(6)** then told both Maj **(b)(3), (b)(6)** and Col **(b)(3), (b)(6)** that LTC**(b)(3), (b)(6)** could be ordered to collect, analyze and share “publicly available” information about DVs & CODELs. (Exhibit W, attachment 2) MAJ **(b)(3), (b)(6)** then advised Col **(b)(3), (b)(6)** that he should counsel LTC**(b)(3), (b)(6)** in writing to clarify to LTC **(b)(3), (b)(6)** that he was not being asked to collect, analyze or share information as an intelligence activity under DoDD 5240.01. However, neither Col **(b)(3), (b)(6)** WG CDR **(b)(6)** or Co**(b)(3), (b)(6)** ever went back to LTC**(b)(3), (b)(6)** and counseled him in writing to clarify that what the command was asking him to do was legal. Additionally, LTC**(b)(3), (b)(6)** gave no indication in either of the interviews that he had any knowledge of MAJ **(b)(3), (b)(6)** full legal opinion.

(13) (U) LTC **(b)(3), (b)(6)** based solely on the email from MAJ **(b)(3), (b)(6)** to CPT**(b)(3), (b)(6)** now states that “the system” worked and the illegal or improper order was changed. On 9 April 2011, LTC**(b)(3), (b)(6)** emailed his National Guard supervisor, COL **(b)(3), (b)(6)** that “JAG ‘clarified’ the order, and limited it to researching and providing feedback on open source press reports – no recommendations for messaging.” (Exhibit Q, attachment 10) Interestingly, the

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greater weight of the evidence is that the command never issued an illegal order at all. LTC (b)(3), (b)(6) testimony seemed to indicate that he believed the command changed what it was asking him to do after receiving MAJ (b)(3), (b)(6) opinion. Rather, MAJ (b)(3), (b)(6) emails suggest the command did not change anything. MAJ (b)(3), (b)(6) told Capt (b)(3), (b)(6) the original order was legal to start with and the “clarification” was to correct LTC (b)(3), (b)(6) faulty perception of what he was being asked to do. MAJ (b)(3), (b)(6) also told the defense counsel that LTC (b)(3), (b)(6) could analyze open source information and share that analysis. MAJ (b)(3), (b)(6) email opinion to the command corroborates this conclusion. She told the command the order was legal but LTC (b)(3), (b)(6) was confused and they needed to counsel him in writing to ensure he understood what he was being asked to do and that it was legal. This counseling never occurred.

(14) (U) Col (b)(3), (b)(6) on receipt of MAJ (b)(3), (b)(6) legal opinion, replied on 30 March 2010 to MAJ (b)(3), (b)(6) copying Maj (b)(3), (b)(6) COL (b)(3), (b)(6) COI (b)(3), (b)(6) and LTC (b)(3), (b)(6) that “LTC (b)(3), (b)(6) works for me. I will direct his duties as required.” It appears Col (b)(3), (b)(6) was taking charge of the counseling requirement. However, when Col (b)(3), (b)(6) returned from R&R on 13 April 2010, COL (b)(6) a UK officer, was the Director of Communications and Col (b)(3), (b)(6) was reassigned to work media relations as the Command Spokesman. (Dr. Kem stated the reason Col (b)(3), (b)(6) was moved was that LTG Caldwell had brought Col (b)(6) in by name to do that job.) On Col (b)(3), (b)(6) return, LTC (b)(3), (b)(6) team was already working for Col (b)(6) the new HQ STRATCOM Director. (Exhibit D, page 20) LTC (b)(3), (b)(6) team, to the extent they continued to provide information on CODELS/DVs, provided only the information that LTC (b)(3), (b)(6) believed the SJA had authorized them to provide – facts with no analysis. As such, it is not surprising that most of the staff interviewed found their performance to be lack-luster.

**g. (U) The circumstances that gave rise to the initiation and completion of the AR 15-6 Report of Investigation – LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) approved by Chief of Staff, CSTC-A, 18 May 10. You will specifically determine whether the initiation of this investigation was in any way motivated by, or was influenced by, the fact that LTC (b)(3), (b)(6) and/or MAJ (b)(3), (b)(6) may have previously complained of CSTC-A’s DV procedures and/or processes. Could this investigation be reasonably construed, in whole or in part, as “retaliation” for these complaints? Was this investigation properly conducted? Were the resulting reprimands or other adverse action taken against LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) properly handled and appropriate under the circumstances? A preponderance of the evidence demonstrates that the initiation of the 15-6 investigation approved by Chief of Staff, CSTC-A/NTM-A on 18 May 10 was not in any way motivated or influenced by the fact that LTC (b)(3), (b)(6) and/or MAJ (b)(3), (b)(6) may have previously questioned whether CSTC-A/NTM-A’s**

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DV preparation amounted to conducting IO on U.S. persons. The investigation could not reasonably be construed, in whole or in part, as retaliation for LTC (b)(3), (b)(6) or MAJ (b)(3), (b)(6) complaints. The investigation was legally sufficient. Errors, if any, were harmless because of other procedural safeguards: this is to say that the process of the investigation is set up to ensure fairness. For instance, LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) chose not to provide a statement to the investigating officer, opting instead to seek legal counsel. Their legal counsel did not attempt to make statements or to have their clients submit to questioning during the course of the investigation. The investigation was, therefore, completed without interviewing either respondent, which would have been an error. The 15-6 investigation process provides a procedural safeguard to ensure LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) received their opportunity to make statements in their own behalf in rebuttal, thus rendering the error harmless. MG Patton received both rebuttals, considered them both, and altered the findings of the report based on his review. Thus, the adverse action taken was handled appropriately under the circumstances, even though MAJ (b)(3), (b)(6) GOMOR does require follow up action to ensure that the proper document was filed.

(1) (U) The investigation was appointed in accordance with the regulation in response to a credible allegation from Maj (b)(3), (b)(6) an officer junior to LTC (b)(3), (b)(6) that LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) were having an inappropriate relationship that was interfering with work, drinking off post, and going off post in civilian clothes without the appropriate permissions. Upon receiving the allegations, MAJ (b)(3), (b)(6) sent an email to Col (b)(3), (b)(6) recommending an investigation under the provisions of AR15-6 to determine the facts and circumstances of LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) alleged misconduct. Col (b)(3), (b)(6) concurred by email from R&R, and COI (b)(3), (b)(6) forwarded the recommendation and concurrence to the Chief of Staff, COL (b)(3), (b)(6) that he initiate an investigation. COI (b)(3), (b)(6) took the recommendation and initiated an investigation. (Exhibit F, attachment 1)

(2) (U) Both statute and Army Regulation require commanders to investigate reports of misconduct. 10 USC § 3583 requires “All commanding officers and others in authority in the Army . . . (1) to show in themselves a good example of virtue, honor, patriotism, and subordination; (2) to be vigilant in inspecting the conduct of all persons who are placed under their command; (3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and (4) to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.” This language is reiterated in Army Regulation 600-20, *Army Command Policy*, (AR 600-20), paragraph 1-5.

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(3) (U) Investigations are interrogative, not punitive. Their purpose is to determine and document the facts and circumstances surrounding various allegations, to make findings and recommendations for corrective action, if appropriate. The subject AR 15-6 investigation was appointed in accordance with the regulation. The Investigating Officer, LTC (b)(3), (b)(6), made findings and recommendations based upon a preponderance of the evidence. His findings and recommendations received a legal review in accordance with AR 15-6, paragraph 2-3b., which determined that the proceedings complied with legal requirements, sufficient evidence supported the findings, and the recommendations were consistent with the findings. (Enclosure 5)

(4) (U) The investigation, although legally sufficient, was not ideal for three main reasons. First, the Chief of Justice, the person charged with primary prosecutorial duties within the command, received the allegations and acted as the investigating officer's legal advisor. Although this is not the preferred practice, it was reasonable at the time since the Chief, Administrative Law was on R&R and another Administrative Law Attorney, Cap (b)(3), (b)(6) had redeployed on short notice because his request for extension was denied due to force cap issues. His replacement had not yet arrived. Therefore, MAJ (b)(3), (b)(6) was assigned to fill the void. Second, the investigating officer, LTC (b)(3), (b)(6) was inexperienced. This was his first AR 15-6 investigation. In his sworn statement he indicated that he went to MAJ (b)(3), (b)(6) frequently for guidance. She assisted him in determining what witnesses to interview and what evidence to review. She also helped him format and edit his final report. Nevertheless, LTC (b)(3), (b)(6) indicated in his sworn statement that the findings were his impressions based upon a review of the evidence using a preponderance standard. Third, neither LTC (b)(3), (b)(6) nor MAJ (b)(3), (b)(6) was interviewed during the investigation. Both were advised of their rights under the provisions of Article 31b, Uniform Code of Military Justice (UCMJ), and both chose to seek legal counsel. LTC (b)(3), (b)(6) did not follow up to determine if they wanted to make statements after they sought counsel. Additionally, even though Defense Counsel for LTC (b)(3), (b)(6) made contact with The Office of the Staff Judge Advocate after the officers invoked their rights to counsel but before the investigating officer turned in his report, there is no evidence that Defense Counsel indicated that the officers wanted to make statements. The communication was merely to check the status of the investigation. In his rebuttal matters, LTC (b)(3), (b)(6) suggested the failure to determine if he and/or MAJ (b)(3), (b)(6) wanted to make statements after they sought counsel was in error. (Enclosure 6). I do not believe that is the case, and even if it was error, I believe it was harmless error that did not have a material adverse effect on LTC (b)(3), (b)(6) or MAJ (b)(3), (b)(6) substantial rights. In this case, the action that resulted from the investigation was referred to LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) prior to finalization using the procedural safeguards of notice and opportunity to respond dictated by Army Regulation 600-37, *Unfavorable Information*, (AR 600-37)

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paragraph 3-4. Therefore, any error caused by the officers not making statements in the investigative phase were cured by their ability to make statements in rebuttal prior to the adverse action being finalized.

(5) (U) LTC (b)(3), (b)(6) found by a preponderance of the evidence using the Facebook photos, documentary evidence and statements from LCDR (b)(3), (b)(6) MAJ (b)(3), (b)(6) 1LT (b)(3), (b)(6) 1LT (b)(3), (b)(6) Col (b)(3), (b)(6) SFC (b)(3), (b)(6) and COL (b)(3), (b)(6) that:

- LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) traveled off Camp Eggers numerous times wearing civilian clothes from January – early April 2010;
- All of their travel to off-post restaurants (particularly the Haji Baba) was a violation of CSTC-A Policy Memorandum #014 as well as NTM-A/CSTC-A Movement Control Policy because such travel was not for official military business and was not authorized by the first general-officer in the chain of command;
- The predominant activity engaged in while off post was eating in restaurants. LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) also wore civilian clothes when they taught “Strategic Communications” to Afghan MOD and MOI personnel;
- LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) did not use government transportation to go off post. They took taxis.
- LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) carried weapons with them and most likely surrendered their weapons to local national at the off post restaurants. They carried their weapons in a concealed manner in violation of the Law of Armed Conflict;
- The preponderance of the evidence did not support the allegation that LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) drank alcohol;
- LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) violated CJTF-82 General Order #1 by failing to maintain personal control over their weapons at all times. This also constitutes a violation of Article 92, UCMJ;
- LTC (b)(3), (b)(6) had an inappropriate relationship, by acting on terms of military equality with respect to being overly familiar with each other in violation of AR 600-20 and Article 92, UCMJ;
- The public nature of LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) relationship is conduct unbecoming an officer in violation of Article 133, UCMJ;
- LTC (b)(3), (b)(6) made a false official statement to Col (b)(3), (b)(6), in violation of Article 107, UCMJ, when he stated that COL (b)(3), (b)(6) authorized him to wear civilian clothes off post;

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- LTC<sub>(b)(3), (b)(6)</sub> and MAJ<sub>(b)(3), (b)(6)</sub> violated the Joint Ethics Regulation, Article 92, UCMJ and Article 133, UCMJ by using their DoD positions for personal gain to generate business for their private company, Sygyzy, LLC.

(6) (U) LTC<sub>(b)(3), (b)(6)</sub> recommended:

- LTC<sub>(b)(3), (b)(6)</sub> and MAJ<sub>(b)(3), (b)(6)</sub> receive punishment under the provisions of Article 15, UCMJ, or that in the alternative, LTC<sub>(b)(3), (b)(6)</sub> and MAJ<sub>(b)(3), (b)(6)</sub> receive GOMORs;
- LTC<sub>(b)(3), (b)(6)</sub> and MAJ<sub>(b)(3), (b)(6)</sub> be relieved for cause;
- LTC<sub>(b)(3), (b)(6)</sub> and MAJ<sub>(b)(3), (b)(6)</sub> have their security clearances suspended or revoked;
- LTC<sub>(b)(3), (b)(6)</sub> and MAJ<sub>(b)(3), (b)(6)</sub> be immediately redeployed; and
- LTC<sub>(b)(3), (b)(6)</sub> and MAJ<sub>(b)(3), (b)(6)</sub> have their Federal status revoked.

(7) (U) COL<sub>(b)(3), (b)(6)</sub> reviewed the recommendations and disagreed, recommending instead that the officers receive administrative reprimands from MG Patton, who, at the time, was the acting as Commander, CSTC-A/NTM-A in LTG Caldwell's absence. MG Patton issued the reprimands and they were served upon the officers for their review and rebuttal prior to filing in accordance with the requirements of AR 600-37. Both LTC<sub>(b)(3), (b)(6)</sub> and MAJ<sub>(b)(3), (b)(6)</sub> presented matters of extenuation and mitigation in their rebuttals, and LTC<sub>(b)(3), (b)(6)</sub> also personally met with MG Patton about his GOMOR.

(8) (U) After reviewing LTC<sub>(b)(3), (b)(6)</sub> rebuttal and meeting with him, MG Patton altered LTC<sub>(b)(3), (b)(6)</sub> GOMOR and removed the language concerning weapons violations, inappropriate relationship. He signed a corrected GOMOR and placed that document in LTC<sub>(b)(3), (b)(6)</sub> official military personnel file. He also had a replacement GOMOR drafted for MAJ<sub>(b)(3), (b)(6)</sub> and took action to have the new GOMOR, with less substantiated findings, placed in her OMPF and to have the previous GOMOR removed (Exhibit Z, attachment 2). Currently, there is confusion over whether this replacement actually occurred. Therefore, I recommend that CSTC-A/NTM-A follow up to ensure that the corrected memorandum did make it into MAJ<sub>(b)(3), (b)(6)</sub> OMPF and that the initial GOMOR was, in fact, removed.

(9) (U) LTC<sub>(b)(3), (b)(6)</sub> did allege in an IG complaint that the investigation and resultant action was in retaliation for him questioning whether CSTC-A/NTM-A's DV preparation amounted to conducting IO on U.S. persons. (Enclosure 13) This allegation was forwarded to and investigated by DOD IG, who found that there was, by law, no reprisal. (Enclosure 8)

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(10) (U) Pursuant to the Military Whistleblower Protection Act, 10 USC § 1034(b)(1), “[N]o person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing [a protected communication].” This prohibition is echoed in DoDD 7050.06, *Military Whistleblower Protection*, as well as AR 20-1, *IG Activities and Procedures*, para. 1–11. Violations of these references may be punished under the provisions of Article 92, UCMJ.

(11) (U) The IG uses a four-question test to determine whether a violation of the Military Whistleblower Protection Act, or reprisal, has occurred. The four questions that must be asked and answered are:

(a) (U) ***Did a military member make or prepare a protected communication?*** No, there was not a protected communication. DoDIG found that LTC (b)(3), (b)(6) question to Capt (b)(3), (b)(6) did not meet the criteria for protection under DoDD 7050.06, since the Office of the Staff Judge Advocate was not designated to receive protected communications. (Enclosure 8) I agree.

(i) (U) Pursuant Rules of Professional Conduct for Lawyers, as a general rule military lawyers represent the Service. Unless specifically authorized, military lawyers do not form attorney-client relationships or represent clients other than the Service. Military lawyers receive the authorization to form an attorney-client relationship when they serve in a Legal Assistance or Trial Defense capacity. Communications made to an attorney serving in one of those capacities are confidential and could be construed as protected.

(ii) (U) Capt (b)(3), (b)(6) was not serving as either a Legal Assistance or Trial Defense attorney when he advised LTC (b)(3), (b)(6). He was serving in the capacity as an Administrative Law attorney. There was no attorney-client relationship, nor should LTC (b)(3), (b)(6) have expected such. LTC (b)(3), (b)(6) spoke to Capt (b)(3), (b)(6) in an office with other people present and participating in the conversation. Further, he authorized Capt (b)(3), (b)(6) to call WGCDR (b)(6) to set up a meeting to discuss the inquiry, and remained in the office while Capt (b)(3), (b)(6) attempted to call WGCDR (b)(6). Finally, he discussed the same issue with Capt (b)(3), (b)(6) office mate, when Capt (b)(3), (b)(6) left the office to research the question. Clearly, the inclusion of so many additional parties in the inquiry negates the assertion that this communication was in any way confidential or protected.

(iii) (U) Although the communication was not protected, it is still important to address the other prongs of the analysis in order to make a complete assessment of whether retaliation or reprisal occurred.

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(b) (U) *Following a protected communication, was an unfavorable personnel action taken or a favorable action withheld, or was a threat made to take an unfavorable action or withhold a favorable action for making or preparing a protected communication?* No. The DoDIG found that LTC (b)(3), (b)(6) seeking legal counsel did not influence the command's decision to conduct an AR 15-6 investigation that resulted in a GOMOR. (Enclosure 8) I agree.

(i) (U) An investigation is not an unfavorable personnel action. Investigations are interrogative, not punitive. The investigation was initiated because MAJ (b)(3), (b)(6) and officer junior to LTC(b)(3), (b)(6) made a credible allegation of misconduct. The report occurred during the conversation when MAJ (b)(3), (b)(6) was gathering details about the specific nature of the activity that LTC(b)(3), (b)(6) was asked to do concerning DV preparation. Nevertheless, the investigation was not initiated because of the nature of the communication concerning LTC(b)(3), (b)(6) but because of the nature of the misconduct alleged. As MAJ (b)(3), (b)(6) stated, the allegations were serious and disturbing, especially considering that they included a claim that LTC(b)(3), (b)(6) and other were going off post in civilian clothes in a hostile fire area carrying concealed weapons. (cite mitchell's statement) This behavior put them at serious risk of losing Prisoner of War status under the Law of Armed Conflict if an incident were to occur during their time off post. Additionally, when COI(b)(3), (b)(6) reviewed the appointment order, he specifically excluded language concerning an inappropriate relationship from the order. This was because he was concerned about the high risk behavior -- movement control violations concerning uniform, weapon and off-post travel. The Command's focus in initiating the investigation was the safety and security of its personnel, not retaliation for the request for clarification of duties.

(ii) (U) LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) did receive adverse administrative action as a result of the investigation. MG Patton issued GOMORs based upon the investigative findings. A preponderance of the evidence indicated that misconduct had occurred. At the time he issued the GOMORs he did not have knowledge of the questioned requirement concerning DV preparation. MG Patton's sworn statement indicates that he did not know of that issue until it was mentioned in LTC (b)(3), (b)(6) rebuttal. (Exhibit Z, page 13) He considered the reprisal, but did not see a connection and, therefore, did not take any action concerning it. He did take action concerning other issues in the rebuttal that he found credible by modifying the GOMORs to take out some of the misconduct. A favorable modification is not the action of someone who is taking reprisal.

(b) (U) *Before taking or threatening an adverse personnel action, did the management officials know about the protected communication?* No. As previously stated,

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MG Patton's sworn statement indicates that he did not know that LTC(b)(3), (b)(6) and/or MAJ (b)(3), (b)(6) may have previously questioned whether CSTC-A/NTM-A's DV preparation amounted to conducting IO on U.S. persons when he issued the initial GOMORs. He did not know of the communication until he read LTC(b)(3), (b)(6) rebuttal. Certainly an action cannot be predicated on a communication about which the management official taking the action had no knowledge.

(c) (U) *Does a preponderance of the evidence establish that the adverse personnel action would have been taken absent the protected communication? Was there an independent basis for the adverse personnel action?* Yes. MG Patton did not know of the communication when he issued the initial GOMOR. Therefore, it is certain that he would have taken the action absent the communication.

(i) (U) MG Patton stated that the reason he took the action was because of the seriousness of the misconduct substantiated in the investigation. This action was reasonable under the circumstances. In his rebuttal, LTC(b)(3), (b)(6) indicated that other officers who went off post in civilian clothes received lesser action. (Enclosure 6, page 10) This is true. The pictures that The IO relied upon had officers other than LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) in them. CPT (b)(3), (b)(6) the NGO Coordinator, was in the pictures. However, the IO did not know CPT(b)(3), (b)(6) and did not recognize her. (Exhibit BB, page 12) Therefore, he was not able to identify her to interview her. CPT(b)(3), (b)(6) did not receive adverse action because she had received permission from Dr. Kem (SES) to wear civilian clothes off post in support of her duties as NGO Coordinator. Additionally, when she went off post, it was to meet with NGO contacts and, therefore, her official duty. COI(b)(3), (b)(6) did receive adverse action. He received a memorandum of counseling from the COI(b)(3), (b)(6) MG Patton released jurisdiction to COI(b)(3), (b)(6) to handle the action because COI(b)(3), (b)(6) engaged in a single incident involving movement control violations. LTC(b)(3), (b)(6) and MAJ (b)(3), (b)(6) violations were repeated. Additionally, they committed the additional misconduct of violating the Joint Ethics Regulation, Article 92, UCMJ and Article 133 UCMJ by using their DoD positions for personal gain to generate business for their private company, Sygyzy, LLC. (Exhibit Z, page 16 and Exhibit F, pages 36-37)

(ii) (U) I find that initiation of the 15-6 investigation and the resulting GOMORs was not in any way retaliation for LTC(b)(3), (b)(6) and/or MAJ(b)(3), (b)(6) questioning whether CSTC-A/NTM-A's DV preparation amounted to conducting IO on U.S. persons. DoDIG previously found that there was not a violation of law. However, after completing all four prongs of the Whistleblower reprisal analysis, I find also that there was not retaliation in fact. The Command investigated credible allegations of misconduct. A preponderance of the evidence in the investigation substantiated findings that violations of policy occurred. GOMORs were issued,

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and, in accordance with AR 600-37, served upon the officers for notice and comment before final action. The officers submitted rebuttal matters. A review of the matters dictated that the reprimands be altered to remove previously substantiated allegations that were successfully refuted. There is no evidence to indicate that MG Patton took this action because LTC(b)(3), (b)(6) and/or MAJ(b)(3), (b)(6) questioned command orders, procedures and/or processes. The action was taken based solely upon substantiated misconduct that was in no way related to the questioned matters.

(iii) (U) The preponderance of the evidence suggests that the 15-6 investigation was legally sufficient and did not constitute reprisal, as alleged by LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6). While not in the specific purview of this investigation to reopen this 15-6 investigation, most of the allegations in it were reexamined, and the findings validated. However, a number of factors contribute to the appearance that the 15-6 investigation was a reprisal by the command against LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) supporting this misperception. Therefore, it is important to thoroughly explore what LTC(b)(3), (b)(6) believes was evidence of reprisal.

(12) (U) As discussed above, the timing of the investigation—emanating as it did from the same discussion at the same time between Maj(b)(3), (b)(6) and MAJ(b)(3), (b)(6) that clarified the order as legal—supports a view that, in time and space, the investigation followed (b)(3), (b)(6) complaint. Furthermore, the handling of the case by the SJA, which was awkward at best, may have fueled this view, as well as the fact that the investigating officer, LTC(b)(3), (b)(6) was inexperienced. Finally, there are service members serving in CSTC-A/NTM-A with LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) but have since been reassigned, who were convinced that the investigation was conducted in reprisal because they were themselves investigated. Though these incidents of misconduct were unrelated to the (b)(3), (b)(6) and (b)(3), (b)(6) case, added together, it is understandable that LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) could form the view that the 15-6 investigation of which they were the subject was animated by retaliation.

(a) (U) The legal office's handling of the investigation gave the appearance of reprisal for a number of reasons, first among which is the unusual set of factors that led to the involvement of MAJ(b)(3), (b)(6) the command's Chief of Justice, in almost every aspect of the case from inception to final disposition. After uncovering the alleged misconduct by MAJ(b)(3), (b)(6) and LTC(b)(3), (b)(6) in her discussion with Maj(b)(3), (b)(6) MAJ(b)(3), (b)(6) contacted Col(b)(3), (b)(6), on leave, to get his recommendation. Once Col(b)(3), (b)(6) acted on the SJA's recommendation, initiating the 15-6 and appointing LTC(b)(3), (b)(6) as investigating officer, MAJ(b)(3), (b)(6) was assigned as the Legal Advisor to LTC(b)(3), (b)(6) due to the fact that the normal Administrative Law Attorney was on leave. MAJ(b)(3), (b)(6) coached him heavily during the investigation, and

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offered him evidence in the form of Face Book user statistics that listed both LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6). She also helps LTC (b)(3), (b)(6) edit his report, although he affirms that the findings were his (Exhibit BB, page 16). While Deputy SJA, COL(b)(3), (b)(6) stated that involvement by the same member of the SJA staff in all aspects of an investigation is unusual, it was not unlawful nor did it compromise the investigation's legality (Exhibit H, page 8). Both he and the current SJA, COL(b)(3), (b)(6) state that the cause for the extent of (b)(3), (b)(6) involvement was a shortage of SJA personnel (Exhibit H, page 7; Exhibit A, page 10).

(b) (U) The investigation itself, while it was judged to be legally sufficient by the Chief, Administrative Law, MAJ(b)(3), (b)(6) upon her return from leave, (Enclosure 5) extends no further than simply proving the allegations which were its subject. Chosen randomly from the staff, LTC (b)(3), (b)(6) had never performed a 15-6 investigation prior to this (Exhibit BB, page 11). Evidence – photos and statements — that were posted by LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) on their own Face Book pages compelled the investigating officer to confirm several of the allegations fairly quickly, without additional required research or interviews, and to add violations of the Joint Ethics Regulation after seeing that MAJ(b)(3), (b)(6) and LTC(b)(3), (b)(6) were forming a company, Syzygy, together (which MAJ(b)(3), (b)(6) in fact confirmed was established in May 2010 (Exhibit V, page 7) while the investigation was still being reviewed) and of an improper relationship (based on the fact that MAJ(b)(3), (b)(6) refers to LTC(b)(3), (b)(6) a superior officer, by his first name). If the command wanted to retaliate, the Chief of Staff might have selected a more senior, or more experienced officer to conduct an investigation.

(c) (U) Both MAJ(b)(3), (b)(6) and LTC(b)(3), (b)(6) cite the fact that they were never interviewed or provided with an opportunity to defend themselves as grounds for claiming the investigation was reprisal. LTC (b)(3), (b)(6) attempted to interview LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) but each invoked their right to legal counsel in writing. (Exhibit BB, page 8) Emails from their TDS lawyers, CPT(b)(3), (b)(6) and (b)(6) confirm that no statement was offered by either of them on behalf of LTC(b)(3), (b)(6) or MAJ(b)(3), (b)(6). By electing to seek legal counsel and then by failing to act through their defense counsel to provide statements during the conduct of the investigation, MAJ(b)(3), (b)(6) and LTC(b)(3), (b)(6) relegated any testimony they would offer to their opportunity, guaranteed as part of the investigation process, to rebut LTC (b)(3), (b)(6) findings after the investigation was complete. Both LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) cite the fact that LTC (b)(3), (b)(6) did not interview others who left post in civilian clothes with them, and noted the lack of fairness with respect the treatment of these individuals.

(d) (U) LTC (b)(3), (b)(6) testified that he did not recognize the identities of others in the photos (Exhibit BB, page 12) and without statements by LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6)

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identifying them, the others who were there could not be questioned. COI(b)(3), (b)(6) testified that, once the investigation was complete, COI(b)(3), (b)(6) whom COI(b)(3), (b)(6) recognized in his review of the 15-6, received a local reprimand based on this being a one-time occurrence, whereas for LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) there was a pattern of misconduct. They received GOMORs at the completion of the 15-6 without being interviewed because they chose not to make statements, and without statements, the 15-6 investigating officer remained ignorant of the participation of others and of other witnesses who could have provided facts relevant to the case.

(e) (U) Assisted by TDS attorneys, both LTC(b)(3), (b)(6) and MAJ(b)(3), (b)(6) submitted rebuttals (Enclosures 5 and 6), and MG Patton considered these submissions prior to the final filing of the GOMORs. (Exhibit A, page 10; Exhibit Z, page 12) LTC(b)(3), (b)(6) requested and received an interview with MG Patton about his rebuttal, portions of which were considered favorably, resulting in his GOMOR being altered to exclude allegations which MG Patton felt were not sufficiently founded in fact, specifically LTC (b)(3), (b)(6) findings that there was an inappropriate relationship between subordinate and superior. Based on his interview with LTC (b)(3), (b)(6) MG Patton also decided to alter MAJ (b)(3), (b)(6) original GOMOR, which had already been given while LTC(b)(3), (b)(6) was on leave, to exclude these same allegations, (Exhibit Z, page 12) but MAJ(b)(3), (b)(6) did not know this. Additionally, the memorandum that MG Patton signed requesting that the revised GOMOR be filed in MAJ (b)(3), (b)(6) file and the initial GOMOR removed, was not acted upon. As of this writing, CSTC-A/NTM-A has, again, contacted Army Human Resources Command to ensure the correct GOMOR is filed in MAJ (b)(3), (b)(6) personnel record.

(f) (U) The final GOMORs administered to both officers retained findings that the preponderance of the evidence supported allegations that (b)(3), (b)(6) and (b)(3), (b)(6) violated the CSTC-A/NTM-A movement control policy by being in civilian clothing while not so authorized by the Chief of Staff or a General Officer and that they violated the Joint Ethics Regulation in that they established a business, SYZGY, LLC, using government resources. LTC (b)(3), (b)(6) GOMOR also stated that he made a false official statement that he had blanket permission from former Chief of Staff COL (b)(3), (b)(6) to go off-post in civilian clothes. COL (b)(3), (b)(6) re-verified that was not the case during this investigation. (Exhibit GG, page 8) While neither LTC(b)(3), (b)(6) nor MAJ (b)(3), (b)(6) rebuttals convincingly counter evidence that bears out these allegations, the mishandling of MAJ (b)(3), (b)(6) GOMOR contributes to the misperception of reprisal.

(g) (U) Another prong of LTC(b)(3), (b)(6) assertion that his and MAJ (b)(3), (b)(6) investigations emanated from a command attempt to retaliate was that others associated with him were also similarly investigated. Specifically, he referred to the investigations of LtC (b)(3), (b)(6)

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(b)(3), (b)(6) who served as supervisor of the IOFST as the Assistant Director of Communications, and Capt (b)(3), (b)(6) who served as LTG Caldwell's air planner. He also cites an investigation of Capt (b)(3), (b)(6) the Administrative Law attorney whom LTC (b)(3), (b)(6) originally consulted about the legality of the order he was given, and who was the recipient of what LTC (b)(3), (b)(6) asserts was a protected communication.

(h) (U) LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) were contacted to provide statements in an investigation of Capt (b)(3), (b)(6). On 28 Dec 10, the Air Force, not CSTC-A/NTM-A initiated a professional responsibility inquiry of Capt (b)(3), (b)(6) after receiving allegations he may have violated the Air Force Rules of Professional Conduct (AFRPC) while assigned to the Office of the Staff Judge Advocate, CSTC-A/NTM-A. The inquiry focused on whether Capt (b)(3), (b)(6) advice to LTC (b)(3), (b)(6) and others in the command may have violated AFRPC Rule, 1.7, Conflict of Interest; Rule 1.6, Confidentiality of Information; Rule 1.1 Competence; and Rule 1.16, Declining or Terminating Representation. The Air Force Judge Advocate General's Corps initiates professional responsibility inquiries against attorneys when allegations and reported evidence indicate the possible violation of professional conduct rules and standards. Inquiries are intended to develop the facts and circumstances surrounding allegations of violations of the rules and standards so that competent authority can determine whether a violation occurred and take appropriate action. The Air Force has not made a final determination on the allegations against Capt (b)(3), (b)(6) (Exhibit KK). Nevertheless, a DoDIG inquiry found that LTC (b)(3), (b)(6) communication to Capt (b)(3), (b)(6) was not protected and, therefore, there was no violation of the Military Whistleblower Protection Act. This investigation affirmed that finding.

(i) (U) CSTC-A/NTM-A investigated both LtC (b)(3), (b)(6) and Capt (b)(3), (b)(6). However, these investigations were for offenses completely separate from their relationship with LTC (b)(3), (b)(6). LtC (b)(3), (b)(6) was investigated for a movement control violation that resulted in a recommendation for counseling, and a contracting matter that resulted in a recommendation for retraining. Capt (b)(3), (b)(6) and LtC (b)(3), (b)(6) were implicated in a third investigation for Capt (b)(3), (b)(6) failure to return from R&R leave by the date on her leave form. The investigation found that LtC (b)(3), (b)(6) had authorized her to stop in Kuwait for temporary duty to take a language exam on her return from R&R but, because of his failure to understand temporary duty policy he did not obtain the proper approval for the eight day absence. Once again, LtC (b)(3), (b)(6) was counseled and retrained. There was no adverse action taken against Capt (b)(3), (b)(6).

(j) (U) LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) seem to have seen the investigation as a punitive matter. However, COI (b)(3), (b)(6) points out that investigations are by nature interrogative and not punitive (Exhibit F, page 32) That is, the investigating officer seeks only to establish the

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facts and circumstances in the case so that it can be disposed of appropriately. LtCol (b)(3), (b)(6) and Capt (b)(3), (b)(6) likewise testify that they felt reprisal was a factor. However, neither LtCol (b)(3), (b)(6) who was the subject of three 15-6 investigations, nor Capt (b)(3), (b)(6) who was the subject of one investigation with LtCol (b)(3), (b)(6) suffered irreparable harm to their careers as a result of their investigations. In fact, one investigation cleared Capt (b)(3), (b)(6) of any wrongdoing. The others highlighted LtCol (b)(3), (b)(6) misunderstanding of policies and ensured additional training prior to his misunderstandings leading to more serious incidents. Furthermore, none of these officers can identify who it is that is attempting to retaliate against them. Repeatedly, they were asked under oath for an explanation of who is out to get them. They could not name anyone.

(k) (U) Finally, in the cases of LtCol (b)(3), (b)(6) and Capt (b)(3), (b)(6) the investigatory process worked in the way that COI (b)(3), (b)(6) describes. The officers subject to these investigations were identified for retraining and benefited from the investigation by gaining a better understanding of their responsibilities. In LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) cases, the investigation established grounds for adverse action and the GOMORs they were issued. In their cases, the investigating officer – despite the fact that he could have been more thorough – found and recommended far more stringent action than the command approved. The Command initially issued GOMORs instead of punishment under the provisions of the Uniform Code of Military Justice recommended. (Exhibit H, pages 14-15) After reviewing the rebuttals, some of the offenses were removed from the GOMORs because the MG Patton no longer believed they were borne out by the preponderance of the evidence. (Exhibit Z, page 20)

(l) (U) MAJ (b)(3), (b)(6) noted in her testimony that awards were never processed on the IOFST NCOs. She claims to have written awards, but did not have copies, nor could she recall for sure having done them, but thought that she had. LTC (b)(3), (b)(6) never mentioned awards for these NCOs in his testimony. When the question of the awards was referred to LTC (b)(3), (b)(6) through his counsel, after MAJ (b)(3), (b)(6) interview he also could not recall writing awards. He believes the awards were submitted prior to leaving CSTC-A/NTM-A, although he can't be sure.

(m) (U) During his interviews, LTC (b)(3), (b)(6) cited three other reasons why he believed there was retaliation. First, he referred to another officer, CPT (b)(3), (b)(6) being investigated because of her relationship with him. CPT (b)(3), (b)(6) spent a lot of time with LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) when they were in Afghanistan. LTC (b)(3), (b)(6) claimed CPT (b)(3), (b)(6) was investigated for misconduct because of that association. This is not the case. In fact, CSTC-A/NTM-A has never investigated CPT (b)(3), (b)(6) (Exhibit K, pages 15-16). Second, LTC (b)(3), (b)(6) referred to MAJ (b)(3), (b)(6) Officer Evaluation Report (OER) as retaliation. He stated the OER LTC (b)(3), (b)(6) received for her tour in Afghanistan indicated that she had an adulterous

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inappropriate relationship. This is not true. MAJ (b)(3), (b)(6) OER does not mention an inappropriate relationship or adultery at all. In fact, the only portion of her OER that refers to adverse action was written by LTC (b)(3), (b)(6) himself when he stated “During this rating period, MAJ (b)(3), (b)(6) received an official GOMOR – an action which resulted in this command being investigated by DOD IG for conducting a ‘whistle-blower’ reprisal. Given that the actions for which she was reprimanded were done at my direction and behest, a more reasonable command environment may have exonerated her.” (Exhibit V, attachment 8) This statement also is not true. The DoDIG did not investigate the command for whistleblower actions because of MAJ (b)(3), (b)(6) GOMOR. The investigation was initiated because of LTC (b)(3), (b)(6) IG complaint of reprisal, which was unfounded. In his zeal to cast the command in a poor light on the record, LTC (b)(3), (b)(6) ends up highlighting MAJ (b)(3), (b)(6) adverse administrative action in a second location in her OMPF. Third, LTC (b)(3), (b)(6) accused CSTC-A/NTM-A of releasing the AR 15-6 investigation on the internet. In fact, a portion of the investigation is on the internet. However, no evidence suggests that anyone from CSTC-A/NTM-A is responsible for that release. LTC (b)(3), (b)(6) did admit that, on or about 17 February 2011, he provided (b)(3), (b)(6) of *Rolling Stone* magazine with the AR 15-6 investigation and his rebuttal to the AR 15-6 investigation, and 10 emails about the alleged illegal order. (Exhibit Q, Day 1, page 70-72) Once LTC (b)(3), (b)(6) released the documents to the media, he deprived the government of the means to control their distribution.

**h. (U) Whether LTC (b)(3), (b)(6) released government records to a journalist or other members of the public. To the extent possible, identify the nature of these records and determine whether any may have included classified material or “For Official Use Only (FOUO)” material. You will specifically determine whether any such release was proper under the circumstances.** No evidence suggests that LTC (b)(3), (b)(6) released classified material of an operational nature to any journalists. CSTC-A strove to work all its actions in unclassified venues, in order to assure transparency, and therefore such release seems doubtful.

(1) (U) However, in an email to LTC (b)(3), (b)(6) dated 22 FEB 10, (b)(3), (b)(6) stated that “I have obtained “emails, documents and a copy of the AR 15-6 report, all of which confirm and support the statements that LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) have made to me in a series of on the record interviews.” (Exhibit EE, attachment 1)

(2) (U) In testimony, LTC (b)(3), (b)(6) affirms that, on or about 17 February 2011, he provided Mr. (b)(3), (b)(6) with the AR 15-6 investigation, LTC (b)(3), (b)(6) rebuttal to the AR 15-6 investigation (without the exhibits), and the 10 email chains about the illegal order that he also provided to the government, none of which were classified. Pursuant to AR 600-37, para. 3-2a,

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the government properly provided LTC(b)(3), (b)(6) with a copy of the AR 15-6 investigation when he received his GOMOR. LTC(b)(3), (b)(6) appears to have only released unclassified documents to which he had a right to possess and did possess.

(3) (U) LTC(b)(3), (b)(6) stated none of the documents were classified above FOUO. LTC(b)(3), (b)(6) stated he did not review the Rolling Stone article script before it was published. LTC(b)(3), (b)(6) stated he was not on Title 10 or Title 32 status when he talked to Mr. (b)(3), (b)(6) for the initial interview, but he was on Title 32 status the day the story was released and he was on title 32 status when Rolling Stone magazine called to verify some facts. (Exhibit Q, Day 1, page 70-72)

i. (U) **Evaluate what is and is not permissible in the use of IO personnel and resources with respect to command communications, as well as assessing the doctrinal and policy boundaries between IO and Public Affairs:** This investigation undertook an exhaustive survey of the pertinent laws and policies before concluding that no violations of law took place, from the Smith-Mundt Act to anti-lobbying statutes. The investigation also examined extant doctrine, both that now in effect and that in place when LTC(b)(3), (b)(6) underwent his IO officer qualification training, as well as the application of that doctrine within ISAF. The Deputy Chief of Staff for Communications, NATO/ISAF/USFOR-A, RDML Smith, testified that ISAF had moved “beyond doctrine” in its establishment of a Communications Directorate that coordinated both IO and PAO activities. This is not entirely accurate. As currently structured, the Communications Directorate at ISAF oversees both information operations and public affairs, and the Director of Communications is responsible for ensuring that these efforts are synchronized. Essentially, this is the doctrine that is taught at the information operations school, with the view that the G7 IO planner serves as the coordinating officer for all of these activities and undertakes the responsibility for IO (Electronic Warfare, Computer Network Operations, Operations Security, PSYOP/MISO, and Military Deception) and synchronizes these activities with the supporting functions (Public Affairs, Civil Affairs, and CMO). The concern is that throughout his tenure, LTC(b)(3), (b)(6) never understood what LTG Caldwell says he made plain up front, echoed by D(b)(3), (b)(6) COL(b)(3), (b)(6) COL(b)(3), (b)(6) and Col(b)(3), (b)(6): that CTSC-A/NTM-A doesn’t conduct information operations. To the end, LTC(b)(3), (b)(6) was looking for an application of his craft and avoiding staff work that isn’t directly connected with it.

(1) (U) *Rolling Stone* claims that LTG Caldwell, “tried to rewrite the official doctrine on information operations, though that effort ultimately failed.” In actuality, the Combined Arms Center radically revised IO concepts while under the command of, then, LTG Petraeus prior to LTG Caldwell taking command. The Army backed away from IO in the 2008 rewrite of FM 3-

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0. This manual referred to IO only as a Joint concept and stated that “the Army conducts five Information Tasks to shape the information environment.”<sup>1</sup> Four of these tasks were well understood and non-controversial: Command and Control Warfare, Information Protection, Operations Security, and Military Deception. One new task, Information Engagement, has been slightly controversial in that it sought to closely coordinate Public Affairs and Psychological Operations disciplines:

*Information engagement* is the integrated employment of public affairs to inform U.S. and friendly audiences; psychological operations, combat camera, U.S. Government strategic communication and defense support to public diplomacy, and other means necessary to influence foreign audiences; and, leader and Soldier engagements to support both efforts.<sup>2</sup>

(2) (U) The key concepts of Information Tasks and Information Engagement were formulated in the Final Draft of FM 3-0 which GEN Casey rejected in mid-2007. GEN Casey directed that Chapter 7, which contains the IO concepts be rewritten. This rewrite was conducted under LTG Caldwell’s command and FM 3-0 was published in Feb 2008.

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<sup>1</sup> FM 3-0 (2008 Rewrite) paragraph, 7-7. Prior to this rewrite, the relatively long standing Joint IO definition directed by Defense Secretary Rumsfeld in the 2003 IO Roadmap was the Army standard.

<sup>2</sup> FM 3-0 (2008 Rewrite) paragraph, 7-10.

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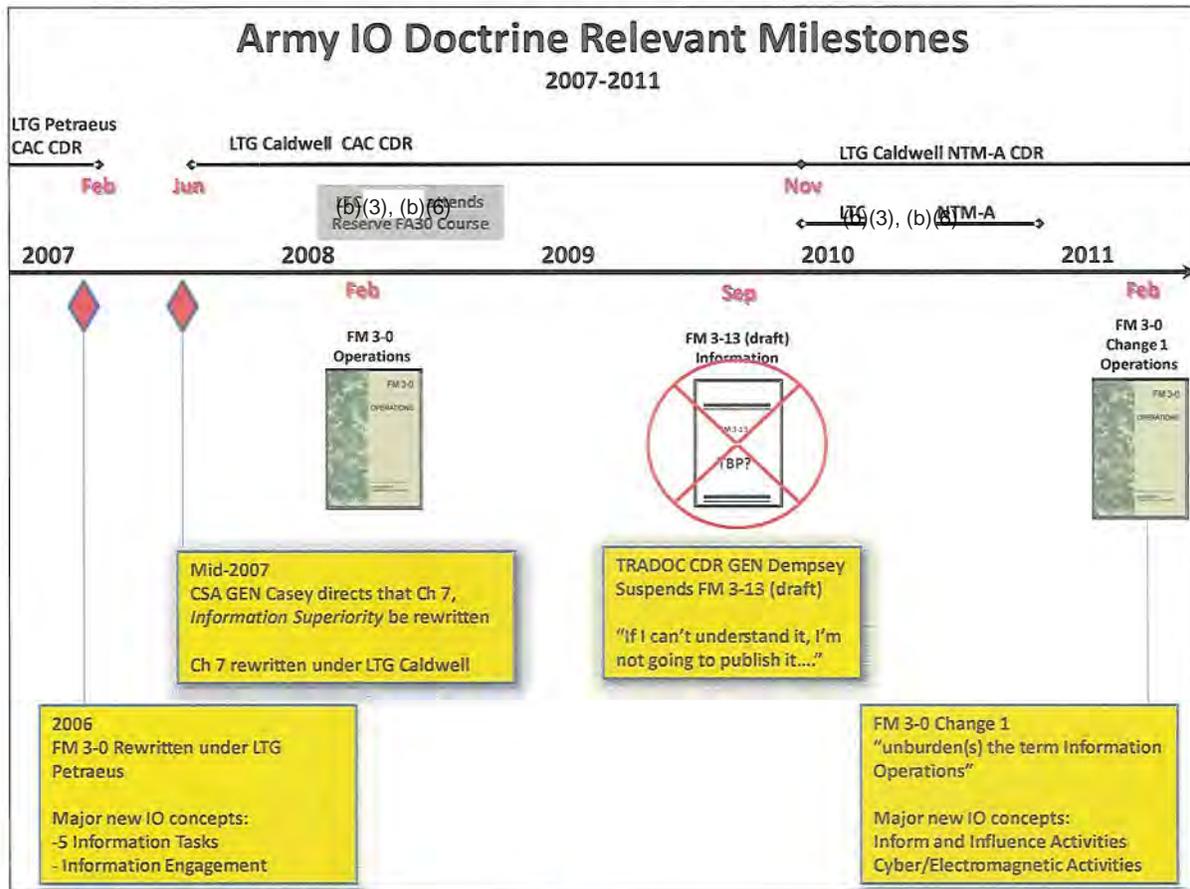


Figure 1

(3) (U) The new construct was controversial. Some Army officers felt that IO had been “deconstructed”<sup>3</sup> and that the new doctrine had been railroaded through the system without sufficient debate and staffing. The IO Directorate of the CAC began to draft a new FM 3-13 which would simply be titled “Information.” The document went through numerous drafts and revisions each attempting to clarify and operationalize the new, unpopular construct. LTG Caldwell was personally engaged in this work.<sup>4</sup>

(4) (U) The Final Draft of FM 3-13 was placed “on hold” by the TRADOC Commander, GEN Dempsey in September 2009. The document, which grappled with the complexities of the information environment in modern warfare as experienced in Iraq and Afghanistan, was did not

<sup>3</sup> COL (b)(3), (b)(6) “To Kill a Mockingbird: the Deconstruction of Army IO, “ Small Wars Journal, 2008.

<sup>4</sup> FM 3-13 (DRAFT).

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provide sufficient clarity causing Gen Dempsey to comment, “If I can’t understand it, I’m not going to publish it...” TRADOC ultimately decided to rethink the entire Information Tasks construct as part of the Change 1 to FM 3-0. In conclusion then, LTG Caldwell’s task was to clarify and flesh out a fairly radical new IO doctrine put forth by his predecessor.

(5) (U) With the new Change 1 to FM 3-0 (Feb 2011) the Army continues to move away from IO a core concept, but has employed a totally new constructed involving “Inform and Influence Activities.” The term Information Engagement (IE) has been rescinded.<sup>5</sup>

(6) (U) Analysis.

(a) (U) Information Engagement does conceptually integrate the functions of PA and PSYOP in a manner which might cause confusion and discomfort in traditional circles. This is likely why the Army has rescinded the term in the new FM 3-0. However, the IE definition clearly states that IE is only to be focused on foreign audiences. Therefore, neither, then, LTG Petraeus nor LTG Caldwell can be accused of attempting to reshape Army doctrine in a manner which would allow for the influence of US domestic audiences.

(b) (U) Judging from his time as the leader of Strategic Effects at MNFI, his numerous writings, and his encouragement of social media, LTG Caldwell is clearly interested in leveraging all means necessary to produce informational effects. However, there are no indications that LTG Caldwell attempted to modify doctrine in inappropriate or illegal fashion. What is significant in this investigation are the specific orders given to LTC(b)(3), (b)(6) and his team internal to CSTC-A/NTM-A.

(c) (U) This investigation interviewed over thirty-five respondents, and none gave the same definitions of Information Engagement or STRATCOM. So clearly, the lag in the production of viable doctrine is having a detrimental effect.

(7) (U) I find that no laws concerning the use of IO personnel and resources with respect to command communications were broken. Statutes that were implicated by the allegations include:

- Anti-Lobbying Statute, 18 USC §1913.

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<sup>5</sup> FM 3-0 (Feb 2011).

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- The Smith-Mundt Act, 22 USC §1461, and the Zorinsky Amendment, 22 USC §1461-1a.
- National Security Act, Prohibition against Covert Activities, 50 USC 413b(f).
- FY 2010 Department of Defense Appropriations Act, §8001.
- The Anti-Deficiency Act, 31 U.S.C. §1341; 31 USC §1351.

(a) (U) **Anti-Lobbying Statute, 18 USC §1913.**<sup>6</sup> Generally speaking, there are two types of lobbying. “Direct Lobbying” means contact with legislators, either in person or in writing. “Indirect” or “grassroots” lobbying means the lobbyist contacts third parties, even the public, and urges them to contact their legislators to support or oppose something.<sup>7</sup> In a democracy, individuals and groups must be able communicate their needs before the government. However, our government puts limits on the ability of government officials to use appropriated funds for such activities through this statute.

(i) (U) **Applicability.** Enacted in 1919, this former criminal statute is directly applicable to both information operations and public affairs. In general, this statute prohibits the use of any appropriated funds for producing certain types of material “intended or designed to influence in any manner a Member of Congress” to favor any type of law or legislation.<sup>8</sup> Importantly, it has a relevant exception. The act specifically allows government agencies and officials, to include DoD, to communicate to “any such member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law,

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<sup>6</sup> 18 USC § 1913. Lobbying with appropriated moneys. No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of 31 USC 1352(a).

<sup>7</sup> Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-188.

<sup>8</sup> See Footnote 6.

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ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business.”<sup>9</sup>

(ii) (U) Amendments. The statute was amended in 2002 to omit the criminal sanctions, in favor of civil penalties,<sup>10</sup> and to expand the scope of the lobbying restriction from just Congressional legislative activities to all levels of the government. Prior to the 2002 amendments, this statute had been heavily interpreted by both the Government Accountability Office’s appropriations law decisions and by the Department of Justice (DOJ) Office of Legal Counsel opinions. Although there are no case opinions on the amendments, the historical interpretations are still relevant to this investigation because the original statute dealt specifically with lobbying Congress at the federal level.

(iii) (U) Historical Interpretations. In GAO and DOJ’s view, 18 USC §1913 prohibits agencies from using appropriated funds for large-scale “indirect” or “grass-roots” lobbying of the public.<sup>11</sup> The idea is to prevent government agencies from manipulating Congress’ perception that the public support for an issue is greater than it actually is. GAO and DOJ both agree that the statute prohibits “large scale public campaigns to generate citizen contacts with Congress on behalf of an Administration position” with respect to pending legislation.<sup>12</sup> DOJ has stated that the statute does not prohibit communications with the public through public speeches, appearances or published writing as long as it is not a ‘high expenditure campaign in which members of the public are expressly urged to write their Senators or Representatives in support,

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<sup>9</sup> See Footnote 6.

<sup>10</sup> The civil penalties range from \$10,000.00 to \$100,000 per expenditure. As a Title 18 statute, enforcement of this statute rests with the Department of Justice. The enforcement mechanism is derived from 31 USC §1352(c). No alleged violation is subject to adjudication unless approved by the Justice Department and DOJ is also responsible for judicial enforcement of any civil penalty. Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-191. There is no private right of action. *Id.* at 4-195.

<sup>11</sup> The original floor debate on the 1919 legislation states “The bill also contains a provision which... will prohibit a practice that has been indulged in so often, without regard to what administration is in power--the practice of a bureau chief or the head of a department writing letters throughout the country, sending telegrams throughout the country, for this organization, for this man, for that company to write his Congressman, to wire his Congressman, in behalf of this or that legislation. [Applause.] The gentleman from Kentucky...during the closing days of the last Congress was greatly worried because he had on his desk thousands upon thousands of telegrams that had been started right here in Washington by some official wiring out for people to wire Congressmen Sherley...Now, it was never the intention of Congress to appropriate money for this purpose, and [§1913] will absolutely put a stop to that sort of thing. [Applause.] 50 Cong. Rec. 403 (1919)(remarks of Representative Good), quoted in National treasury Employees Union v. Campbell, 654 F.2d 784, 791(D.C.Cir. 1981), quoted in Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-190 to 4-191.

<sup>12</sup> Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-192.

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or in opposition to, legislation.’<sup>13</sup> In 1989, DOJ set the ‘high expenditure’ or ‘substantial’ level at \$50,000.00.

(iv) (U) Analysis. To the extent that CODELs/DVs were requesting to visit CSTC-A, the command’s communications to the CODELs is reasonably viewed as authorized under this statute because the statute specifically allows agencies to provide information to Congressmen when they request that information. The CODELs were visiting CSTC-A to learn about areas of interest and DoD was customizing the information provided to the needs of each DV. This statutory exemption includes CSTC-A’s requests for funding and personnel. The provided DV packets and witness testimony do not suggest that CSTC-A was engaging in any kind of grass-roots lobbying campaign to engage the U.S. public to contact Congress.

(b) (U) **The Smith-Mundt Act (SMA), 22 USC §1461,<sup>14</sup> and the Zorinsky Amendment, 22 USC §1461-1a.<sup>15</sup>** This statute is not directly applicable to DoD. It is

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<sup>13</sup> The Honorable Susan Gaffney, Subject: Application of Anti-Lobbying Restrictions to HUD Report Losing Ground; B-284226.2, Aug 17, 2000 (finding that HUD Secretary Cuomo did not violate anti-lobbying law (18 USC §1913) when HUD issued the 'Losing Ground' Report, which criticized the 'deep cuts' in HUD programs proposed by the House Appropriations Committee in the fiscal year 2000 HUD appropriations bill and when HUD send the Report to everyone on its main distribution mailing list.)

<sup>14</sup> 22 USC §1461. General authorization. (a) Dissemination of information abroad. The Secretary [of State] is authorized, when he finds it appropriate, to provide for the preparation, and dissemination abroad, of information about the United States, its people, and its policies, through press, publications, radio, motion pictures, and other information media, and through information centers and instructors abroad. Subject to subsection (b) of this section, any such information (other than “Problems of Communism” and the “English Teaching Forum” which may be sold by the Government Printing Office) shall not be disseminated within the United States, its territories, or possessions, but, on request, shall be available in the English language at the Department of State, at all reasonable times following its release as information abroad, for examination only by representatives of United States press associations, newspapers, magazines, radio systems, and stations, and by research students and scholars, and, on request, shall be made available for examination only to Members of Congress. (b) Dissemination of information within United States. (1) The Director of the United States Information Agency shall make available to the Archivist of the United States, for domestic distribution, motion pictures, films, videotapes, and other material prepared for dissemination abroad 12 years after the initial dissemination of the material abroad or, in the case of such material not disseminated abroad, 12 years after the preparation of the material. (2) The Director of the United States Information Agency shall be reimbursed for any attendant expenses. Any reimbursement to the Director pursuant to this subsection shall be credited to the applicable appropriation of the United States Information Agency. (3) The Archivist shall be the official custodian of the material and shall issue necessary regulations to ensure that persons seeking its release in the United States have secured and paid for necessary United States rights and licenses and that all costs associated with the provision of the material by the Archivist shall be paid by the persons seeking its release. The Archivist may charge fees to recover such costs, in accordance with section 2116(c) of Title 44. Such fees shall be paid into, administered, and expended as part of the National Archives Trust Fund.

<sup>15</sup> 22 USC §1461-1a. Ban on domestic activities by United States Information Agency (USIA). “Except as provided in § 1461 of this title and this section, no funds authorized to be appropriated to the United States Information Agency shall be used to influence public opinion in the United States, and no program material prepared by the United States Information Agency shall be distributed within the United States. This section shall not apply to programs carried out pursuant to the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2451 et seq.). The provisions of this section shall not prohibit the United States Information Agency from responding to inquiries from members of the public about its operations, policies, or programs.” The

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applicable to DoS, to include the public affairs and information roles of the Secretary of State.<sup>16</sup> Along with the other statutes discussed in this paper, the SMA shows Congress has consistently legislated that the U.S. government should not engage in influence of the domestic press. CSTC-A did not perform any activities that would violate this act.

(i) (U) Applicability. The SMA is a statute that allows the agencies of the Department of State to prepare and disseminate some media products to foreign audiences overseas. The SMA also includes the Zorinsky Amendment which prohibits using appropriated funds to influence public opinion in the United States and any distribution of those materials to domestic audiences.<sup>17</sup> As a Title 22 statute, it is not applicable to the Department of Defense. A 2006 legal review by the Defense Policy Analysis Office also concluded that the Smith-Mundt Act does not apply to the Department of Defense.<sup>18</sup> The review defines “influence” as “much of the activities subsumed under Information Operations.”<sup>19</sup> The legal review does indicate that DoD has applied by policy the Zorinsky amendment’s prohibitions against influencing public opinion in the United States.<sup>20</sup> The opinion does not list any specific policies that apply SMA to DoD.

(ii) (U) Prohibition. In 1985, Congress passed the Zorinsky amendment to limit the Department of State, so that “no funds . . . shall be used to influence public opinion in the United

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U.S. Information Agency (other than the Broadcasting Board of Governors and International Broadcasting Bureau) was abolished and all functions transferred to the Department of State by 22 USC 6531 and 6532. See 22 U.S.C.A. §1461-a. Pub.L. 103-236 § 232 provides that this section is not to be interpreted as prohibiting the Department of State from responding to inquiries from members of the public about its operations, policies, or programs. *Id.*

<sup>16</sup> P.L. 105-227(1998).

<sup>17</sup> Some of the legislative history is that the Smith-Mundt Act of 1948 (Pub.L.No. 80-401, 62 Stat.6 (1948)) created, among other things, the means for the U.S. “to promote a better understanding of the United States in other countries, and to increase mutual understanding between the people of other countries.” The SMA, however, not only promotes dissemination of truthful information, but it also restricts dissemination of government propaganda to Americans. As originally written in 1948, the act did not contain an explicit ban on domestic dissemination of U.S. propaganda. Rather, it authorized the Secretary of State to prepare and disseminate information about the United States through “press, publications, radio, motion pictures, and other information media. . . .” After some period of uncertainty on the subject of domestic dissemination, the Act was amended in 1972 to include “a blanket provision barring [domestic] public distribution of any and all materials produced by the United States Information Agency (22 U.S.C. §1461). Finally, in 1985, a section was added to clarify that “no funds authorized to be appropriated to the USIA shall be used to influence public opinion in the United States, and no program material prepared by the USIA shall be distributed within the United States.” (22 USC §1461-1a).

<sup>18</sup> See Defense Policy Analysis Office (DPAO) Note, Aug. 2006, Subject: “Restrictions on Influencing a Domestic Audience Applicable to the DoD,” Richard Shiffron, former Deputy DoD General Counsel for Intelligence and Compartmented Activities, on file at OTJAG.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

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States.”<sup>21</sup> The basic idea was stated by the author, Senator Edward Zorinsky of Nebraska when he introduced the amendment in 1985. He stated, “The American taxpayer certainly does not need or want his tax dollars used to support U.S. Government propaganda directed at him or her.”<sup>22</sup> In following the spirit of SMA and the Zorinsky Amendment, the 2006 legal review states that DoD follows the dictionary definition of propaganda, which is “a systematic effort at indoctrination to a particular viewpoint, as opposed to a mere promulgation of information.”<sup>23</sup>

(iii) (U) Interpretation. In GAO appropriations law opinions, GAO has referenced the Smith-Mundt Act as a general example of Congress’ intent that consistent with the common appropriation law restrictions prohibiting publicity or propaganda within the United States, Congress has also prohibited the Department of State from producing pro-U.S. government news reports and print materials for international audiences and then broadcasting them to domestic audiences. In limiting domestic dissemination of the U.S. government-produced news reports, Congress was reflecting concern that the availability of government news broadcasts may infringe upon the traditional freedom of the press and act as an attempt to control public opinion.

(c) (U) **National Security Act, Congressional Prohibition Against Covert Activities, 50 USC 413b(f)**.<sup>24</sup> This statute is directly applicable to information operations and public affairs. In this case, CSTC-A did not violate this statute.

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<sup>21</sup> See Footnote 18.

<sup>22</sup> 131 Congr. Rec. 14945, June 7, 1985. See also Restrictions on Influencing a Domestic Audience Applicable to the Department of Defense, 2006 Defense Policy Analysis Office (DPAO), Richard Shiffrin, former Deputy DoD General Counsel for Intelligence and Compartmented Activities.

<sup>23</sup> See Footnote 18.

<sup>24</sup> 50 U.S.C.A. § 413b. Presidential approval and reporting of covert actions. (a) Presidential findings. The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions: (1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than 48 hours after the decision is made. . . . (e) “Covert action” defined: As used in this subchapter, the term “covert action” means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include--(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities; (2) traditional diplomatic or military activities or routine support to such activities; (3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or (4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad. (f) Prohibition on covert actions intended to influence United States political processes, etc. No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

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(i) (U) Applicability. These statutes apply to any part of the U.S. government engaged in intelligence activities, which would include DoD. Broadly spoken, the President must make a written finding before authorizing any covert activities. While the Central Intelligence Agency (CIA) is generally the agency involved, the statute itself is not limited to just the CIA. The restrictions in this section are reasonably interpreted as applying to the entire U.S. government.

(ii) (U) Prohibition. This statute specifically prohibits the President from conducting “covert actions which are intended to influence the United States political processes, public opinion, policies, or media.” Covert actions are then defined as activities of the U.S. government to “influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly.”

(iii) (U) Exceptions. It also provides for four exceptions, of which two are relevant here: “(2) traditional diplomatic or military activities or routine support to such activities; or (4) activities to provide routine support to the overt activities. . . .of other United States Government agencies abroad.”

(iv) (U) Analysis. CSTC-A did not violate this statute because CSTC-A was never engaged in any kind of covert action, as defined above. The CSTC-A command briefs and talking points were all overt, not covert. There was never any question that the material was being presented by DoD. Additionally, both exceptions appear to cover CSTC-A’s command briefs as they could be classified as routine support to an overt Congressional Delegation visit. Hosting such visits is also a traditional military activity overseas.

**(d) (U) Section 8001, Department of Defense Appropriations Act (DODAA), 2010.**

(i) (U) Applicability. Each year since 1951, using substantially identical language, Congress has included an anti-publicity and an anti-propaganda rider in nearly all of the appropriation acts that it enacts – to include the FY 2010 Department of Defense Appropriation Act, §8001.<sup>25</sup> The rider is applicable to both public affairs and information operations.

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<sup>25</sup> Congress generally adds the no publicity or propaganda rider to the annual Department of Defense Appropriations Act. The rider generally states the following, “No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.” The Department of Defense Appropriations Act (DODAA), 2010 was passed Dec 19,

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(ii) (U) Prohibition. The rider states that no appropriated funds are available for “publicity or propaganda purposes not authorized by the Congress.” The ultimate effect of the anti-publicity and anti-propaganda riders is that any use of appropriated funds for these functions is an Anti-Deficiency Act (ADA) violation that must be reported to the President and Congress unless the agency has special statutory authorization.<sup>26</sup> The Government Accountability Office issues opinions on the application of Congressional appropriations law, to include this rider. Due to Congress’ widespread use of this rider in almost all appropriation acts since 1951, there is considerable Government Accountability Office (GAO) case law on how to interpret this provision. Additionally, the Department of Justice (DOJ) has issued guidance as well.

(iii) (U) Interpretation of Permissible Agency Activities. In GAO appropriation law decisions, GAO has clarified that agencies may still report on the activities and programs of their agencies, to include justifying those policies publicly and rebutting attacks on those policies publicly.<sup>27</sup> GAO has found that despite the anti-publicity and anti-propaganda riders, the executive branch has a duty to inform the public regarding government policies and, traditionally, policy-making officials have used Government resources in explanation and defense of their policies.<sup>28</sup> The courts have stated it is not illegal for government agencies to spend appropriated funds to advocate their positions, even on controversial issues.<sup>29</sup> DOJ has also interpreted the riders to allow an agency’s legitimate informational activities. DOJ has further stated that ‘the role of the federal government in providing ‘information’ has traditionally been recognized as proper.’<sup>30</sup> Finally, GAO has noted that Congress considers informing Congress to be an executive agency duty.<sup>31</sup>

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2009 as public law 111-118. It included this provision in §8001. Currently, the continuing resolutions passed in FY11 continue this authority.

<sup>26</sup> 31 USC §1351.

<sup>27</sup> B-114823, Dec. 23, 1974 (anti-publicity and anti-propaganda riders do not prohibit public officials from reporting on the activities and programs of their agencies, justifying those policies to the public, and rebutting attacks on those policies.)

<sup>28</sup> B-194776, June 4, 1979 (finding despite anti-publicity and anti-propaganda riders, the executive branch has a duty to inform the public regarding government policies and, traditionally, policy-making officials have used Government resources in explanation and defense of their policies.)

<sup>29</sup> See *Joyner v. Whiting*, 477 F.2d 456, 461 (4<sup>th</sup> Cir. 1973); *Donaggio v. Arlington County, Virginia*, 880 F. Supp. 445, 454-56 (E.D. Va. 1995); *Arrington v. Taylor*, 380 F.Supp. 1348, 1364 (M.D.N.D. 1974).

<sup>30</sup> Memorandum from Robert J. Lipshutz, Counsel for the President, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, Re: Statutory Restraints on Lobbying Activity by Federal Officials at 7 (Nov. 29, 1977).

<sup>31</sup> When the first publicity and propaganda riders were used around 1950, the Select Committee, quoting in its Interim Report from the report on the Hoover Commission stated, “Apart from his responsibility as spokesman, the department head has another

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(iv) (U) Interpretation of Impermissible Agency Activities. GAO has interpreted the ‘publicity or propaganda’ riders to prohibit three general types of agency publications: those that are (i) self-aggrandizing, (ii) purely partisan in nature, or (iii) covert propaganda.<sup>32</sup> Similarly, DOJ has interpreted the legislative history around the ‘publicity or propaganda’ riders to indicate that Congress intended to stop (i) agency efforts to direct and control public thinking on various issues of public debate, particularly through overt political action; (ii) useless, excessive, or frivolous agency publications, and (iii) agency self-promotion, aggrandizement, or puffery.<sup>33</sup>

(a) (U) Interpretation of Self-Aggrandizement. GAO views self-aggrandizement as a violation of the “publicity” prohibition. Shortly after the rider was issued in 1951, GAO issued an opinion stating the intent of the riders was ‘to prevent publicity of a nature tending to emphasize the importance of the agency or activity in question and it has since considered such gratuitous self-aggrandizement or puffery to be unauthorized publicity.’<sup>34</sup> Both GAO and DOJ agree that Congress’ overarching concern was the use of federal funds to manipulate and control public opinion about policy issues: “[P]ublic opinion ought not . . . be subjected to influence and direction by the executive agencies, the administrative branch of the government, in the manner that it is today. . . The people should not finance use of these agencies to foster and perpetuate the bureaucrats [sic] not the people’s objective in national policy.”<sup>35</sup> DOJ thus believes “the appropriation rider should be read as principally designed to meet the immediate evil perceived by Congress—the unchecked growth of a government public relations arm used to disseminate agency [views] to the public at large—not as an effort to interfere with the normal and healthy functioning of the body politic.”<sup>36</sup> GAO commonly looks

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obligation in a democracy: to keep the public informed about the activities of his agency. How far to go and what media to use in this effort present touchy issues of personal and administrative integrity. But of the basic obligation there can be little doubt.” Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-197(quoted H.R. Rep. No. 81-3138, at 53 (1950).

<sup>32</sup> GAO VNR Decision at 10.

<sup>33</sup> Memorandum Opinion for the General Counsel Department of Health and Human Services, July 30, 2004, DOJ OLC opinion on the expenditure of appropriated funds for informational video news releases.

<sup>34</sup> Memorandum Opinion for the General Counsel, Department of Health and Human Services, 30 July 2004, “Expenditure of appropriated funds for Informational Video News Releases”

<sup>35</sup> Memorandum Opinion for the General Counsel, Department of Health and Human Services, 30 July 2004, “Expenditure of appropriated funds for Informational Video News Releases” citing 97 Cong. Rec. at 4099 (statement of Rep Meader).

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to see if the agency has special promotional authority and if not, the agencies scope of permissible activities is more limited.<sup>37</sup> One unique case in this area involved the Office of National Drug Control Policy's use of the term "Drug Czar" to describe its director in video news releases that it issued under the Drug-Free Media Campaign Act of 1998. GAO found it was permissible because the term originated in the public press, not with the agency, and it was a term that was commonly used to refer to the agency.<sup>38</sup>

(b) (U) *Interpretation of Covert Propaganda.* GAO has stated that the publicity and propaganda restriction is one way that Congress marks the boundary between an agency making information available to the public and agencies creating news reports unbeknownst to the receiving audience. Thus, GAO has consistently stated that any kind of covert publication would fall into the propaganda prohibition.<sup>39</sup> GAO's definition is extremely close to Congress' prohibition on covert activities in 50 USC 413b(f). Under the NSA statute, Congress prohibits covert activities where the U.S. government role is not be apparent or acknowledged publicly. Under GAO's covert propaganda test for the anti-propaganda rider, the critical element of covert propaganda for GAO is the concealment of the agency's role in sponsoring the materials.<sup>40</sup> In GAO opinions, findings of propaganda are predicated upon the fact that the target audience could not ascertain the information source.

(c) (U) *Overt Political Action.* The anti-publicity and anti-propaganda riders also prohibit overt political activity. GAO has held that this means no appropriated funds are available for political purposes, that is, for a propaganda effort designed to aid a political party or candidate.<sup>41</sup> The difficulty with this category is that sometimes it is hard to tell a purely political activity from a legitimate activity. The activity would have to be "so completely devoid of any connection with official functions or so

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<sup>36</sup> Lobbying activity at 6.

<sup>37</sup> Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-201.

<sup>38</sup> B-303495, Jan. 4, 2005, which was affirmed in B-303495.2, Feb. 15, 2005.

<sup>39</sup> Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-202.

<sup>40</sup> Id. B-229257, June 10, 1988.

<sup>41</sup> Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-218 (B-147578, Nov. 8, 1962 and B-130961, Oct. 26, 1972.)

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political in nature that it is not in furtherance of the purpose for which Government funds were appropriated, thereby making the use of such funds...unauthorized.”<sup>42</sup>

(e) (U) **The Anti-Deficiency Act, 31 U.S.C. §1341<sup>43</sup>; 31 USC §1351.<sup>44</sup>** This statute is applicable to the DoD appropriation rider that prohibits the use of any appropriated funds for “publicity or propaganda.” In its current form, the ADA states that an “officer or employee of the U.S. government” may not “make or authorize an expenditure or obligation *exceeding an amount available* in an appropriation,” unless authorized by law (emphasis added).<sup>45</sup> When a statute states that no appropriated funds are available for a specific purpose, the statute is effectively saying that Congress has appropriated zero funds for that purpose. In the case of the anti-publicity and anti-propaganda riders, Congress has appropriated zero funds for those purposes. Thus, even a \$100.00 expenditure will cause the government to “exceed an amount available in an appropriation.” Since no funds were authorized for that purpose, there is no way to correct the violation. Thus, if any funds are spent in violation of an anti-publicity or anti-propaganda rider, the expense is an uncorrectable anti-deficiency act (ADA) violation that must be reported to the President and Congress IAW 31 USC §1351.

(i) (U) In terms of evaluating what is and what is not permissible in the use of IO personnel and resources with respect to command communications, all the statutes above have similar attributes.

<sup>42</sup> Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-218(B-144323, Nov. 4, 1960).

<sup>43</sup> 31 USC § 1341. Limitations on expending and obligating amounts. (a)(1) An officer or employee of the United States Government or of the District of Columbia government may not--(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law; (C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or (D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. (2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. (b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.

<sup>44</sup> 31 USC § 1351. Reports on violations. If an officer or employee of an executive agency or an officer or employee of the District of Columbia government violates section 1341(a) or 1342 of this title, the head of the agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken. A copy of each report shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress.

<sup>45</sup> See 31 U.S.C. § 1341(a)(1)(A).

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(ii) (U) To Whom the Statute Applies. The statutes listed do not limit themselves just to information operations personnel. They are statutes that apply across the federal government to officials in all agencies. In DoD command communications, a public affairs officer can not engage in covert propaganda to a domestic audience and neither can the information operations officer. The distinction is that by doctrine, we generally never ask the public affairs officer to do anything covert. While doctrinally, we might ask an information operations officer to engage in covert propaganda with a foreign population. Thus, our doctrine preaches to IO officers that they should not seek to influence the domestic press, only foreign audiences. This a safe line considering the actual prohibition is the covertness of the activity. Our doctrine does not emphasize these lines for the public affairs officer. However, the statutes actually apply equally to both officers. The public affairs officer cannot release a video news release to the domestic press that does not disclose or make apparent in the body that it was produced by the government.<sup>46</sup> If they do so, the public affairs officer violates the anti-propaganda rider in the annual DoD appropriations act. In the future, recommend training all officers on what the statutes actually permit and prohibit instead leaving the misimpression that it is only illegal if an IO officer does it.

(iii) (U) Permissible Activities. Either in case law interpretation or by statutory exception, all the statutes recognize the role of the federal government in providing ‘information’ is proper.<sup>47</sup> The executive branch is even viewed as having a duty to inform the public regarding

<sup>46</sup> In B-302710, May 19, 2004, GAO found that the Department of Health and Human Services (HHS) violated the propaganda prohibition when it produced and distributed prepackaged video news stories that did not identify the agency as the source of the news stories. Prepackaged news stories, ordinarily contained in video news releases, or “VNRs,” have become a popular tool in the public relations industry. The prepackaged news stories may be accompanied by a suggested script, video clips known as “B-roll” film which news organizations can use either to augment their presentation of the prepackaged news story or to develop their own news reports in place of the prepackaged story, and various other promotional materials. These materials are produced in the same manner in which television news organizations produce materials for their own news segments, so they can be reproduced and presented as part of a newscast by the news organizations. The HHS news stories were part of a media campaign to inform Medicare recipients about new benefits available under the recently enacted Medicare Prescription Drug, Improvement, and Modernization Act of 2003. HHS designed its prepackaged video news stories to be indistinguishable from video segments produced by private news broadcasters, allowing broadcasters to incorporate them into their broadcasts without alteration. The suggested anchor lead-in scripts included in the package facilitated the unaltered use of the prepackaged news stories, announcing the package as a news story by fictional news reporters. HHS, however, did not include any statement in the news stories to advise the television viewing audience, the target of the purported news stories, that the agency wrote and produced the prepackaged news stories, and the television viewing audiences did not know that the stories they watched on television news programs *about the government* were, in fact, prepared *by the government*. See also B-304228, Sept. 30, 2005 (prepackaged news story produced by consultant hired by the Department of Education did not reveal to the target audience the Department’s role so it was covert propaganda in violation of the prohibition); B-303495, Jan. 4, 2005 (prepackaged news stories produced by the Office of National Drug Control Policy were covert propaganda in violation of the prohibition). Cf. B-307917, July 6, 2006 (newspaper article).

<sup>47</sup> Government Accountability Office (GAO) Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 4, January 2004, page 4-227 (In one case, GAO found that military chaplains are required by statute (10 USC §3547) to hold religious services for their commands. The Army could publicize such information as the schedule of services and the names and

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government policies. Traditionally, policy-making officials have used Government resources in explanation and defense of their policies. Agencies are also viewed as permissibly allowed to report on the activities and programs of their agencies, to include justifying those policies publicly and rebutting attacks on those policies publicly. Finally, agencies may communicate to any member of Congress, at his/her request, regarding requests for legislation, law, policy or appropriations which the agency deems necessary for the official conduct of the public business.

(iv) (U) Impermissible Activities. The Anti-Lobbying Statute, the Smith-Mundt Act, the NSA prohibition on covert activities, and the anti-publicity/anti-propaganda riders can be loosely grouped as reflecting a Congressional preoccupation with ensuring the federal government does not use appropriated funding in efforts to influence or sway the opinions of the American public as a whole. There are abundant legal opinions on what these statutes mean. In broad summary, (1) U.S. Government agencies may not use appropriated funds to produce any kind of information products intended for a domestic audience that do not clearly state in the audio or text that they were produced by the U.S. government agency involved (the government's role must be apparent or acknowledged publicly); (2) U.S. government agencies may not use appropriated funds to engage in purely partisan activities; and (3) U.S. government agencies may not use appropriated funds to engage in grass-roots lobbying activities designed to get individual citizens to contact Congress in support of a particular piece of legislation.

(v) (U) Distinguished Visitor Presentations. Command preparation of distinguished visitor packets and/or briefings is specifically permissible under 18 USC §1913. The case law interpretations of the statutes allow agencies to report on the activities and programs of their agencies, to include justifying those policies publicly and rebutting attacks on those policies publicly. This can be done legally in a command briefing to Congressional Delegations. The preparation can include themes, messages and talking points for key leaders to use in discussing issues with the Congressional Delegations. The key is that all presentations must be done overtly such that it is obvious to the American public that the information was prepared and presented by the U.S. government. From a statutory standpoint, it does not violate law if the preparation or presentation is done by an officer with an information operations or psychological operations background.

**j. (U) The facts and circumstances surrounding the release of NTM-A Public Affairs 25 Feb 2011 response to the *Rolling Stone* article and LTC (b)(3), (b)(6) email of 26 Feb**

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telephone numbers of installation chaplains as an appropriate extension of this duty. GAO advised the Army that it could procure and distribute calendars on which this information was printed. See 62 Comp. Gen. 566 (1983)).

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**2011 titled “Statement”.** Your inquiry should include, but is not limited to: who prepared these documents; at whose direction they were prepared; by whom, if anyone, they were reviewed prior to release; who was aware that they were being released; whether any of these NTM-A personnel were directed to cease communications with regard to the *Rolling Stone* article prior to their release; and, whether reference (a) was published through PAO channels as an NTM-A official statement or press release.: LTC (b)(3), (b)(6) testified that he prepared both the response to the *Rolling Stone* article and the 26 February 2011 email entitled “Statement.” LTC(b)(3), (b)(6) received notice of pending publication of the Mr. (b)(3), (b)(6) article while in Belgium with LTG Caldwell, at approximately 2000 (2330 in Afghanistan). Based on time zone differences and the immediacy of the *Rolling Stone* deadline, stated by Mr. Hastings as “the next morning,” as well as possible ramifications of the article across DOD, LTG Caldwell and LTC(b)(3), (b)(6) requested guidance from both OSD-PAO and ISAF PAO. ISAF PAO advised no comment; OSD PAO advised a brief statement, and eventually approved the text sent by LTC(b)(3), (b)(6) and reviewed by LTG Caldwell to Mr. Hastings: “The NATO Training Mission - Afghanistan categorically denies the assertion that the command used an Information Operations Cell to influence Distinguished Visitors. Information Operations capabilities are not utilized within NTM-A.” This statement was partially used by Mr. Hastings in the published article. LTC (b)(3), (b)(6) testified that, unaware of public affairs guidance (PAG) directing deference to ISAF for all media queries, he sent the email entitled “Statement” to CSTC-A/NTM-A directors, executive officers, and others in order to multiple forego responses to queries made to him via email. LTC (b)(3), (b)(6) stated that he had received approximately 168 emails requesting information concerning the *Rolling Stone* article. Instead of replying to each one individually, he sent a mass email reply. No media are listed in the address line to this email. Neither the SJA nor LTG Caldwell reviewed this email; however, LTG Caldwell verbally reprimanded LTC(b)(3), (b)(6) for sending that email later on the day it was sent. No evidence suggests that the *Rolling Stone* article was published through PAO channels as a CSTC-A/NTM-A official communication.

(1) (U) **The Freedom of Information Act (FOIA), as amended at 5 U.S.C. §552<sup>48</sup>** is a disclosure statute that requires Federal Executive Branch agencies to make records available to

<sup>48</sup> § 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

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the public. In addition, agencies must index and make available for public inspection and copying statements of policy, manuals and instructions, and final opinions and orders in cases, as well as the indexes.

(a) (U) The FOIA applies to all records created or received by a Federal agency and in its possession or under its control. Agencies must make records available to the public on request, unless they fall within one of the nine statutory exemptions. The intent of the FOIA is to make the government accountable to the public for its actions. FOIA requires agencies to publish in the Federal Register statements of its organizations, functions, rules, procedures, general policy, and any changes, and how to get information.

(b) (U) There is no evidence that LTC(b)(3), (b)(6) improperly failed to release information connected with the subject matter of this investigation upon receipt of a proper request. In fact, he responded to the initial request for information after consultation with OSD-PAO and ISAF PAO. After he received and understood the ISAF PAG. LTC(b)(3), (b)(6) referred all additional requests for information to ISAF PAO. Therefore, no violation of the Freedom of Information Act occurred.

(a) (U) **The Privacy Act of 1974, as amended at 5 U.S.C. §552a<sup>49</sup>** protects records that can be retrieved from a system of records by personal identifiers such as a name, social security

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(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

<sup>49</sup> The Privacy Act of 1974, as amended at 5 U.S.C. §552a

(b) Conditions of disclosure

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (c)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

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number, or other identifying number or symbol. A system of records is any grouping of information about an individual under the control of a Federal agency from which information is retrievable by personal identifiers. The Privacy Act prohibits disclosure of these records without written individual consent unless one of the twelve disclosure exceptions enumerated in the Act applies. LTC (b)(3), (b)(6) initial response to Mr. Hastings was very generic and did not contain any information protected by the Privacy Act, nor did his email “Statement”. Neither document improperly discussed personal protected information. Therefore, LTC (b)(3), (b)(6) did not violate the Privacy Act when he sent the “Statement” to his extensive distribution list.

5. (U) RECOMMENDATIONS

a. (U) CSTC-A/NTM-A should follow up to ensure that the final corrected GOMOR is officially filed in MAJ (b)(3), (b)(6) OMPF and that the initial GOMOR was, in fact removed.

b. (U) CSTC-A/NTM-A should review movement control policies for discrepancies, inconsistencies and confusing parts; and align this policy, where possible, with ISAF movement policy.

c. (U) CSTC-A/NTM-A and ISAF should inquire into the remaining allegations from people we interviewed. Consider the application of Afghan Hands and the policies covering utilization and employment of personnel in this program, to ensure that CSTC-A/NTM-A deviations from policies now in effect at ISAF are fully considered. Related to this, there were a number of allegations made—not addressed in this investigation—to problems with command climate, specifically related to the employment of AF/PAK Hands (see statements from Capt (b)(3), (b)(6) CPT (b)(3), (b)(6) and Lt Col (b)(3), (b)(6) While CSTC-A/NTM-A has a unique mission and may have more restrictive movement control policies than ISAF, this should be a deliberate decision.

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(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which

maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of Title 31.

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d. (U) Commanders review where personnel assigned to PAO, IO, IE, MILDEC, and PYSOP/MISO continue to work in close proximity to one another with the risk of being re-missioned into other tasks. DoD schools should to begin training all personnel with identical legal training on the statutes listed in Finding *i*, above. There will, therefore, be a standard view of what is legal and what is not legal.

e. (U) The command should review its records to locate, if possible, the IOFST NCOs' awards. If the awards cannot be located, that CSTC-A/NTM-A take action to ensure the IOFST NCOs are properly recognized, if their performance merits.



WILLIAM G. WEBSTER  
Lieutenant General, U.S. Army  
Commanding

**Executive Summary, USFOR-A Investigation into 23 Feb 2011 *Rolling Stone* magazine article, "Another Runaway General: Army Deploys Psy-Ops on U.S. Senators"**

1. (U) On 25 February 2011, the Commander, U.S. Forces – Afghanistan (USFOR-A) appointed me to inquire into the facts and circumstances surrounding allegations of misconduct or misuse of military resources and/or personnel reported within 23 Feb 2011 *Rolling Stone* magazine article, "Another Runaway General: Army Deploys Psy-Ops on U.S. Senators". He followed up with a written appointment memorandum on 28 February 2011. (Enclosure 3)

2. (U) The investigative team and I interviewed 34 witnesses and reviewed over 200 documents including prior investigations, newspaper and magazine articles, regulations, statutes and policy memoranda. By a preponderance of the evidence, I found that no law was broken and no retaliation occurred.

3. (U) **FACTS:** *Rolling Stone* magazine published an article entitled, "Another Runaway General: Army Deploys Psy-Ops on U.S. Senators." The article accuses LTG Caldwell and Combined Security Transition Command – Afghanistan (CSTC-A)/National Training Mission – Afghanistan (NTM-A) (hereinafter CSTC-A/NTM-A) of performing psychological operations (PYSOP) or Information Operations (IO) on visiting Congressional Delegations (CODELs) and distinguished visitors (DV), including Foreign Dignitaries. The article alleges that when LTC (b)(3), (b)(6) questioned the legality of these actions, LTG Caldwell retaliated against both him and his deputy by investigating them and eventually filing General Officer Memorandums of Reprimand (GOMORs) in each of their official military personnel files (OMPFs) for unrelated minor misconduct.

(U) The 71<sup>st</sup> Information Operations Team, Texas Army National Guard, was assigned to CSTC-A in November 2009 in response to Request for Forces (RFF) 1006. RFF 1006 assigned a single Information Operation Field Support Team (IOFST) to CSTC-A. No PSYOP/MISO forces were assigned for CSTC-A. RFF 1006, dated 1 June 2009, originated long prior to LTG Caldwell's assumption of command of CSTC-A/NTM-A in November 2009. The IOFST arrived the same month as LTG William Caldwell's assumption of command in NOV 2009. The IOFST consisted of five personnel: LTC (b)(3), (b)(6) as Team Chief; MAJ (b)(3), (b)(6) as Deputy; MSG (b)(3), (b)(6) NCOIC; SFC (b)(3), (b)(6) and SSG (b)(3), (b)(6) Team Members. The team's employment was not consistent with their specified training and doctrinal purpose, to provide CSTC-A/NTM-A Information Operations planning capability. However, the command's unpublished policy from LTG Caldwell's arrival until June 2010 was that CSTC-A/NTM-A did not conduct Information Operations. Testimony revealed that Chief of Staff, COL (b)(3), (b)(6) expressed this policy to LTC (b)(3), (b)(6) in December 2009 and Communications Director, Marine Corps CPT (b)(3), (b)(6) (b)(3), (b)(6) said the same to LTC (b)(3), (b)(6) in January 2010. CSTC-A/NTM-A's policy after LTG Caldwell's arrival was to inform and educate with full transparency.

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(U) Early in his tenure, LTG Caldwell determined that CSTC-A/NTM-A, a training command rather than an operational command, had no viable Information Operations mission. While this policy conflicts with the purpose stated in the RFF in June 2009, the document which drove the 71<sup>st</sup> IOFST's deployment, the change was clearly within LTG Caldwell's command authority. CSTC-A/NTM-A's staff manning levels were also a fraction of the command's authorized numbers. A steady stream of 16-36 official visiting groups were arriving per month; and LTG Caldwell insisted on fully staffed, professionally presented information engagements to inform and educate distinguished visitors. Therefore, COL (b)(3), (b)(6) in conjunction with CJ5, COL (b)(6) (UK), re-missioned the 71<sup>st</sup> IO team to assist with duties as part of a new cross functional working group, stood up after LTG Caldwell's arrival. That working group, termed the Information Engagement Working Group (IEWG), included members from each staff directorate. It was first supervised by the Chief of Staff, but was later transferred to the leadership of the Communications Director, Col (b)(3), (b)(6) who was succeeded by COL (b)(6) (UK). The IEWG met weekly to synchronize the efforts of the Joint Visitors Bureau (JVB), the Public Affairs Office (PAO), and the Commander's Action Group (CAG).

(U) Initially, this arrangement seemed satisfactory: LTC (b)(3), (b)(6) and his team contributed in developing products for the command's visitors. They routinely performed research to determine the interests and potential questions of CSTC-A/NTM-A's visitors, in order to ensure that visits were effective in informing and educating these individuals or groups. From early December 2009 through late February 2010, LTC (b)(3), (b)(6) supervised the IOFST's NCOIC, MSG (b)(3), (b)(6) as he assisted in the preparation of over 100 official visits to CSTC-A/NTMA, hosted by various CSTC-A/NTM-A general officers, including LTG Caldwell. The IOFST, in conjunction with the Commanders Action Group and others, researched biographies, public voting records, committee membership duties, and background articles. They also performed general research to ensure that the products presented during visits were tailored to the interests of each visitor. (Enclosure 4, attachments 1-9)

(U) On 31 January 2010, approximately two weeks after assuming duties as Communications Director, Col (b)(3), (b)(6) had a meeting with LTC (b)(3), (b)(6). That meeting marked the first time LTC (b)(3), (b)(6) expressed reservations about the legality of the mission he was being asked to perform, although LTC (b)(3), (b)(6) testified that he was uncomfortable with generating themes, messages, and talking points prior to that date, and had expressed concern the IOFST he led was not doctrinally employed. Testimony confirms LTC (b)(3), (b)(6) continued to perform duties associated with DV preparation throughout the winter of 2010, which leads to the conclusion that he had no strenuous objection to those duties (Exhibit Q, Day 1, page 67). Additionally, Col (b)(3), (b)(6) stated that, at this initial meeting, he re-emphasized directly to LTC (b)(3), (b)(6) that no IO mission existed in CSTC-A/NTM-A. This was the second time a superior had informed LTC (b)(3), (b)(6) of

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this fact. The first notification occurred when COL (b)(3), (b)(6) re-missioned the IOFST to the Communications Directorate in early December 2009. At the January 2010 meeting, LTC (b)(3), (b)(6) attempted to present Col (b)(3), (b)(6) with a doctrinal explanation of an IOFST's capabilities. Col (b)(3), (b)(6) responded that doctrine did not apply in a command without an IO mission. From this point, the relationship between Col (b)(3), (b)(6) and LTC (b)(3), (b)(6) seemed to deteriorate, although throughout the month of February 2010. LTC (b)(3), (b)(6) and the IOFST continued to support the IEWG and DV missions. However, the necessity for IOFST support to the IEWG lessened in early March 2010 with the addition of MAJ (b)(3), (b)(6) a Congressional Liaison Officer, and MAJ (b)(3), (b)(6) a Public Affairs Officer brought in from LTG Caldwell's former staff at the Combined Arms Center.

(U) On 22 March 2010, the day prior to Col (b)(3), (b)(6) departing for TDY/R&R leave, a second disagreement took place, this time between LTC (b)(3), (b)(6) and Air Force Maj (b)(3), (b)(6) who was tasked to supervise the IEWG in (b)(3), (b)(6) absence. Acting on guidance from Chief of Staff, COL (b)(3), (b)(6) (who succeeded COL (b)(3), (b)(6)) and conveyed through Director of Staff Wing Commander (UK (b)(6)) Maj (b)(3), (b)(6) wanted to improve the IEWG's output with assessments of the previous week's engagements. In an e-mail, Maj (b)(3), (b)(6) requested support from LTC (b)(3), (b)(6) team. LTC (b)(3), (b)(6) responded that the IOFST was not set up to do assessments and that his team's focus was on the enemy and the Afghans. The evidence suggests this was a miscommunication that turned on the word *assessments*. In testimony, Col (b)(3), (b)(6) WG CDR (b)(6) and Maj (b)(3), (b)(6) when interviewed separately, expressed a common understanding that *assessments* in this context meant the same thing as an after action review of previous visits, along with open source determination of the visit's effectiveness. WG CDR (b)(6) stated that (b)(3), (b)(6) was simply being asked to read the paper". (Exhibit II)

(U) LTC (b)(3), (b)(6) conveyed a different understanding of this term, although it is difficult to pin down exactly what he thought at the time. At various times in testimony, he described assessments as "effects assessments," an IO mission related to taking stock of the beliefs of indigenous populations. (Exhibit Q, Day 1, page 19) Ostensibly to clarify, he stated "When you say the word 'assess' in the IO realm, you lead into not just what happened but what to do about it. Where you need to go in order to change or reinforce or achieve the effect that you've identified that you want to achieve". (Exhibit Q, Day 1, page 28) Still later, LTC (b)(3), (b)(6) affirmed that the *assessments* he was asked to perform agree in nature with the definitions offered by Col (b)(3), (b)(6) Maj (b)(3), (b)(6) and WG CDR (b)(6) however, he stated that while that activity was not illegal or improper, the fact that the IOFST was performing these activities violated the law. (Exhibit Q, Day 2, pages 26-27) Despite the disagreement over the use of the term *assessments*, ultimately the question of whether the order was illegal becomes moot for two reasons. First, CSTC-A/NTM-A's Chief of Military Justice, MAJ (b)(3), (b)(6) conferred with

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Maj (b)(3), (b)(6) and determined that the information requested was all open source, and that the IOFST was simply being asked to do staff work, not anything in the IO realm. Second, in testimony, LTC (b)(3), (b)(6) himself acknowledges that "nothing illegal happened with regard to IO and PSYOP or whatever influence operations you want to call it. We didn't allow illegal things to happen". (Exhibit Q, Day 1, page 67) LTC (b)(3), (b)(6) lawyer sums this up by stating, "the system worked". (Exhibit Q, Day 1, pages 10-11). In the end, there is no evidence that an illegal order was ever issued.

(U) The 23 March 2010 exchange between MAJ (b)(3), (b)(6) and Maj (b)(3), (b)(6) with Deputy Staff Judge Advocate (SJA), COL (b)(3), (b)(6) also in attendance, was a seminal event for this investigation. During this conversation, Maj (b)(3), (b)(6) mentioned potential misconduct to MAJ (b)(3), (b)(6) and COL (b)(3), (b)(6) including unauthorized wear of civilian clothes and an inappropriate relationship. Maj (b)(3), (b)(6) testifies that she was "aware of them [LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) violating GO-1" because of comments MAJ (b)(3), (b)(6) and LTC (b)(3), (b)(6) made to her related to consumption of alcohol (Exhibit P, pages 9-10), and because of an instance in which LTC (b)(3), (b)(6) complained of a hangover during a planning meeting. (Exhibit P, page 11) COL (b)(3), (b)(6) determined that such alleged activity would violate CSTC-A/NTMA-A policy, and place LTC (b)(3), (b)(6) MAJ (b)(3), (b)(6) and the command at unnecessary risk. He testified that Maj (b)(3), (b)(6) prepared a sworn statement of the allegations (Exhibit G, page 7). On COL (b)(3), (b)(6) orders, MAJ (b)(3), (b)(6) e-mailed Col (b)(3), (b)(6) then on TDY/R&R leave, to ascertain whether he concurred with recommending CO (b)(3), (b)(6) initiate an investigation. Col (b)(3), (b)(6) responded that if improprieties and misconduct were reported, they should probably be investigated. (Exhibit W, attachment 2) Subsequently COL (b)(3), (b)(6) forwarded the allegations to COL (b)(3), (b)(6) who determined that an investigation under the provisions of Army Regulation 15-6, *Procedures for Investigating Officers and Boards of Officers*, (hereinafter AR 15-6) was warranted, and appointed LTC (b)(3), (b)(6) from the Directorate of Programs, CJ8, as the Investigating Officer (Enclosure 5). The investigation substantiated misconduct, which led to LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) being issued GOMORs. That AR 15-6 investigation and subsequent adverse administrative action led to the current retaliation claims, which are unfounded.

**4. (U) FINDINGS:**

**a. (U) Whether US Military personnel were ordered to conduct or conducted PSYOPS or IO:** No evidence suggests that U.S. military personnel assigned to CSTC-A/NTM-A, including those assigned to, or engaged in, Public Affairs operations, were ordered to conduct, or actually conducted, what amounted to psychological operations (PSYOP) and/or information operations (IO) that were intended to influence either individual U.S. citizens, groups of U.S. citizens, or foreign officials, foreign dignitaries, or other distinguished foreign visitors to the Headquarters, CSTC-A or CSTC-A organizations.

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**b. (U) Whether US Military personnel were ordered to prepare detailed profiles or information packets on DVs:** CSTC-A/NTM-A officers did, in fact, order U.S. military personnel to prepare detailed information packets including profiles on both U.S. and foreign distinguished visitors. Evaluation of these materials revealed that these packets were nearly identical to information packets—in some cases for the same CODELs—from similar 3- and 4-star headquarters (comparative examples were gathered from CENTCOM, USFI, CFC-Korea, and ARCENT).

**c. (U) How CSTC-A prepared for DVs:** CSTC-A developed a fairly detailed standard operating procedure (SOP) to prepare for and execute DVs engagements, and established a cross-functional working group, the Information Engagement Working Group (IEWG), to synchronize the activities required for each visit.

**d. (U) Whether any PSYOPs or IO units, teams, or elements were assigned to CSTC-A; describe any such team's mission, organization, and constituent personnel:** No PSYOP/MISO forces were assigned to CSTC-A/NTM-A, however, RFF 1006 assigned a single Information Operation Field Support Team (IOFST) to CSTC-A. RFF 1006 specifies only an IOFST, not a PSYOP trained unit. Employment of the team was inconsistent with their specified training and doctrinal purpose because of CSTC-A/NTM-A's policy, from LTG Caldwell's arrival, that CSTC-A/NTM-A did not do IO: a training command. CSTC-A/NTM-A informed and educated, striving for total transparency. The IOFST consisted of five personnel: LTC (b)(3), (b)(6) as Team Chief; MAJ (b)(3), (b)(6) as Deputy; MSG (b)(3), (b)(6) NCOIC; SFC (b)(3), (b)(6) and SSG (b)(3), (b)(6) Team Members. All had some IO training; none had PSYOP training, beyond the IO course designed to assist IOs in synchronizing PSYOP, which LTC (b)(3), (b)(6) completed in 2009.

**e. (U) Whether Col (b)(3), (b)(6) Director of Communications, issued LTC (b)(3), (b)(6) any orders, written or verbal, with respect to DV visits; whether Col (b)(3), (b)(6) directly tasked LTC (b)(3), (b)(6) to conduct an "IO campaign" with respect to DV visits:** No evidence suggests that any order was ever given concerning an "IO Campaign." Col (b)(3), (b)(6) tasked LTC (b)(3), (b)(6) verbally and in writing to support the Information Engagement Working Group with assistance performing *assessments*. Use of this term created a misunderstanding, requiring clarification that *assessments* pertained to measures of effectiveness amounting to lessons learned from open source confirmation that past DVs had received the CSTC-A/NTM-A message during DV information engagements.

**f. (U) The source, nature, and extent of any legal advice regarding the controlling legal authorities for, and distinctions between, PSYOPS or IO, and Public Affairs that may have**

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(b)(3), (b)(6), (b)(5)

**g. (U) The circumstances that gave rise to the initiation and completion of AR 15-6 Report of Investigation – LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) approved by Chief of Staff, CSTC-A, 18 May 10. Whether the initiation of this investigation was in any way motivated by, or was influenced by, the fact that LTC (b)(3), (b)(6) and/or MAJ (b)(3), (b)(6) may have previously complained of CSTC-A's DV procedures and/or processes. Could this investigation be reasonably construed, in whole or in part, as "retaliation" for these complaints? Was this investigation properly conducted? Were the resulting reprimands or other adverse action taken against LTC (b)(3), (b)(6) and MAJ (b)(3), (b)(6) properly handled and appropriate under the circumstances?** A preponderance of the evidence demonstrates that the initiation of the AR 15-6 investigation approved by Chief of Staff, CSTC-A on 18 May 10 was not in any way motivated or influenced by the fact that LTC (b)(3), (b)(6) and/or MAJ (b)(3), (b)(6) may have previously questioned whether CSTC-A/NTM-A's DV preparation amounted to conducting IO on US persons. The investigation was appointed in accordance with the regulation in response to credible allegations of misconduct. The Investigating Officer, LTC (b)(3), (b)(6) made findings and recommendations based upon a preponderance of the evidence which included Face Book photos and sworn statements. His findings and recommendations received a legal review in accordance with AR 15-6, paragraph 2-3b.. (b)(5)

(b)(5)

(b)(5) The adverse action taken was handled appropriately under the circumstances, even though MAJ (b)(3), (b)(6) GOMOR does require follow up action to ensure that the proper document was filed.

**h. (U) Whether LTC (b)(3), (b)(6) released government records to a journalist or other members of the public:** No evidence suggests that LTC (b)(3), (b)(6) released classified material of an operational nature to any journalists. In his sworn statement LTC (b)(3), (b)(6) affirmed that, on or about 17 February 2011, he provided Mr. Hastings of *Rolling Stone* with the AR 15-6

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investigation, LTC (b)(3), (b)(6) rebuttal to the AR 15-6 investigation (without the exhibits), and the 10 email chains about the alleged illegal order, none of which were classified. LTC (b)(3), (b)(6) appears to have only released unclassified documents to which he had a right to possess.

**i. (U) Evaluate what is and is not permissible in the use of IO personnel and resources with respect to command communications, as well as assessing the doctrinal and policy boundaries between IO and Public Affairs:** This investigation undertook an exhaustive survey of the pertinent laws and policies before concluding that no laws concerning the use of IO personnel and resources with respect to command communications were broken. The investigation also examined extant doctrine and that in place when LTC (b)(3), (b)(6) underwent his IO officer qualification training, as well as the application of that doctrine within ISAF. Information Engagement does conceptually integrate the functions of PA and PSYOP in a manner which might cause confusion and discomfort in traditional circles. This is likely why the Army has rescinded the term in the new FM 3-0. Judging from his time as the leader of Strategic Effects at MNFI, his numerous writings, and his encouragement of social media, LTG Caldwell is clearly interested in leveraging all means necessary to produce informational effects. However, there are no indications that LTG Caldwell attempted to modify doctrine in inappropriate or illegal fashion. What is significant is that this investigation interviewed over thirty-five respondents, and none gave the same definitions of Information Engagement or STRATCOM. Clearly, the lag in the production of viable doctrine is having a detrimental effect.

**j. (U) The facts and circumstances surrounding the release of NTM-A Public Affairs 25 Feb 2011 response to the *Rolling Stone* article and LTC (b)(3), (b)(6) email of 26 Feb 2011 titled "Statement":** LTC (b)(3), (b)(6) prepared both the response to the *Rolling Stone* article and the 26 FEB 11 email entitled "Statement." LTC (b)(3), (b)(6) received notice of pending publication of the Hastings article while in Belgium with LTG Caldwell, at approximately 2000 (2330 in Afghanistan). Based on time zone differences and the immediacy of the *Rolling Stone* deadline, stated by Mr. Hastings as "the next morning," as well as possible ramifications of the article across DOD, LTG Caldwell and LTC (b)(3), (b)(6) requested guidance from both OSD-PAO and ISAF PAO. ISAF PAO advised no comment; OSD PAO advised a brief statement, and eventually approved the text sent by LTC (b)(3), (b)(6) and reviewed by LTG Caldwell to Mr. Hastings: "The NATO Training Mission - Afghanistan categorically denies the assertion that the command used an Information Operations Cell to influence Distinguished Visitors. Information Operations capabilities are not utilized within NTM-A." This statement was partially used by Mr. Hastings in the published article. LTC (b)(3), (b)(6) unaware of PAG directing deference to ISAF for all media queries, sent the email entitled "Statement" to CSTC-A directors, executive officers, and others in order to multiple forego responses to queries made to him via email. No media are listed in the address line to this email. Neither SJA nor LTG Caldwell reviewed this

**Executive Summary, USFOR-A Investigation into 23 Feb 2011 *Rolling Stone* magazine article, "Another Runaway General: Army Deploys Psy-Ops on U.S. Senators"**

email; however, LTG Caldwell reprimanded LTC (b)(3), (b)(6) for sending that email later on the day it was sent. No evidence suggests that the *Rolling Stone* article was published through PAO channels as an NTM-A official communication. No evidence suggests LTC (b)(3), (b)(6) violated the Freedom of Information Act or the Privacy Act.



WILLIAM G. WEBSTER  
Lieutenant General, U.S. Army  
Commanding



DEPARTMENT OF THE ARMY  
THIRD ARMY  
UNITED STATES ARMY CENTRAL  
1881 HARDEE AVENUE, SW.  
FORT MCPHERSON, GA 30330-1064

ENCLOSURE 2

REPLY TO  
ATTENTION OF

ACEN-CG

15 March 2011

MEMORANDUM FOR Commander, International Security Assistance Force/United States Forces-Afghanistan, Kabul, Afghanistan, APO AE 09356

SUBJECT: Request for Extension to Complete AR 15-6 Investigation

1. Reference your 28 February 2011 memorandum (enclosed), I was appointed to inquire into the facts and circumstances surrounding allegations of misconduct or misuse of military resources and/or personnel that are reported in the 23 Feb 2011 *Rolling Stone* magazine article, "Another Runaway General: Army Deploys Psy-Ops on U.S. Senators."
2. We have been working through our plan obtaining documentary evidence conducting research on doctrine, law and policy, and interviewing witnesses. Many of the witnesses have redeployed, some to the United States and others to OCONUS locations. Additionally, some of them have retained counsel, requiring us to synchronize availability of witness and counsel in order to take statements. The number of witnesses, their geographically dispersed nature and the coordination with counsel all serve to slow investigative progress. We anticipate interviews with 16 more people, 3 of whom are in the United Kingdom, 4 of whom are in Afghanistan, and 9 of whom are in 5 different CONUS locations.
3. Respectfully request an extension until 8 April 2011 to complete my investigation.

WILLIAM G. WEBSTER  
Lieutenant General, USA  
Investigating Officer



HEADQUARTERS  
UNITED STATES FORCES - AFGHANISTAN  
KABUL, AFGHANISTAN  
APO AE 09356

USFOR-A-CDR

19 March 2011

MEMORANDUM FOR LTG William G. Webster

SUBJECT: Request for Extension of Deadline to Complete AR 15-6 Investigation

1. Your request for an extension of the deadline to complete the AR 15-6 investigation into the facts and circumstances surrounding allegations of misconduct or misuse of military resources and/or personnel that were reported in the 23 February 2011 *Rolling Stone* magazine article, "Another Runaway General: Army Deploys Psy-Ops on U.S. Senators" is approved.
2. You must submit your findings and recommendations no later than 8 April 2011.

A handwritten signature in black ink, appearing to read "D. Petraeus".

DAVID H. PETRAEUS  
General, United States Army  
Commander  
International Security Assistance Force/  
United States Forces-Afghanistan



# NATO Training Mission – Afghanistan

## Combined Security Transition Command – Afghanistan



## Chairman's Update

May 24, 2010

[www.NTM-A.com](http://www.NTM-A.com)



## Agenda

- **Commander's Assessment**
- **NTM-A Update (180 days and Beyond)**
- **NTM-A Current Challenges**
- **Parting Thoughts**



## Commander's Assessment

### Bottom Line:

- Leader Development remains #1 priority – essential to develop self-sustaining Afghan National Security Forces (ANSF); underpins all aspects of ANSF
- Quality and quantity of ANSF are trending in the right direction, but difficult challenges remain
- Building the foundation to transition to an enduring Afghan-led security capacity takes strategic patience and requires a large upfront investment

Growth Targets: On path to meet 109K ANP & 134K ANA by 31 Oct 2010; however, some key components are at risk....

- Must sustain recruiting success through the traditional summer lull
- Attrition decreasing but no assurance will continue; ANCOP and engaged ANA corps are at risk
- Critically short on trainers – the essential resource required for quality
- Recruit-Train-Assign model for police is essential to building quality into the quantity

Enduring Capacity: Beginning to see nascent capability for independent operations

- Ministerial development shows slow but steady progress; Systems virtually non-existent in 2009; improving, but not self-sustaining capacity until after 2011
- Critical lack of leadership depth and corruption hinder the development of systems

***2010 Focus: Building the Foundation***



## Where We Have Been

**NTM-A has accomplished much to stabilize the Afghan training mission**

- **ANSF Quantity**
  - On path to meet objectives of 109K for ANP and 134K for ANA by 31 Oct 10.
  - ANCOP and high OPTEMPO ANA units are still at risk
  - Aggregate attrition still a future risk
- **ANSF Quality**
  - Improved instructor to trainee ratio (1:29)
  - Reoriented programs to emphasize quality in leader development, literacy, R-T-A, marksmanship, and standards for doctors
  - Quality remains unacceptably low
- **Ministerial Development**
  - Demonstrates slow but steady progress, but hindered by corruption, not fully capable until after 2012
  - MoI and MoD support ISAF anti-corruption efforts



## Where We Are Going

- **Leader development is essential to developing professional ANSF**
  - Number 1 priority
  - ANSF deficiencies include insufficient numbers of junior officers and NCOs
  - Leadership bench is not deep
- **Attrition impacts ability to meet quantitative goals and adequate quality**
- **Balance operational requirements and long-term health of the force**
  - Near continuous deployments risks hindering long-term development efforts
- **Still continue to work with Joint Staff, Services, and NATO to obtain personnel with appropriate skills and rank**
  - Receipt of all NATO pledges would bring manning to 80%
- **Continue to improve policing while working with other organizations on judiciary and corrections to build the foundation for the rule of law**



## Challenges

**Afghan Police** – *Meeting quantity and quality targets are achievable, but many challenges mean success not a forgone conclusion*

**Challenges:** leadership capacity, meeting partnering requirements, summer recruiting lull, High ANCOP operational tempo, training contract, and ministerial challenges

**Afghan Army** – *Meeting quantity and quality targets is achievable, but leader development, personnel management, and logistics are slowing down their ability to conduct independent operations*

**Challenges:** attrition (205 & 215 Corps), summer recruiting lull, leader training, enduring systems, force structure, ethnic mix, and ministerial development

**Afghan Army Air Corps** – *Steady progress, aligning trained pilots, aircraft delivery, and sustainment infrastructure is a constant struggle*

**Challenges:** training time for skilled personnel, English training, lack of air planning expertise, and incomplete airfield infrastructure

**Programs** – *Infrastructure, equipment, local acquisition, contract management, funding, logistics, and maintenance (\$10B/yr) on track but challenges remain*

**Challenges:** other commands oversight of fielded force contracts, timely budget passage, growth decisions for long-lead items and build infrastructure, lack of Afghan capacity, and “Afghan First” program depends upon customs, electricity, and security



## NTM-A Personnel Fill

	Authorized	In Place	Short	% In Place	Pledged	% In Place Once Pledges Arrive
NATO Staff	314	138	176	44%	95	74%
NATO Trainers	2325	852	1473	37%	630	63%
JMD	814	736	74	90%		
RFF	1758	1290	468	73%		
TDY (Gap Fillers)		817	(817)			
<b>Total</b>	<b>5209</b>	<b>3833</b>	<b>1376</b>	<b>74%</b>	<b>725</b>	<b>88%</b>

- *CE—69 of 73 US positions are filled (95%)*
- *Working with SHAPE to identify pledges against NATO Staff Positions.*
- *JMD—36 of 65 Coalition positions are filled (49%)*
- *TDY personnel provide a temporary limited capability due to numerous skill and grade mismatches*



## Parting Thoughts

- We are building the foundation for enduring Afghan institutions and systems in 2010
- Pockets of success in the past few months, still much work to do
- Summer will determine if accomplishments will continue
  - Increased operational requirements
  - Historical trends of lower recruiting and higher attrition
- Need help filling and maintaining JMD at 100%
- Need assistance in getting NATO trainers In Place
- Continue use of 90-day TDY personnel until NATO trainers are In Place



UNCLASSIFIED//~~FOUO~~



## NATO Training Mission – Afghanistan Combined Security Transition Command – Afghanistan



### Questions / Discussion

POC for this b

(b)(3), (b)(6)

NTM-A CAG  
swa.army.mil

(b)(3), (b)(6)

DSN

(b)(2)



## **NTM- A Challenges**



## NTM-A Challenges

- Illiteracy
- Multiple languages
- Drug use
- Corruption
- Lack of Afghan leadership
- High tempo
- Contractual issues
- NTM-A manning shortfall

**Lead  
To:**

- Challenges in training quantity & quality
- High attrition
- Low retention
- Mistrust of the government

### Overall Priorities

1. Leader Development – Officer/NCO
2. Attrition
3. 180 Day In-stride Review
4. CJSOR Manning
5. ANCOP Force Development

### Reform Initiatives

- Recruit – Train – Assign for ANP
- Pay Incentives for ANSF
- Partnering
- Predictability
- Leadership Development Programs
- Literacy / English Language Training

***Increase ANSF quality while maintaining quantity***



# Summary: ANP Challenges

**Afghan Police** – Meeting quantity and quality targets are achievable, but many challenges make success not a forgone conclusion

- Leader Development: Lack of leadership capacity within the fielded force and time to grow senior leaders
- Lack of Partnering: Until truly partnered, reforming the police will not happen
- ANP Mission Set: Myriad of independent actors; lacks unity of command and unity of effort
- Summer Recruiting: Must be able to sustain recruiting goals into the summer
- Ethnic Balance: Although ANP is a national force the ethnic balance is not entirely aligned
- Operational Capacity: High operational tempo in ANCOP
- Training Contract: Contractual issues with basic police training course
- Ministerial Challenges: Accelerating the growth and improvement of MOI policies and processes



# Summary: ANA Challenges

*Afghan Army – Meeting quantity and quality targets is achievable, but leader development, personnel management, and logistic systems are slowing down their ability to conduct independent operations*

- Leader Development: Substantial effort into increasing leader training capacity, but concern that Corps Cdrs will not release soldiers for courses
- Attrition: Remains key concern, particularly in committed corps
- Retention: Improved, but summer retention rates are critical
- Enduring Systems: Personnel and logistics systems development remain unable to meet the needs of the force
- Unbalanced Force Structure: Past decisions to build infantry-centric force first, make the current force unable to sustain itself for at least another year
- Ethnic Mix: Holding back our ability to fill key officer positions
- Ministerial Development: Steady progress, but key inhibitors are Inherent Law (ILON), Roles and Responsibilities between MoD and GS (Decree 5001) and leveling of capability between MoD and GS (Decree 467).



## Summary: Air Corps Challenges

Afghan Army Air Corps – *Steady progress, aligning trained pilots, aircraft delivery, and sustainment infrastructure is a constant struggle*

- Growth: Lead time required for pilots and other skilled Air Corps hinders growth at same pace as Army and Police.
- English Language Training: requirement for pilots exceeds the DLI's entire capacity for intensive training.
- Shindand Airbase: Lack of Afghan presence delays establishment of Shindand as indigenous Afghan flight training location.
- Coalition Footprint: Mission Creep at Shindand Air Base may prevent its use as a facility for basic pilot training.
- Planning Expertise: MoD GS-G3 Air Plans directorate lacks real air planning expertise, but little Afghan push to remedy.
- Airfield Infrastructure: Must compete for scarce construction capacity to complete all airfield infrastructure projects by Solar Year 1392.



# Summary: Resourcing Challenges

**Program Management**: *Infrastructure, equipment, local acquisition, contract management, funding, logistics, and maintenance (\$10B/yr) are on track but challenges remain.*

- **IJC Support**: Depend upon IJC for oversight of contracts that support the Afghan Security Forces on the battlefield.
- **Congress**: Depend upon timely congressional passage of the FY 10 Supplemental (July 2010) and the FY 11 OCO (Oct 2010).
- **Future Growth**: Depend upon timely growth decisions to procure long-lead items and build infrastructure.
- **Afghan Capacity**: Afghan logistics, infrastructure, procurement, and resource systems require more effort and time to enable transition.
- **“Afghan First”**: While we have a very aggressive program building local manufacturing, depends upon customs, electricity, and security.

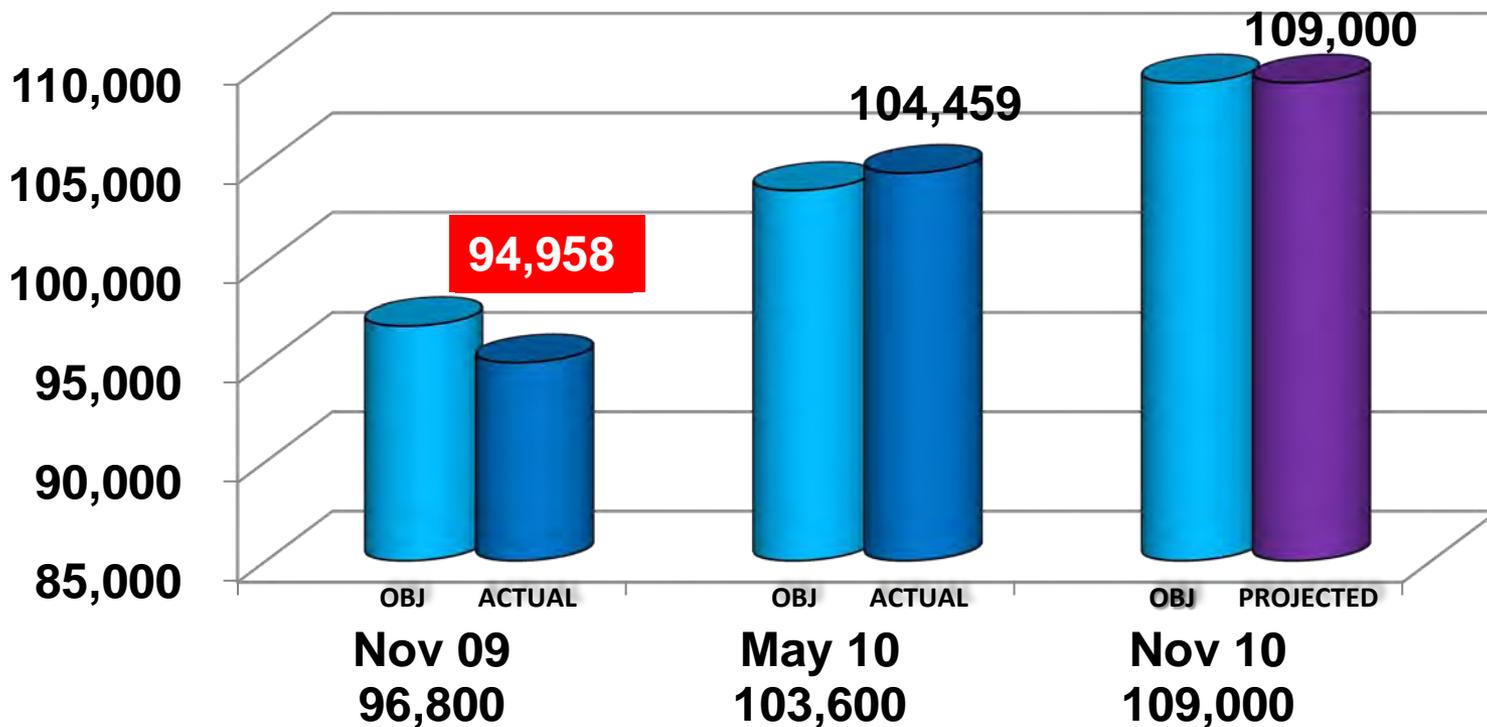


# NTM-A Review 180 days and Beyond

Afghan National Police



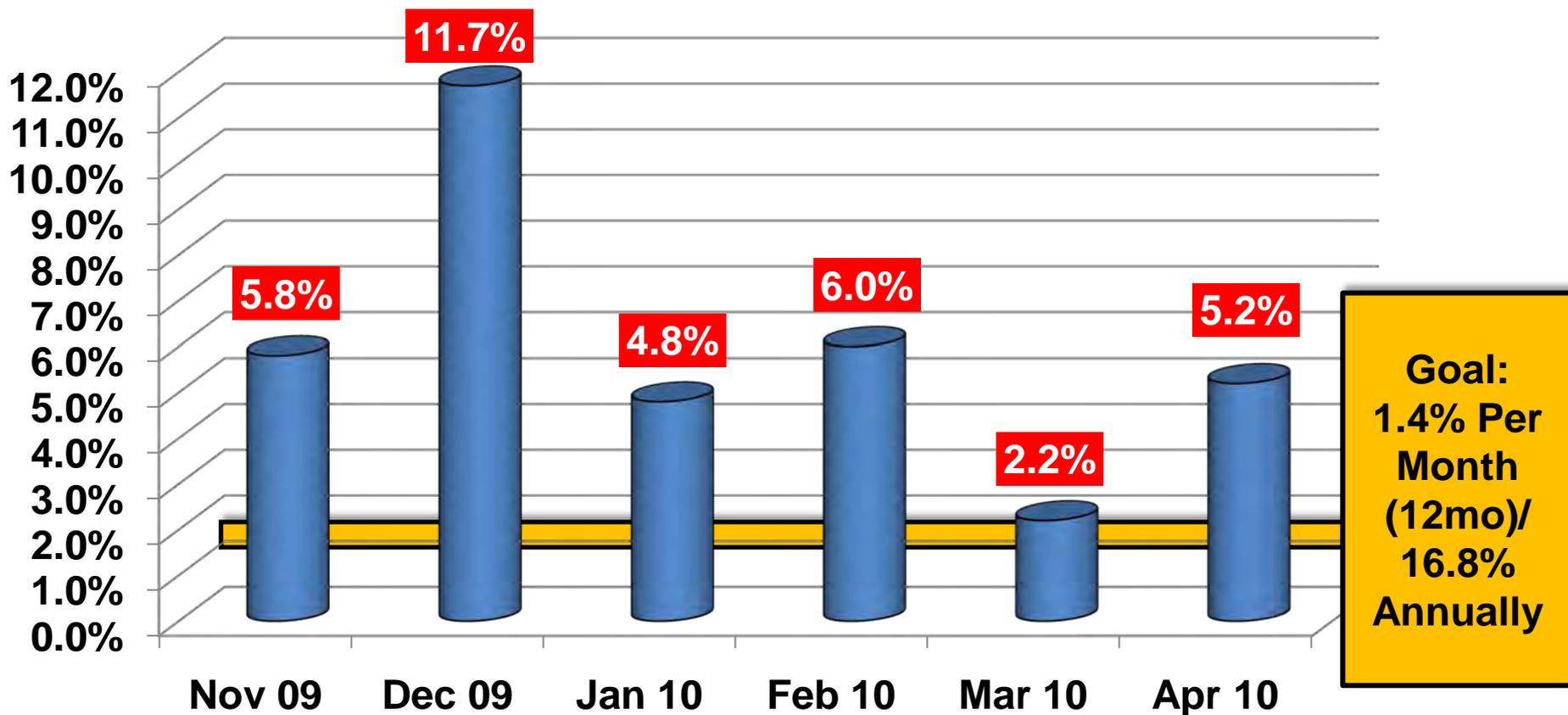
## ANP Strength Summary



**109K achievable, but summer months are critical**



## ANCOP Attrition Summary



**High attrition rates trending down; remains >70% annually; entering historically challenging summer months**



# Expanding ANP Leader Development

NOV 09

MAY 10

NOV 10

- Afghan National Police Academy (ANPA)
- Officer Candidate School (OCS)
- ANCOP training course (NCO)
- 4,188 ANP leaders trained in FY 09

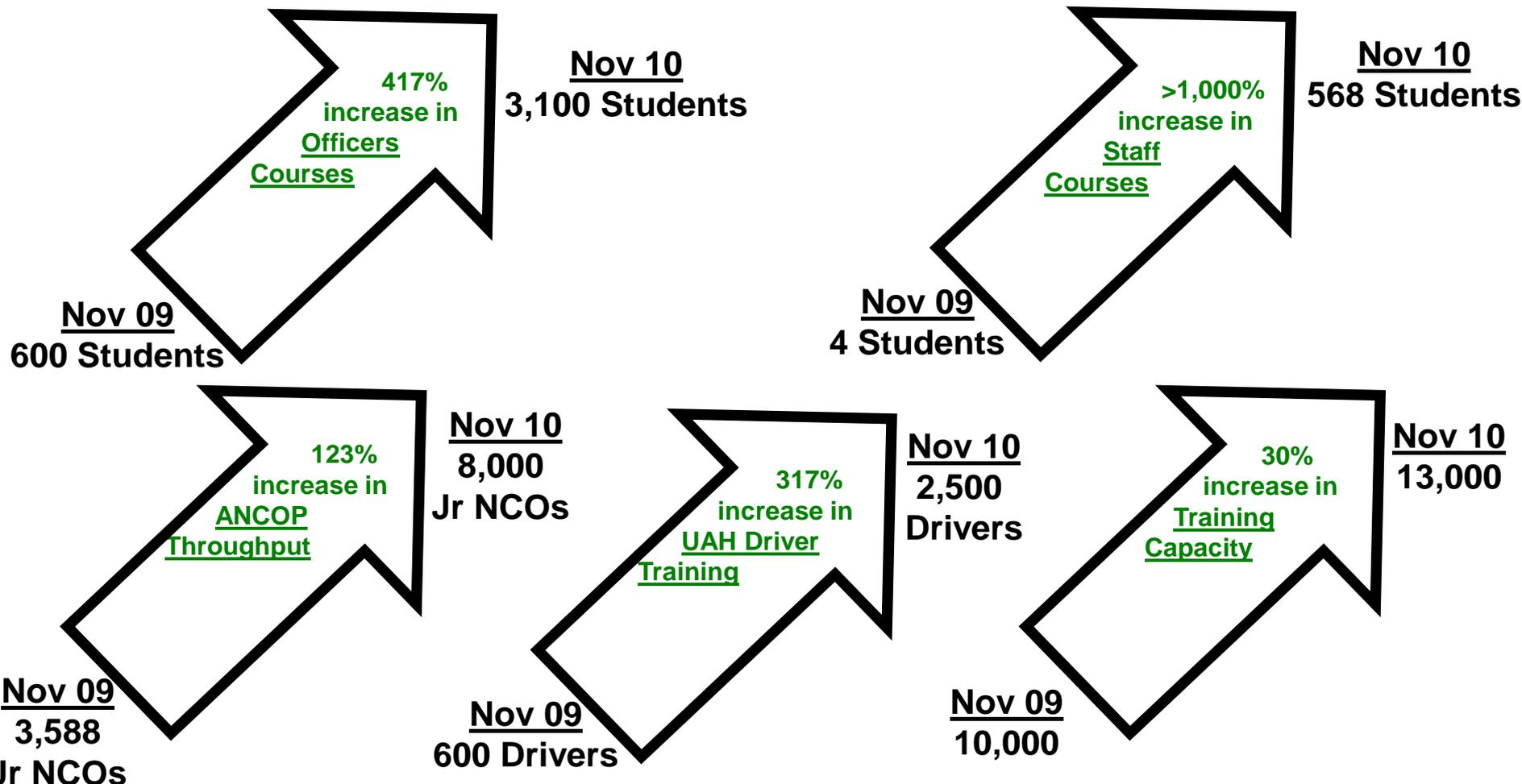
- ANPA
- OCS
- ANCOP NCO course
- ANP Career Lifecycles est.
- ANP Recruiting Command
- Training relationship established w/NMAA
- Afghan Police Training Teams (APTT)
- Professional Speaker Series

- ANPA & OCS
- ANCOP NCO course
- ANP Career Lifecycles
- ANP Recruiting Cmd
- Training relationship established w/NMAA
- Police Commander's Courses
- ANP Training Command
- APTT
- Foreign Police Training
- Enduring training partnership w/ EUPOL
- 11,100 projected ANP leaders trained – 167% increase from FY 09

**Create enduring systems to fill the ANP leadership void**



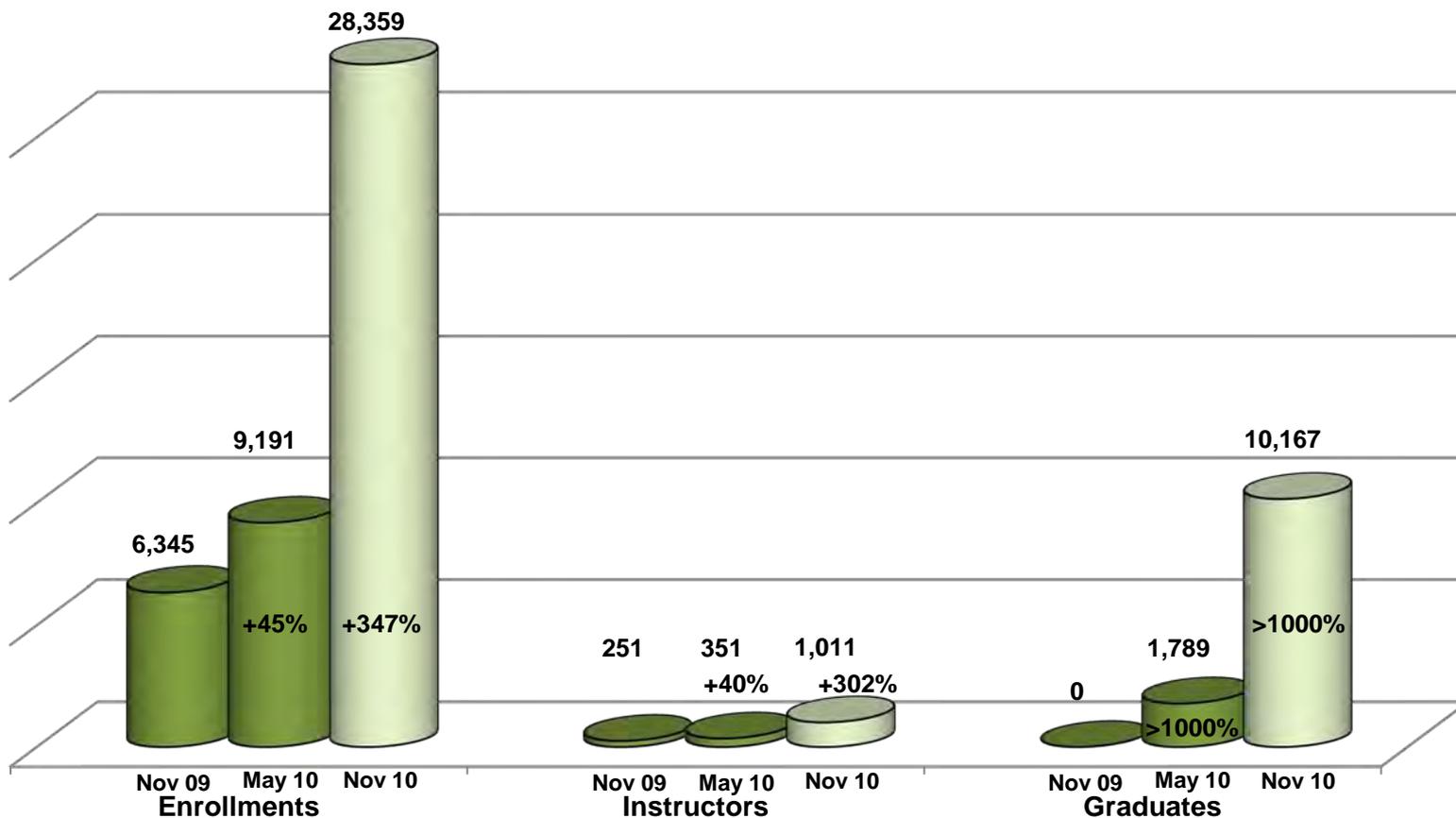
## ANP Training Comparison – 2009/2010



**Developing the systems and institutions to professionalize and grow the force**



## ANP Literacy Program Growth



**Literacy training .... rapid start .... monumental task ....  
key to professionalization of the ANP**

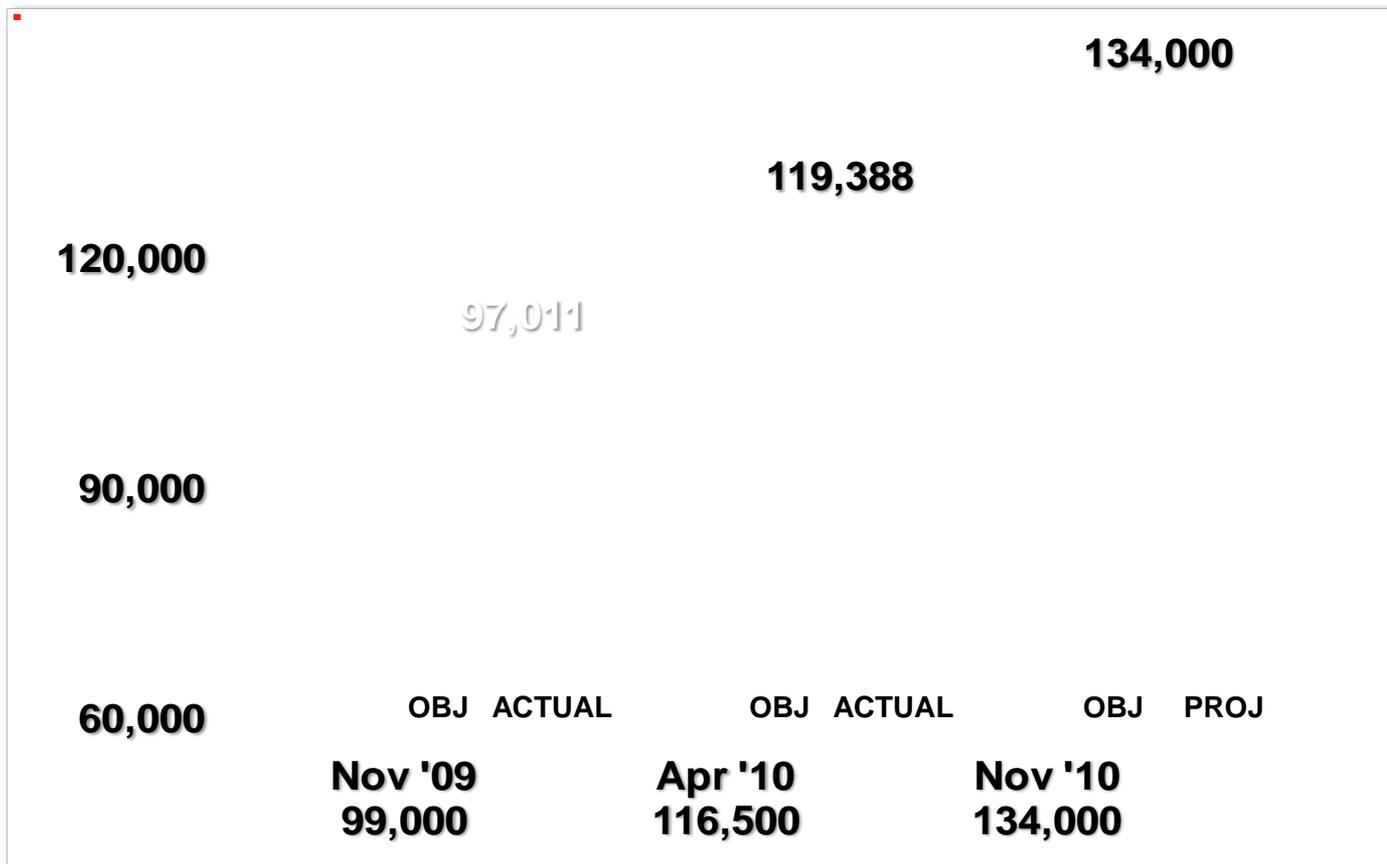


# NTM-A Review 180 days and Beyond

Afghan National Army



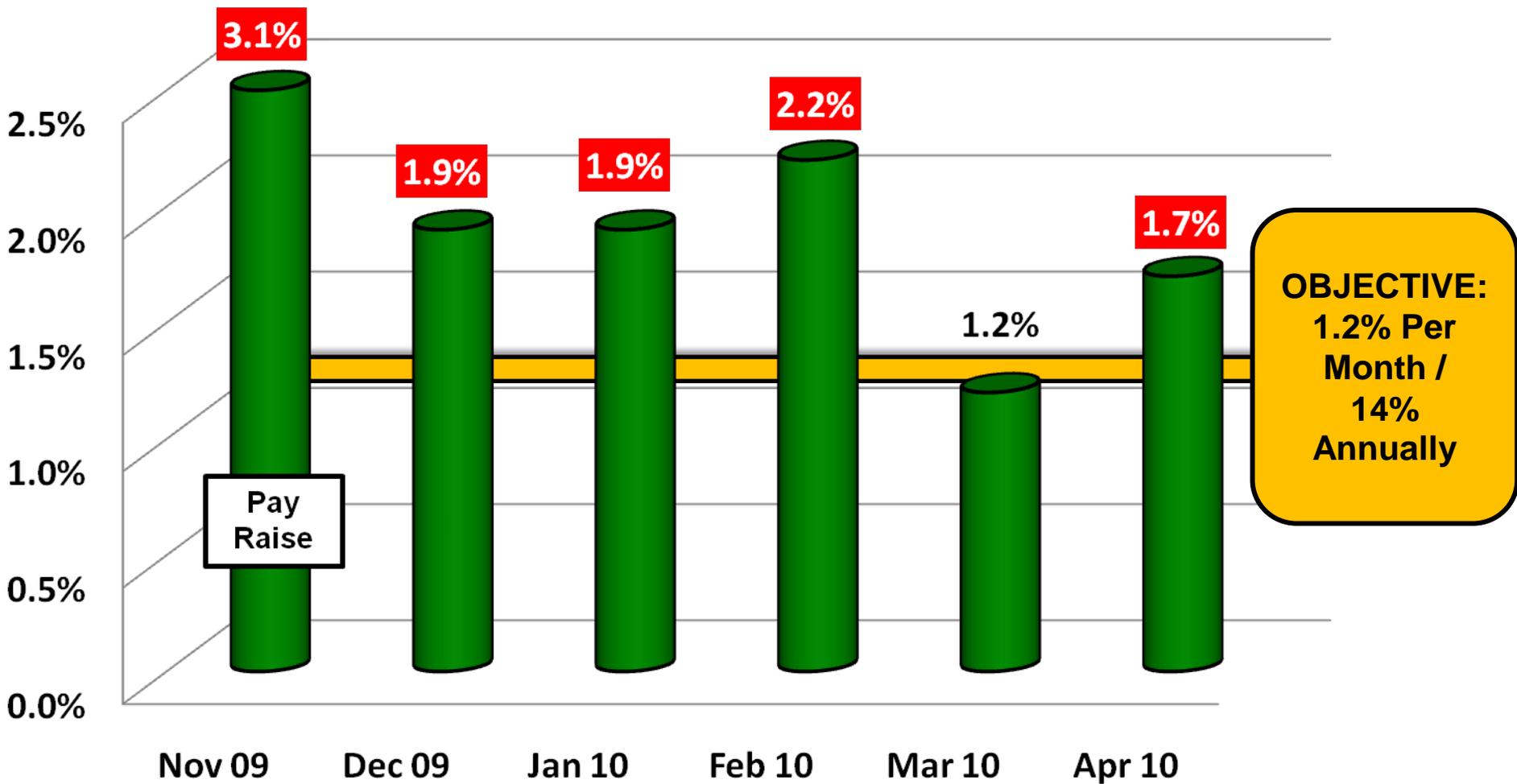
## ANA Growth



**134K achievable, but summer months are critical**



## ANA Monthly Attrition Goals



**Attrition coming down, but still a concern**



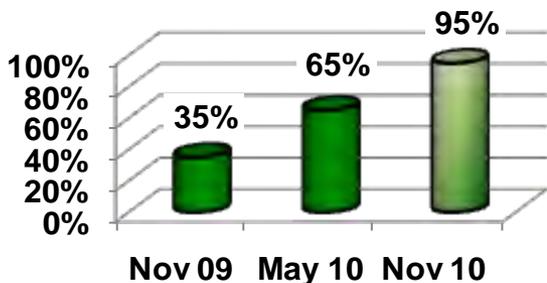
## Improving Individual Training

NOV 09

MAY 10

NOV 10

### Basic Rifle Marksmanship Improved Qualification %



- No Testing or Assessment

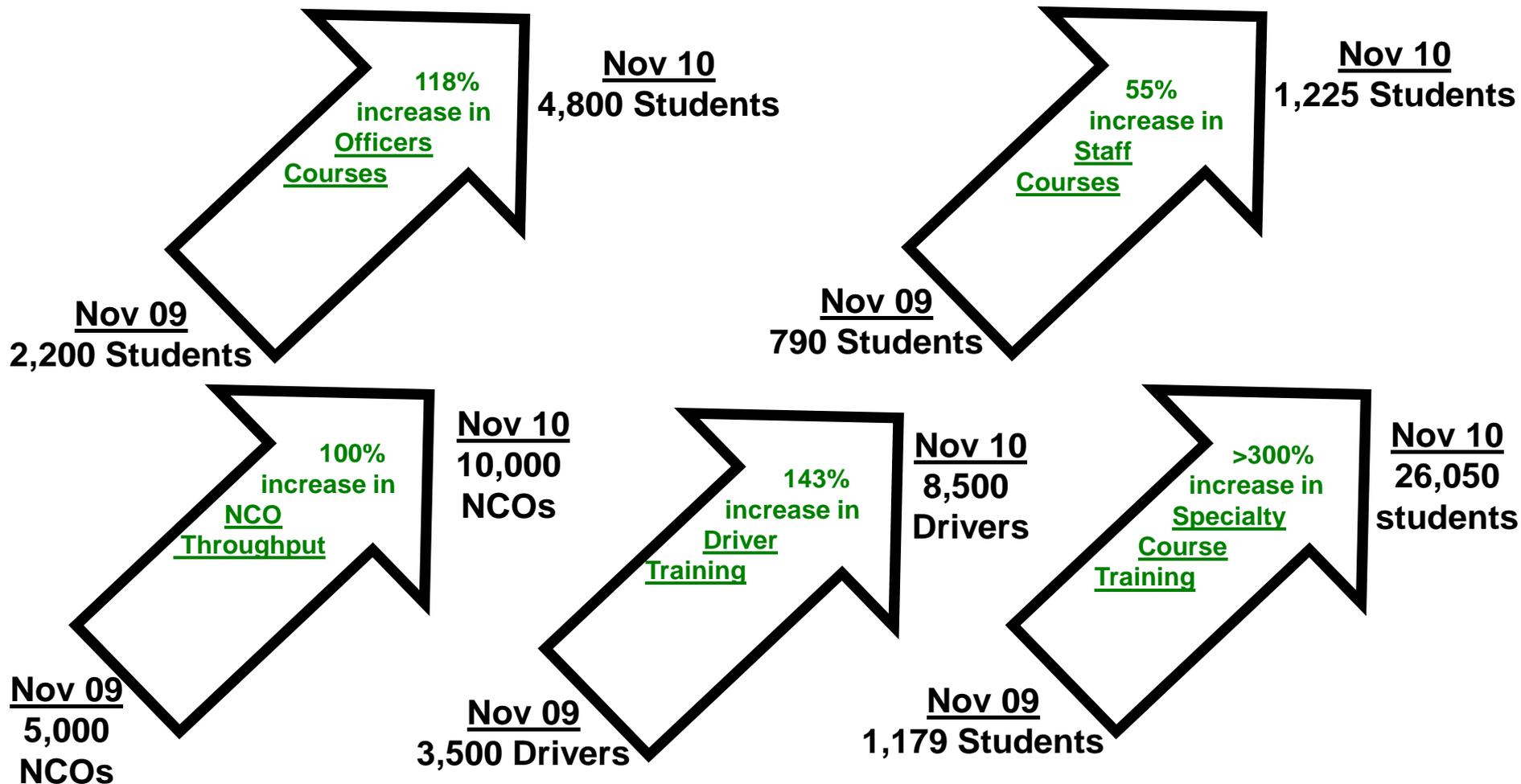
- Testing Mid/End-of-Cycle
- Combat First Aid
- M16 Rifle
- Squad/Crew Served Weapons
- Hand & Arm Signals
- Communications
- Reporting

- Comprehensive Basic Warrior Training
- Literacy Program

**Transitioning to a standards-based army**



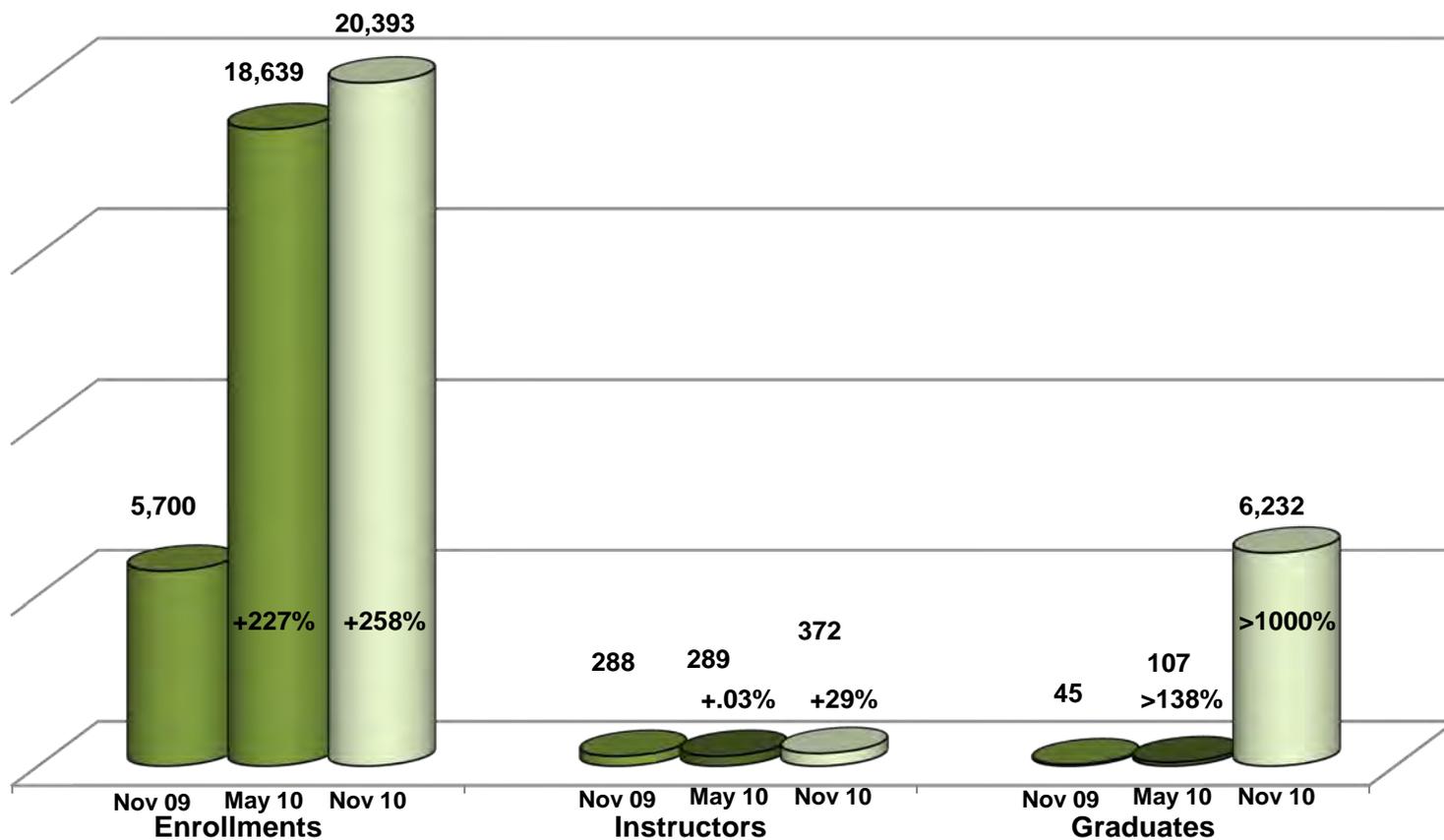
## ANA Training Comparison – 2009/2010



**Developing the systems and institutions to professionalize and grow the force**



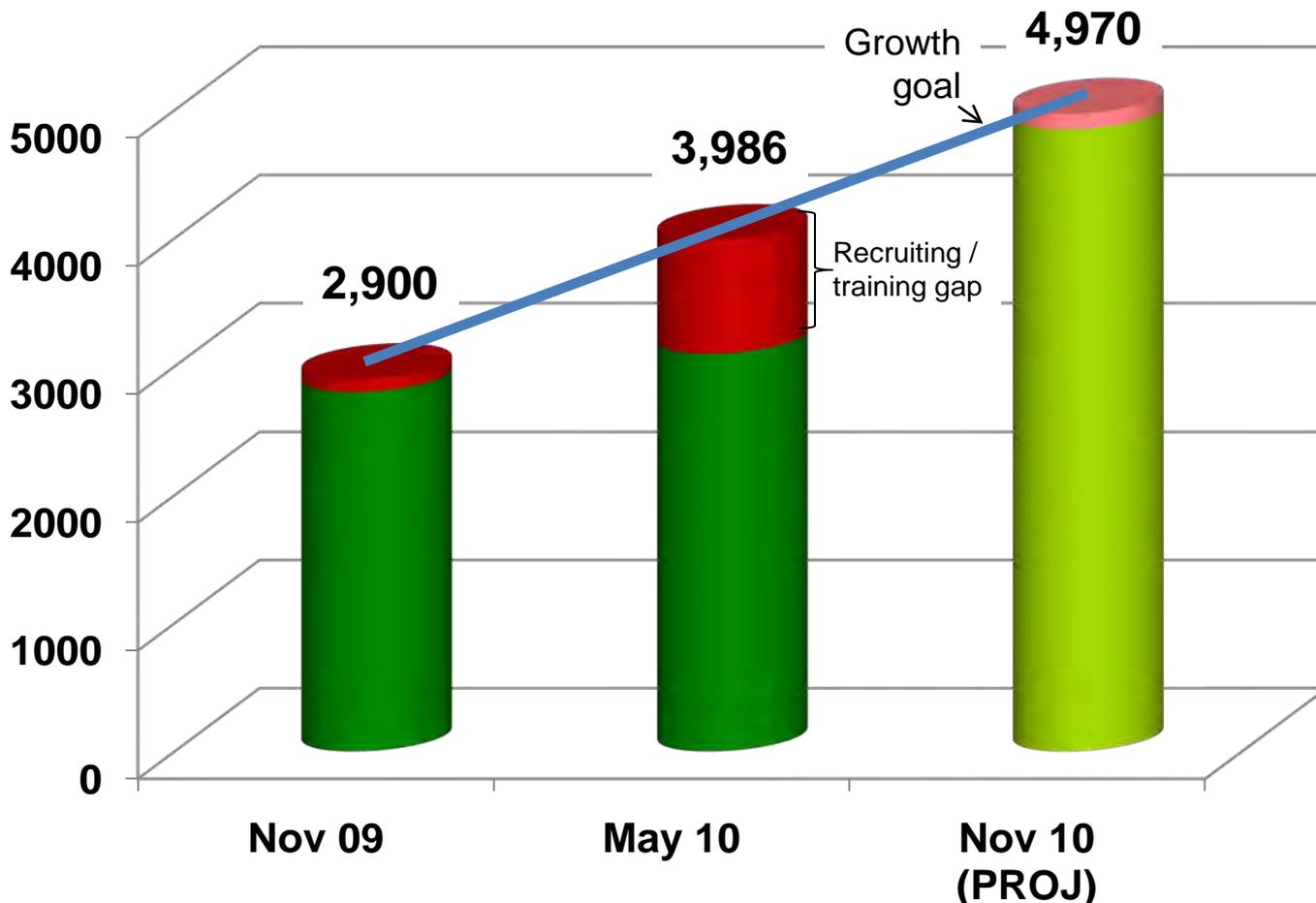
## ANA Literacy Program Growth



**Literacy training .... rapid start .... monumental task ....key to professionalization of the ANA**



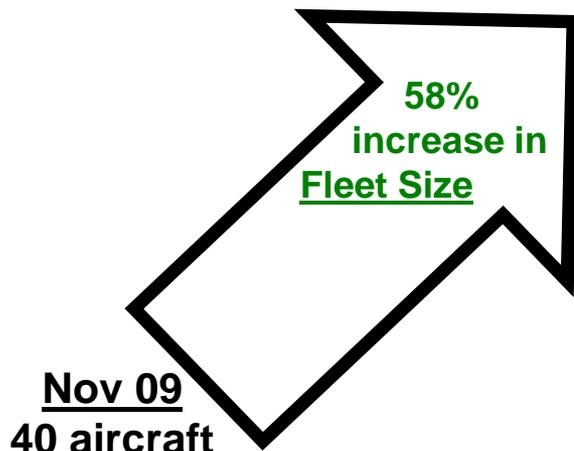
## Air Corps Airmen Build



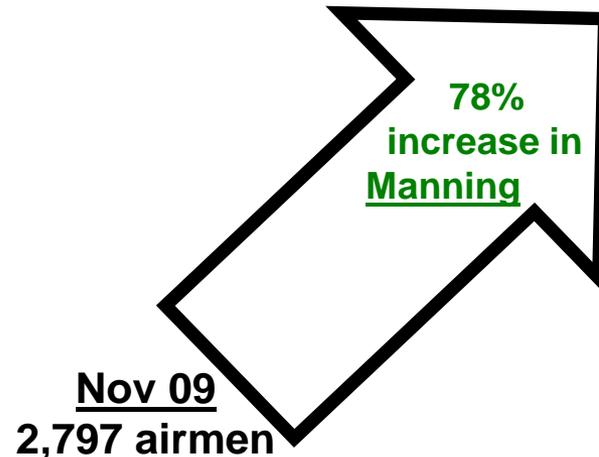
**Manning increases by 71%, but ~800 airmen below ideal growth path**



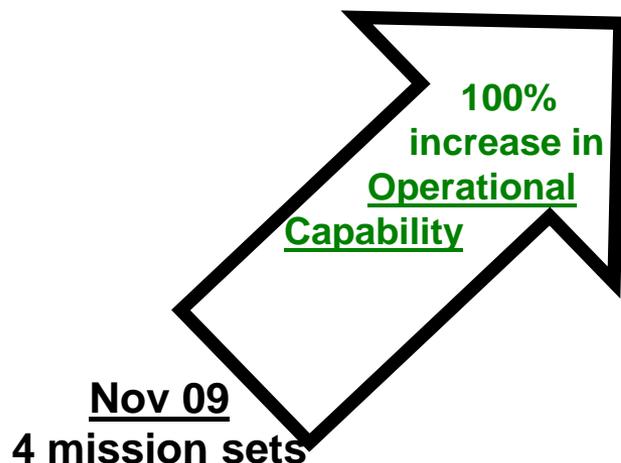
## Afghan Air Corps Progress



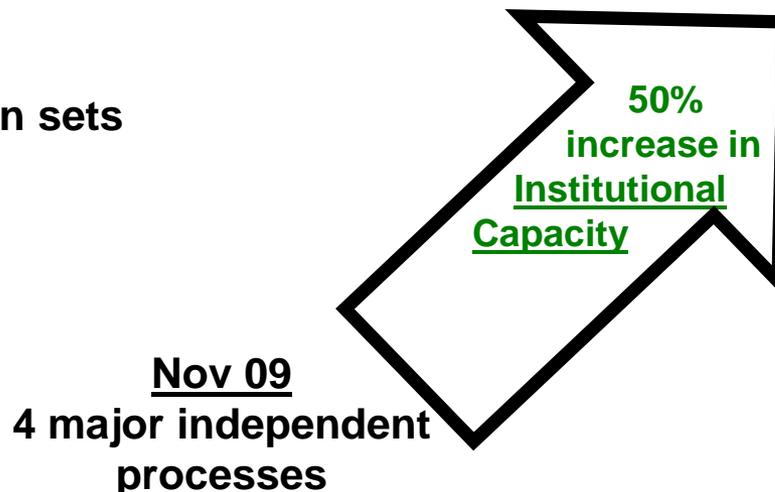
**Nov 10**  
63 aircraft



**Nov 10**  
4,970 airmen



**Nov 10**  
8 mission sets



**Nov 10**  
6 major processes

**Steady progress...challenges with English language and literacy, pilot training, technical skills, and aircraft acquisition lead times**



# NTM-A Review 180 days and Beyond

## Resourcing



# ANP – Developing Sustainment for 109K Force

NOV 09

MAY 10

NOV 10

- 0 of 4 Regional Logistics Centers online
- Limited distribution capability
- Maintenance contracted out

- 2 of 4 Regional Logistics Centers standing up; AUP personnel assigned
- Distribution assets being increased
- Maintenance contracted out

- 4 of 4 Regional Logistics Centers achieve initial operating capability
- Distribution capability increased
- Maintenance contracted out

**Self-sustainment capability slowly improving; insufficient advisor coverage & lack of compliance hinders progress**



# Contract Management Assessment

NOV 09

- Contract Management Oversight <50%
- Contract Tracking cell of 1 person
- No centralized system to track contracts
- Infrastructure oversight of 2 Engineers at RSTs with dozens of projects
- No Review Process
- Maintenance contract with 3 part-time people

MAY 10

- Contract Management Oversight ~80%
- Contract Tracking cell of 6 people with acquisition skills/experience
- Centralized tracking system in place
- Infrastructure oversight of 5 Engineers at RST's
- Weekly DCG-P Reviews
- Maintenance contract with 7 full-time Red River Army Depot experts

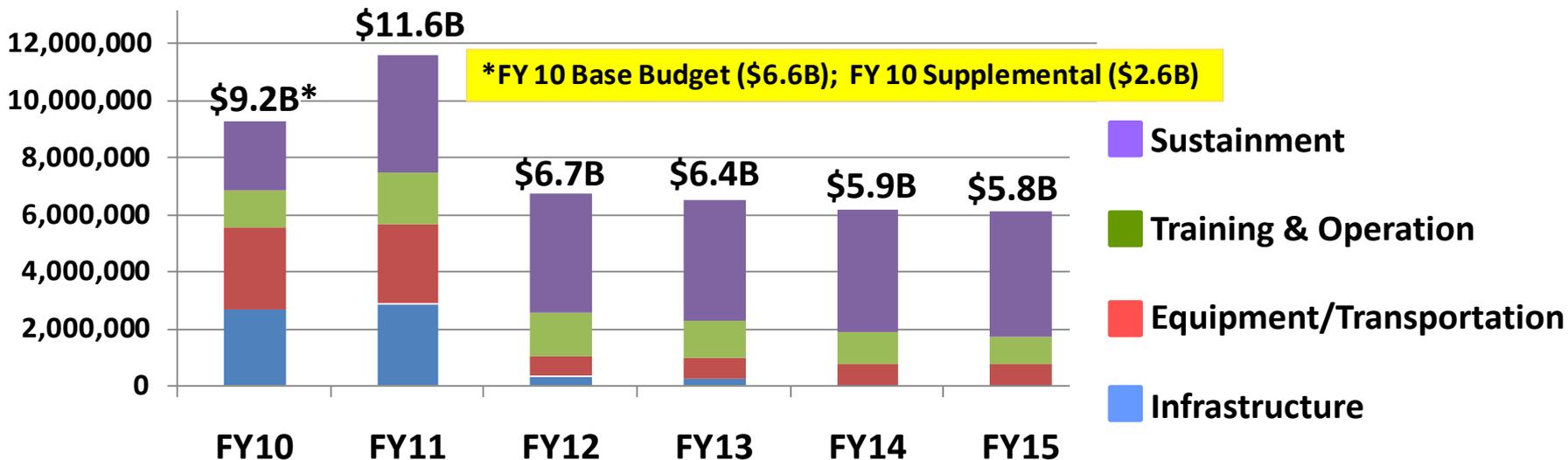
NOV 10

- Contract Management Oversight ~100%
- Contract Tracking cell includes quality control
- Tracking system integrated w/IJC & RSTs
- Infrastructure includes reach-back to Afghan engineering firm
- Weekly DCG-P reviews plus CG & ISAF monthly updates
- New maintenance & police tng contracts with better internal controls plus USG oversight

**Made progress, but contract oversight remains difficult & will need continued focus**



## ANSF Program to Support Growth Strategy (305.6K)



NTM-A / CSTC-A

### Afghan National Security Forces (ANSF) Afghan National Army (ANA) & Afghan National Police (ANP)

	Reported	Objective	Objective	Objective
<b>ANA</b>	Apr 27, 2010 119,338	Oct 31, 2010 134,000	July 2011 159,000	Oct 2011 171,600
<b>ANP</b>	Apr 6, 2010 102,138	Oct 31, 2010 109,000	July 2011 123,000	Oct 2011 134,000
<b>Total ANSF</b>	221,476	243,000	282,000	305,600

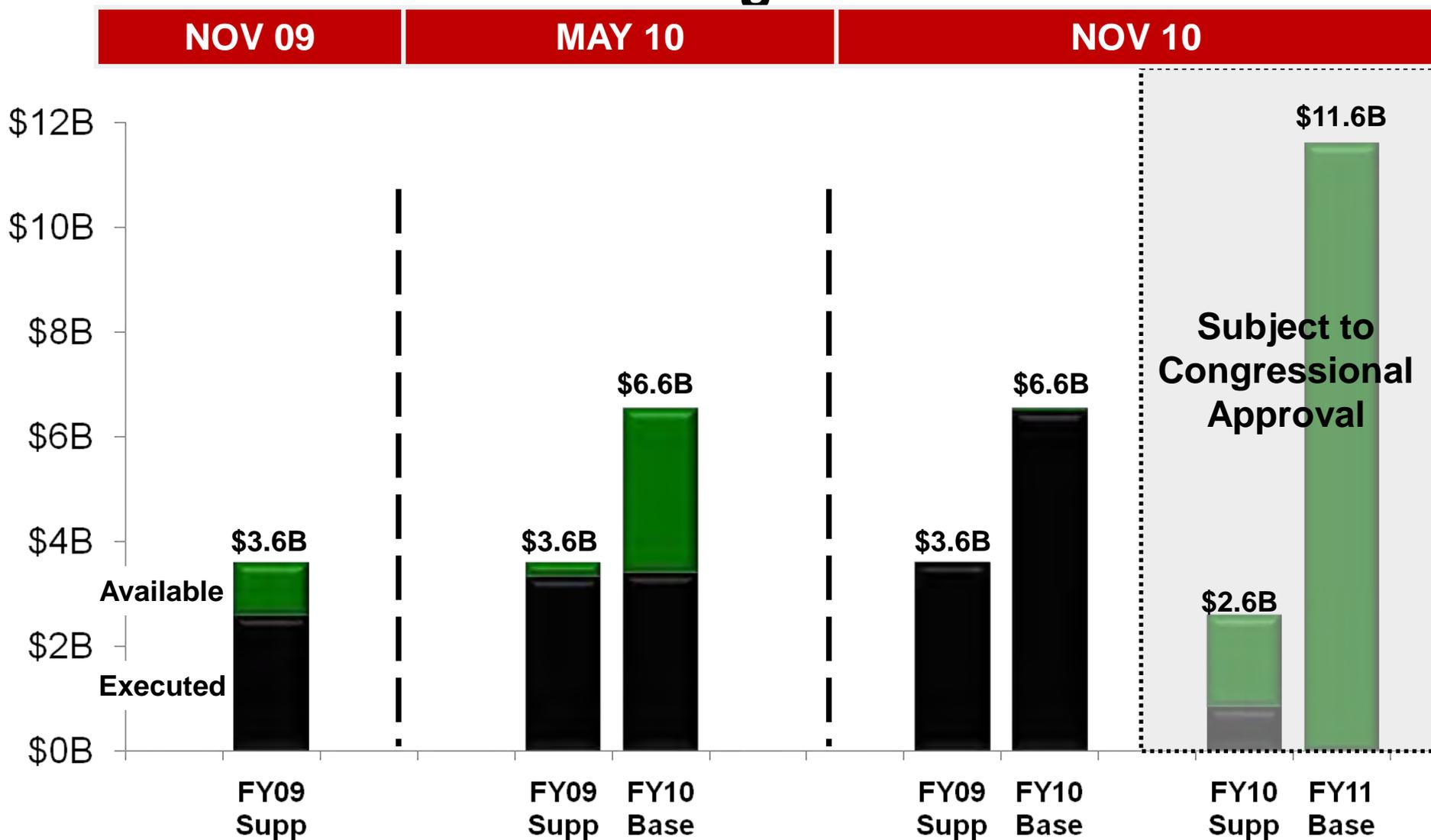
**37% Growth in 17 months**

### Magnitude of Growth

- **2003 - 2009**: 6 Years and \$20.5B
  - Build and sustain 200K force
- **2010 - 2011**: 2 Years and \$20.8B
  - Sustain and regenerate 200K force
  - Build and sustain an additional 105K



## ASFF Funding Execution



**CSTC-A on track to fully execute appropriated funding**



# ANSF Facility Resourcing



TEMPORARY



Tents



Connex



ENDURING

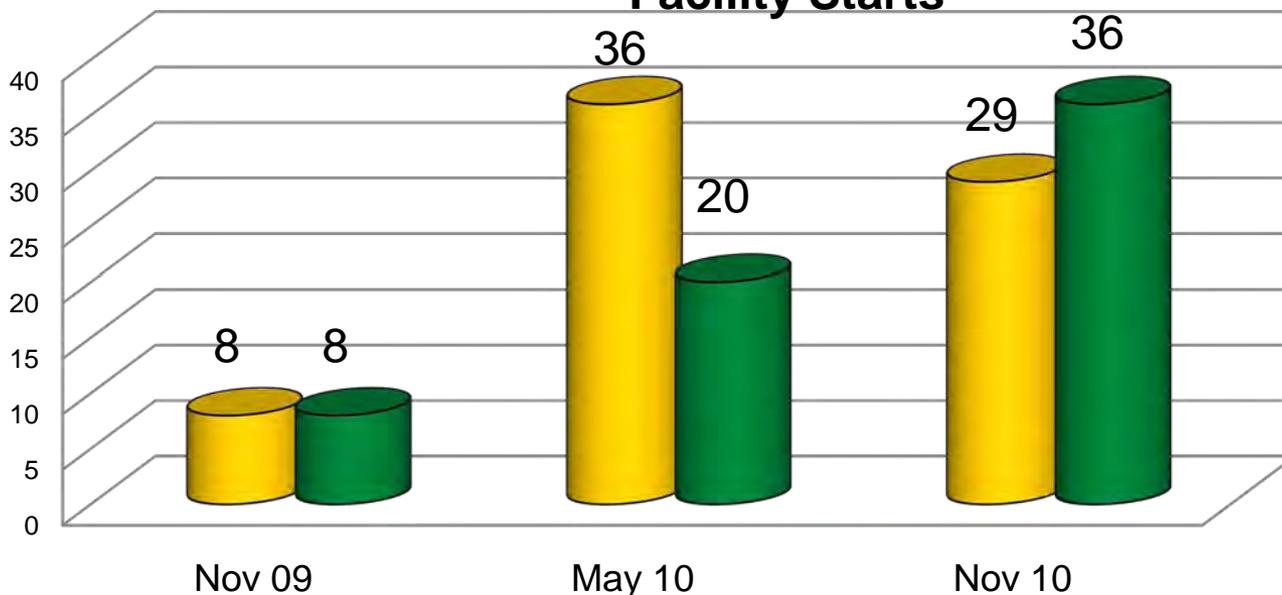


K-Span



Brick and Mortar

## Facility Starts



**Faster construction of enduring facilities avoids temporary basing and improves quality of life for ANSF**



# MoD Office of the Surgeon General/MEDCOM

NOV 09

MAY 10

NOV 10

- Central Combat Medic (CM) training only
- One ICU
- Physician recruiting non-existent and matriculation stagnant

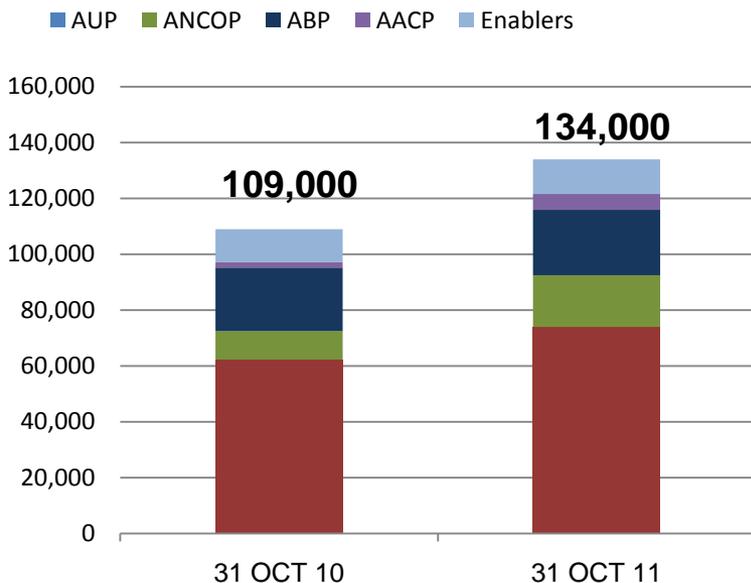
- Two regional CM training sites stood up
- 5 ICUs
- Graduated and commissioned 38 new physicians in Mar-Apr

- Four regional sites plus central CM training will exceed 1,500/yr output
- 5 ICUs; improving capabilities but need residency programs
- No new physicians under current paradigm until graduation 21 Mar 11

**Building medical capacity takes years – progress is slow, but steady**



## ANP Force Structure Growth



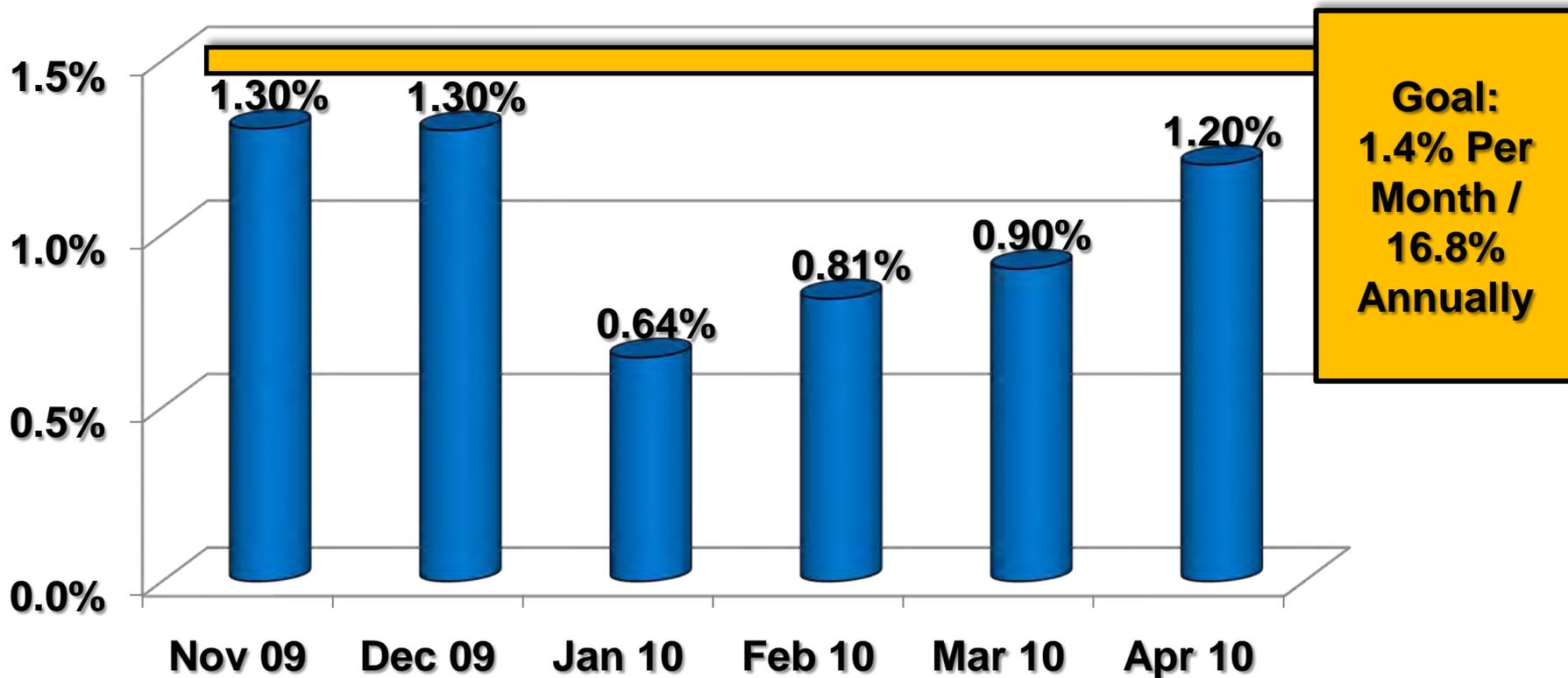
	31 OCT 10	31 OCT 11
AUP	62,297	73,964
ANCOP	10,139	18,520
ABP	22,734	23,397
AACP	2,105	5,745
Enablers	11,725	12,374
<b>Total</b>	<b>109,000</b>	<b>134,000</b>

	31 OCT 10 109K	31 OCT 11 134K	TOTAL
<b>Afghan Uniform Police (AUP)</b>	<ul style="list-style-type: none"> <li>• Kabul Security</li> <li>• 1 Regional HQ</li> <li>• Expand High Threat Districts</li> </ul>	<ul style="list-style-type: none"> <li>• Expand High Threat Districts</li> </ul>	<ul style="list-style-type: none"> <li>• 7 Regional HQs</li> </ul>
<b>Afghan National Civil Order Police (ANCOP)</b>	<ul style="list-style-type: none"> <li>• 1 Brigade HQs</li> <li>• 5 Spec Spt BNs</li> <li>• 2 Patrol BNs</li> <li>• 1 Urban BNs</li> </ul>	<ul style="list-style-type: none"> <li>• 3 Bde HQs</li> <li>• 3 Spec Spt BNs</li> <li>• 16 Patrol BNs</li> <li>• 1 Urban BNs</li> </ul>	<ul style="list-style-type: none"> <li>• 8 BDE HQs</li> <li>• 8 Spec Spt BNs</li> <li>• 30 Patrol BNs</li> <li>• 10 Urban BNs</li> </ul>
<b>Afghan Border Police (ABP)</b>	<ul style="list-style-type: none"> <li>• 1 Zone HQ</li> <li>• 1 ABP BN</li> <li>• Airport Customs Unit/PLT</li> <li>• Replenish/Expand COs</li> </ul>	<ul style="list-style-type: none"> <li>• Expand COs</li> </ul>	<ul style="list-style-type: none"> <li>• 6 Zone HQs</li> <li>• 34 ABP BNs</li> <li>• 5 Airports</li> <li>• 14 BCPs</li> </ul>
<b>Afghan Anti-Crime Police (AACP)</b>  (counter terrorism, counter narcotics, Major Crime Task Force, and forensics)	<ul style="list-style-type: none"> <li>• TF 333</li> <li>• TF 444</li> <li>• MCTF</li> <li>• JSU</li> </ul>	<ul style="list-style-type: none"> <li>• JSU</li> </ul>	<ul style="list-style-type: none"> <li>• Assorted CT, CN, MCTF, JSU, and Forensic Police</li> </ul>
<b>Enablers</b>  (logistics, medical, personnel support, training & education, & recruitment)	<ul style="list-style-type: none"> <li>• 3 Regional Logistic Centers</li> <li>• National Police</li> <li>• Trng Command</li> <li>• National Police</li> <li>• Recruit Command</li> <li>• Mol Trans BDE</li> <li>• 1 Provincial Care Clinic</li> </ul>	<ul style="list-style-type: none"> <li>• Mol Trans BN</li> <li>• Increase medical capability</li> <li>• Increase logistic capability</li> </ul>	<ul style="list-style-type: none"> <li>• Assorted Enablers Totaling 12,601</li> </ul>
<b>FY Total Growth Authorized</b>	<b>12,200/109,000</b>	<b>25,000/134,000</b>	<b>134,000</b>

Note: numbers differ from initial program numbers – except totals  
As of 21 May 10



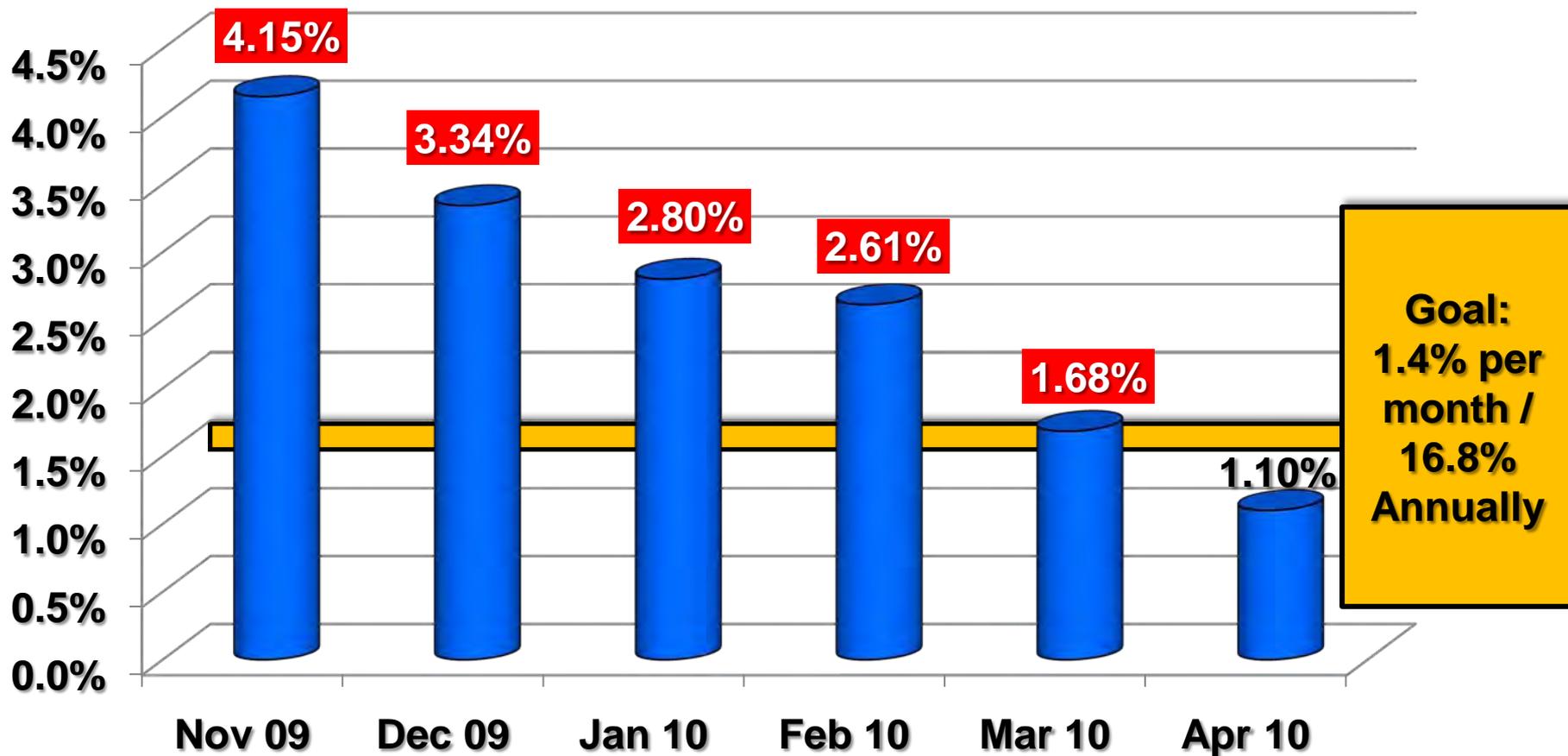
## Afghan Uniformed Police Attrition



**Acceptable attrition rates, but entering historically challenging summer months**



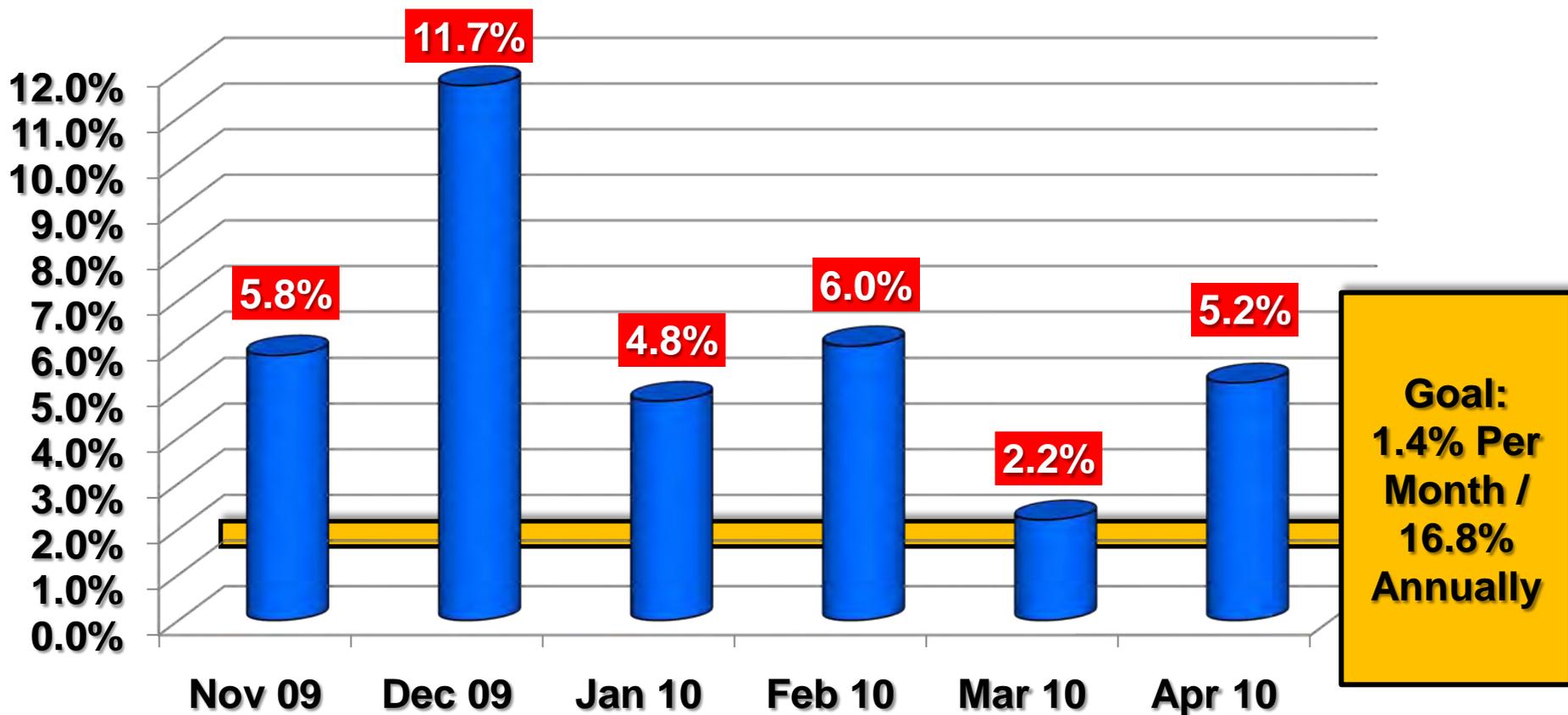
# Afghan Border Police Attrition



**Attrition rates trending down, but entering historically challenging summer months**



# ANCOP Attrition Summary



- Attrition remains >70% annually
- Operational requirements increasing
- Unacceptable and unsustainable level of attrition

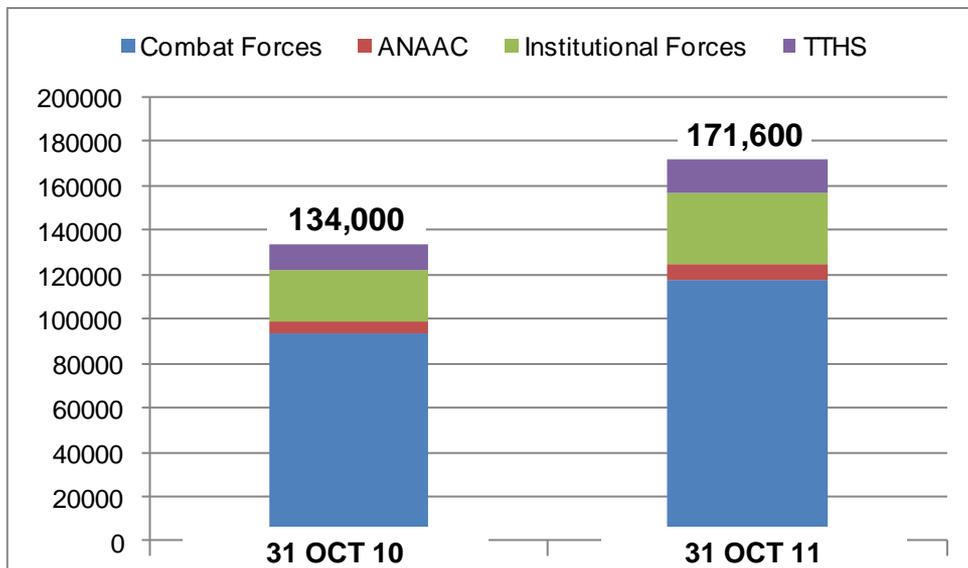


## General Comments

- Fielding Plan to 122k is published and undergoing staff coordination
  - Input from IJC and Mol were primary drivers in plan
  - Driven by operational concerns of securing Kabul and operations in the South
- Fielding Plan to 134k is pre-decisional and pending Command Plan Review (CPR)
  - Mol desire to bring in 6,200 non-Tashkil spaces into the AUP impacts flexibility to shape operational force structure
  - IJC desire to shape operations in the South is AUP heavy
  - ANCOP numbers are fixed with 3 brigades of planned growth
- Annex K is source document for Fielding Plan and contains specific data



## ANA Force Structure Growth



	31 OCT 2010	31 OCT 2011
Combat Forces	94,063	118,790
Afghan National Army Air Corps (ANAAC)	5,616	7,122
Supporting Forces	23,449	27,292
TTHS	10,872	18,396
<b>TOTAL</b>	<b>134,000</b>	<b>171,600</b>

Unit type	Totals in Oct 09	Fielded In FY 10	Fielded in FY11	Totals in Oct 11
Corps/Div HQ	7	1	1	9
Infantry Bde HQ	14	7	1	22
Infantry Btn (4 Coys)	1	12	9	81
Infantry Btn (3 Coys) *	49	10		0
CS Btn	13		8	21
CSS Btn	15	6	1	22
Corps/Div Log Btn	1	1	5	7
Cdo Bde HQ	1		1	2
Cdo Btn **	6	3		9
SF Bde HQ	0		1	1
SF Btn	0	2	2	4
Route Clearance Coy	6		15	21
MP Guard Bde HQ	0	1		1
MP Guard Btn	1	2		3
MP Coy	1		6	7
MI Coy	0	1	6	7
Air Wing	2	1		3
Air Detachment	2	2		4
GSU	15	8		23

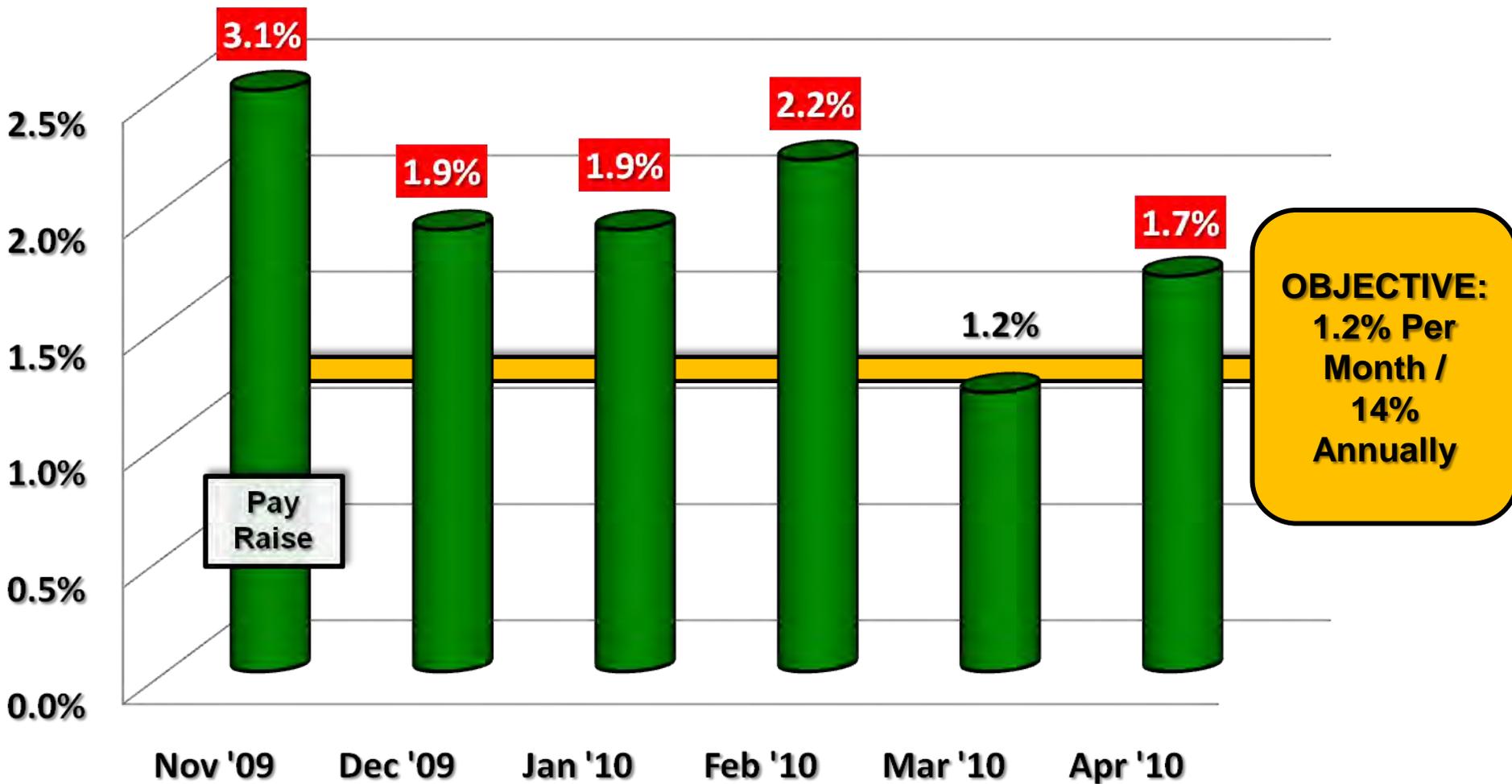
Note: numbers differ from initial program numbers – except totals

\* 59 individual Inf Coys are fielded to the 3 Coy Infantry Btns in FY10 and FY11 to bring these up to 4 Coy Inf Btns.

\*\* 6 Forward Support Coys are fielded to augment existing Cdo Btns in FY10.



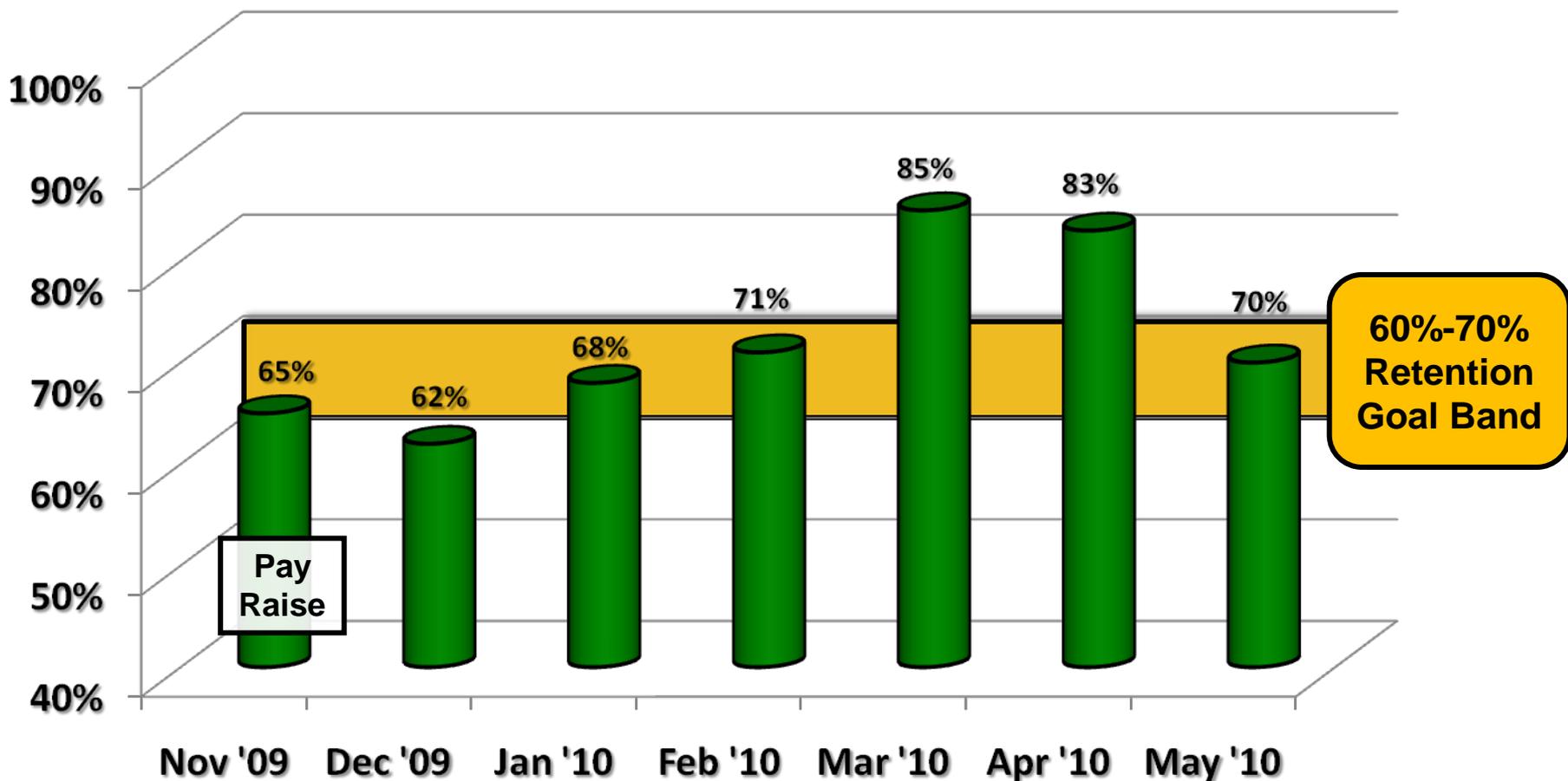
## ANA Monthly Attrition Goals



**Attrition coming down, but still a concern**



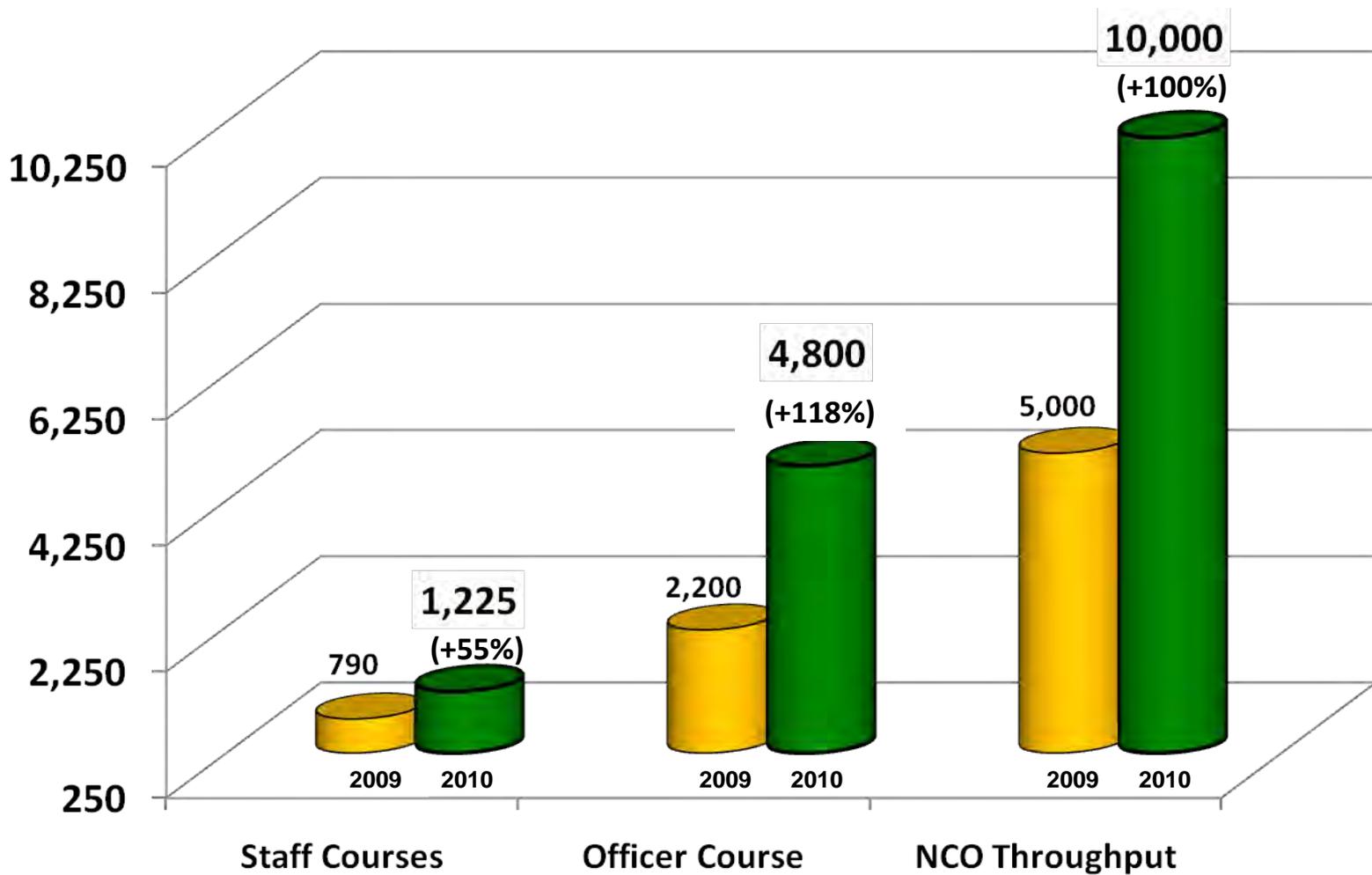
## ANA Retention Goals



**Retention has improved – summer retention critical**



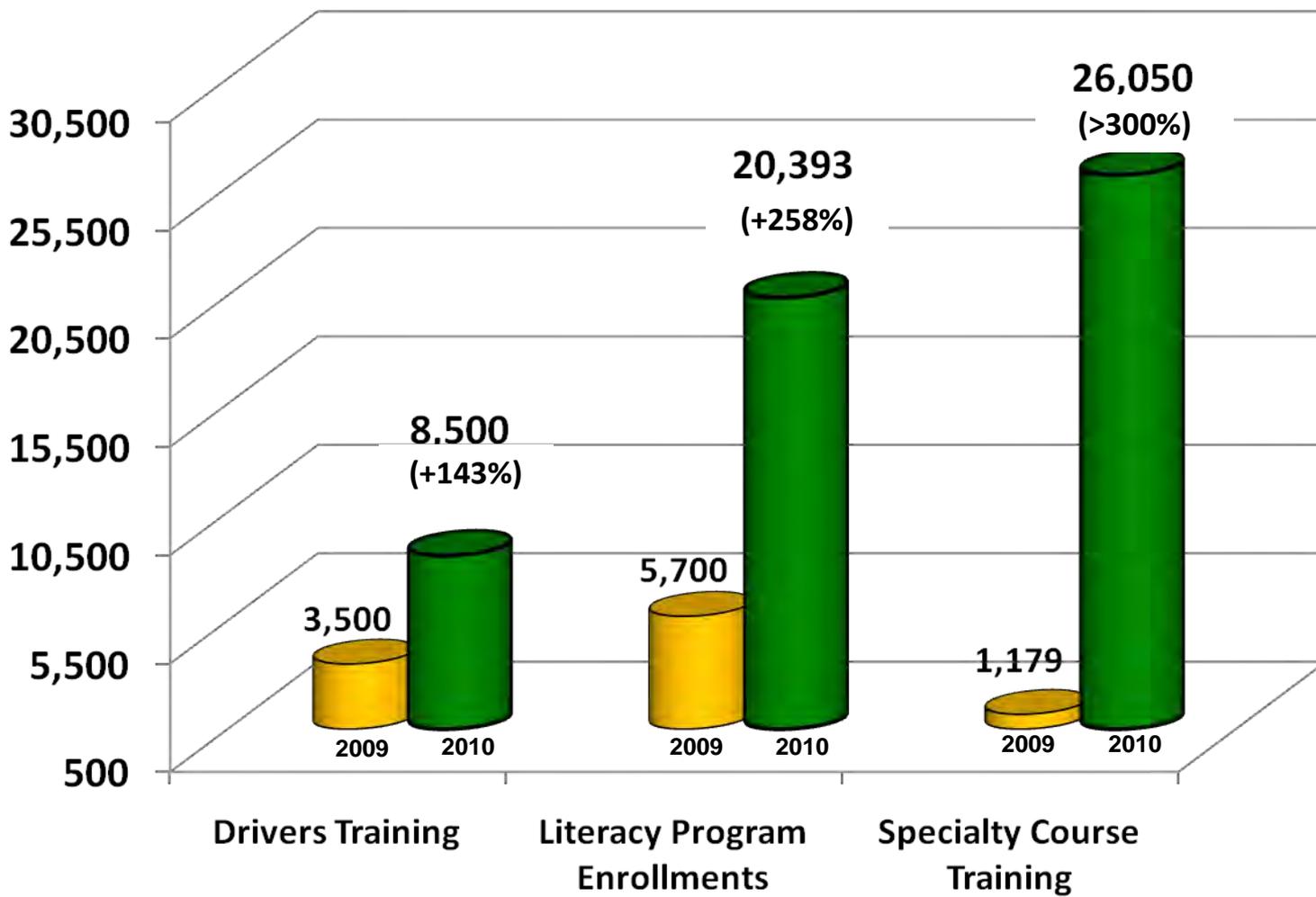
## Increasing ANA Leader Training



**Developing the systems and institutions to professionalize and grow the force**



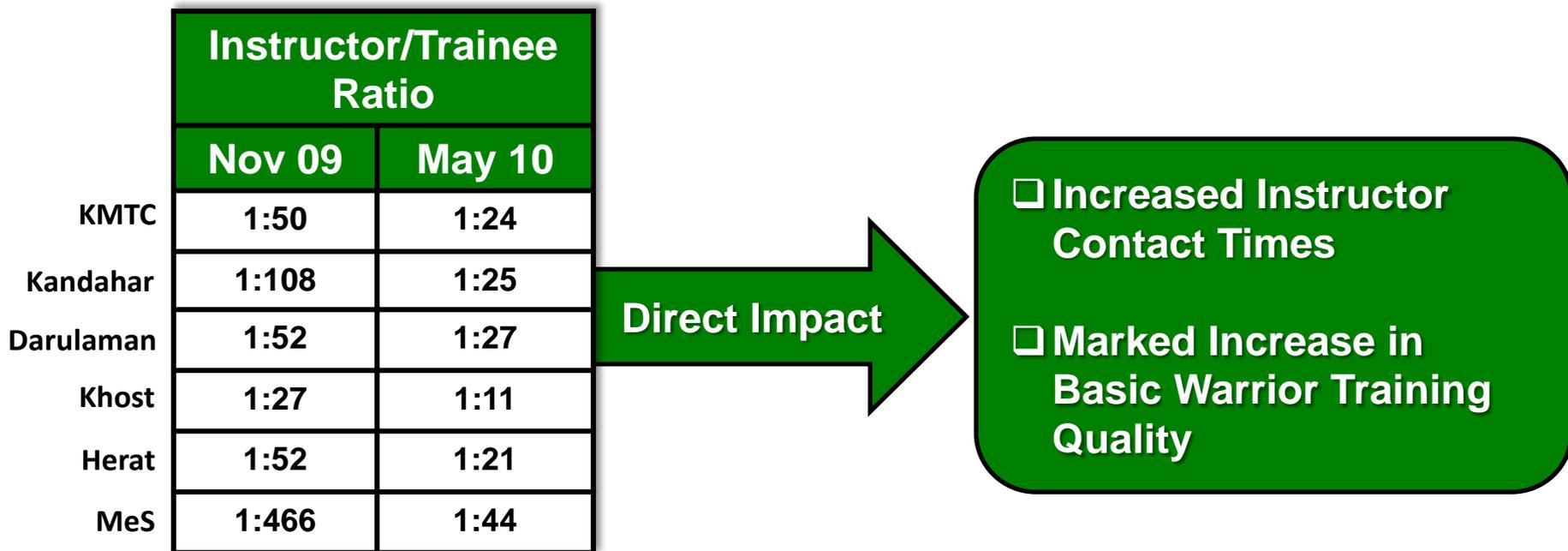
## Increasing ANA Training Capacity



**Expanding capacity to grow the force**



# Improving Instructor to Trainee Ratio



**Improvements due to US trainers – need to develop ANA trainers to meet 1:30 ratio by Nov 10**



## CJSOR V 9.5 and CE V 2.0 In-Place Status

*Internal Working Document: Synched with SHAPE on 05-10-2010*

Institutional Training Advisory Group	In-Place (Force Generated)	In-Place (Bi-lateral)	In-Place (Contractors)	In-Place Totals
Army (CTAG-A)	454	23	0	477
Police (CTAG-P)	150	15	193	358
Medical (MTAG)	0	0	0	0
Air Corps (CAPTF)	17	0	0	17
<b>TOTALS</b>	<b>621</b>	<b>38</b>	<b>193</b>	<b>852</b>

- In-place force generated includes 194 U.S. 2-22.
- In-place ONLY indicates resources against authorized requirements; in-place resources above individual serial requirements are not indicated.



## CJSOR V 9.5 and CE V 2.0 Accounting Status (2325)

*Internal Working Document: Synched with SHAPE on 05-10-2010*

Institutional Training Advisory Group	Total Authorized	In-Place	Percent Filled (In-Place)	Pledged	Short (w/ Pledged)
Army (CTAG-A)	1,385	477	34.4%	437	471
Police (CTAG-P)	609	358	58.8%	97	154
Medical (MTAG)	128	0	0%	16	112
Air Corps (CAPTF)	203	17	8.4%	80	106
<b>TOTALS</b>	<b>2325</b>	<b>852</b>	<b>36.7%</b>	<b>630</b>	<b>832</b>
<b>CE V 2.0</b>	<b>314</b>	<b>138</b>	<b>43.9</b>	<b>95</b>	<b>81</b>

- In-place includes bi-lateral, contract, and NATO (to include 194 U.S. 2-22) manning.
- Pledged forces are official commitments by nations to SHAPE.
- In-place and pledges ONLY indicates resources against authorized requirements; in-place and pledged resources above individual serial requirements are not indicated.

75% and below



## CJSOR V 9.5 and CE V 2.0 Accounting Status (2123)

*Internal Working Document: Synched with SHAPE on 05-10-2010*

Institutional Training Advisory Group	Total Authorized In-Cycle (thru 2/28/2010)	In-Place	Percent Filled (In-Place)	Pledged	Short (w/ Pledged)
Army (CTAG-A)	1,303	477	36.6%	394	432
Police (CTAG-P)	609	358	58.8%	97	154
Medical (MTAG)	32	0	0%	0	32
Air Corps (CAPTF)	179	17	9.5%	80	82
<b>TOTALS</b>	<b>2123</b>	<b>852</b>	<b>40.13%</b>	<b>571</b>	<b>700</b>

- In-place includes bi-lateral, contract, and NATO (to include 194 U.S. 2-22) manning.
- Pledged forces are official commitments by nations to SHAPE.
- In-place and pledges ONLY indicates resources against authorized requirements; in-place and pledged resources above individual serial requirements are not indicated.

75% and below

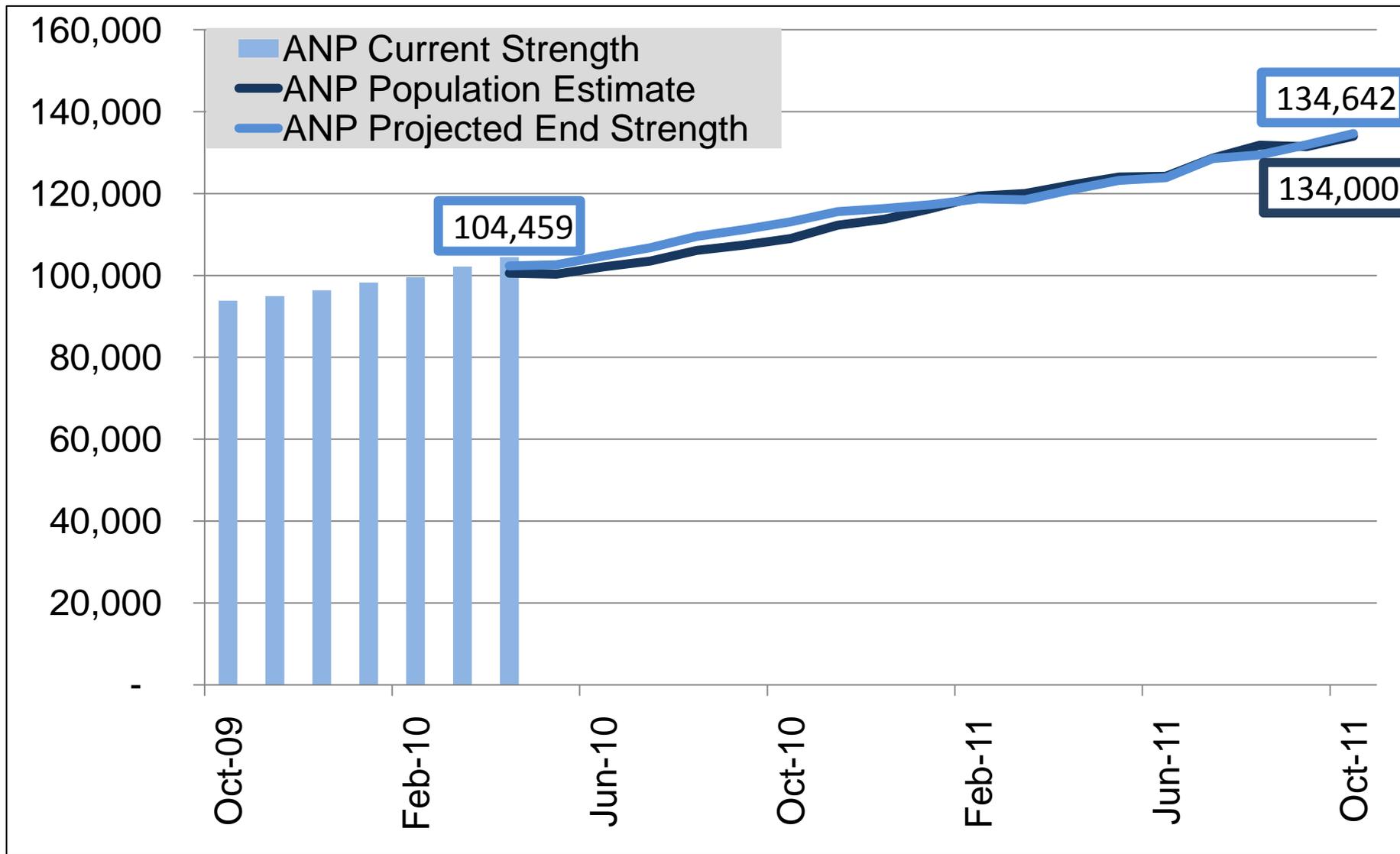


## NTM-A CJSOR V9.5 - Top Ten Requirements

Capability	Latest Arrival Date	Personnel Requirement	Confirmed (C) Pledges	Unconfirmed (U) Pledges
Police Regional Training Center Instructors (Kandahar, Konduz, Jalalabad)	4/1/2010	90 pax (30 per center x 3 centers)	DEU (30): Konduz; CAN (32): Kandahar	
Lonestar Border Police Training Center Instructors	7/1/2010	58 pax		
National Police Training Center Instructors (Wardak)	8/1/2010	62 pax	FRA (40): Lead	TUR (30); ISL (1); GRC (10); FYR (20)
Medical Clinic Instructors/Personnel (Kandahar, Gazni, Paktya, Wardak)	12/1/2010 6/1/2012 6/1/2012 6/1/2012	64 pax (16 per clinic x 4 clinics)	POL (16): Ghazni	CZE (16): Paktya; TUR (16): Wardak
Mi-17 Air Mentor Team (Kandahar, Shindand)	5/1/2010 11/1/2010	38 pax (19 per AMT)		ITA (19): Shindand
MP School Leadership and Development Team Religious and Cultural Affairs School (RCA) Personnel	9/1/2010 11/1/2010 3/1/2010	25 pax for MP School 6 pax for RCA	BIH (10): MP Trainers SVK (15): MP METT	HRV (8): MP Trainers; TUR (7): RCA
Signal School Leadership and Development Team General Services Directorate Personnel	6/1/2010 3/1/2010	44 pax for Signal School 5 pax for GS Directorate		
Kabul Air Corps Training Center (KACTC) Instructors	7/1/2010	16 pax		GRC (5): Student SQN, (5) PME
Mi-35 Air Mentor Team (Kandahar)	6/1/2010	17 pax		
Artillery School Leadership and Development	2/1/2010 6/1/2010 7/31/2010	215 pax	AUS (9): IDT; FRA (10): 201 METT; HRV (5): Fld Arty METT; POL (30): 203 METT; ESP (26): 207 METT; SVK (12): 205 METT	AUS (22): Trainers; ALB (13): 209 METT; HRV (11): Fld Arty METT;
<b>TOTALS</b> <b>252 open requirements (39%)</b>	<b>1 BOG</b> <b>(Arty School)</b>	<b>640 pax</b>	<b>235 Against Reqs (37%)</b> <b>6 Over Reqs</b>	<b>152 Against Reqs (24%)</b> <b>31 Over Reqs</b>

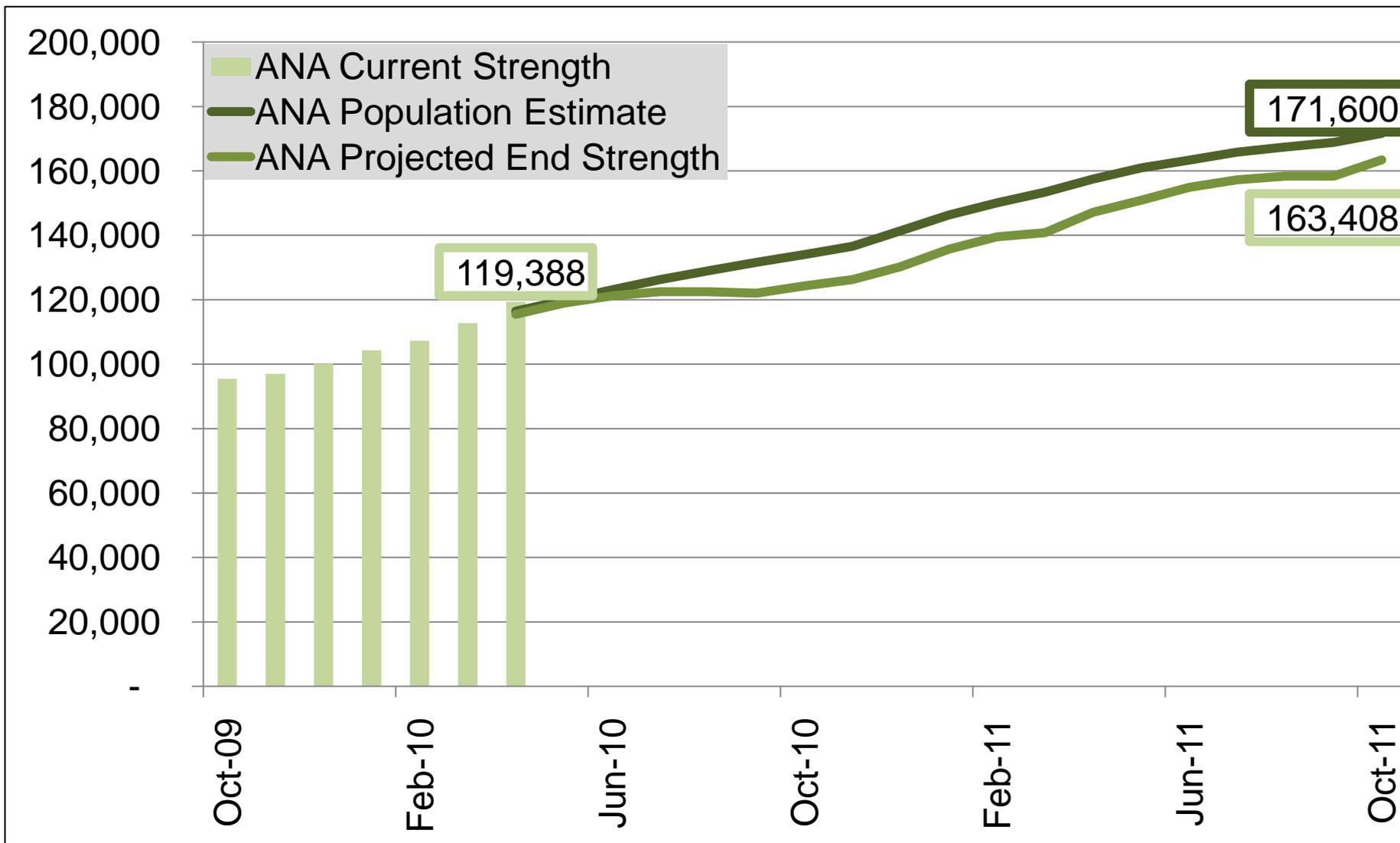


## ANP Strength





## ANA Strength





## ANSF Strength

