

FOR OFFICIAL USE ONLY
Sensitive Material



**The Inspector General
of the Air Force**

U.S. AIR FORCE

Report of Investigation (S6567P)

Maj Gen Thomas J. Fiscus

October 2004

**DO NOT OPEN COVER WITHOUT A NEED TO KNOW--
PRIVILEGED COMMUNICATION TO IG**

This is a PRIVILEGED DOCUMENT. It will not be released (in whole or in part), reproduced, or given additional dissemination (in whole or in part) outside the Air Force without approval of The Inspector General, SAF/IG.

Sensitive Material
FOR OFFICIAL USE ONLY

REPORT OF INVESTIGATION
CONCERNING
MAJ GEN THOMAS J. FISCUS

S6567P

TABLE OF CONTENTS

	Page
I. Introduction.....	1
II. Scope and Authority	2
III. Investigative Process	3
IV. Chronology	6
V. Allegations, Findings, Analysis and Conclusions	16
Allegation 1	16
Findings.....	16
Analysis.....	22
SMSgt [REDACTED].....	22
Maj [REDACTED].....	26
Maj [REDACTED].....	29
Lt Col [REDACTED].....	38
TSgt [REDACTED].....	41
Conclusion	44
Allegation 2	45
Findings.....	45
Analysis.....	49
Lt Col [REDACTED].....	49
Maj [REDACTED].....	51
TSgt [REDACTED].....	58
Maj [REDACTED].....	62
Conclusion	65
Allegation 3	66
Findings.....	66
Analysis.....	68
Lt Col [REDACTED].....	68
Ms. [REDACTED].....	70
Ms. [REDACTED].....	72
Ms. [REDACTED].....	77

Conclusion	82
VI. [REDACTED]	83
VII. [REDACTED]	91
VIII. Summary	102
List of Exhibits	104

REPORT OF INVESTIGATION

CONCERNING

MAJOR GENERAL THOMAS J. FISCUS

Case S6567P

PREPARED BY

[REDACTED]

OCTOBER 2004

I. INTRODUCTION

An anonymous person telefaxed a six-page complaint against The Judge Advocate General of the Air Force (TJAG), Maj Gen Thomas J. Fiscus, to the Air Force Chief of Staff and a former TJAG on 15 Aug 04. (Ex 2) The complainant accused Maj Gen Fiscus of carrying on romances with at least ten women, four of whom were allegedly his current paramours (complaint reproduced as written):

The Judge Advocate General Thomas Fiscus [REDACTED] who keeps using his rank to carry on lots of romantic relationships and makes women in the Air Force his own personal harum despite his being married. He is currently having affairs with [REDACTED] [REDACTED] who is in his chain of command, along with a former Jag named [REDACTED] and a [REDACTED] named [REDACTED] and a woman named [REDACTED] whose [REDACTED]. And those are just the current ones I know about. He even has the gall to use his Pentagon computer for his love letter emails with [REDACTED] as you can see. He probably uses the computer for his other girls too unless he doesn't care if his wife knows. Also some people wonder why Fiscus travels so much and takes extra long TDYs and takes lots of long lunches and goes "home" early even when he is not TDY. Duh. And don't forget that slut Maj [REDACTED] who [REDACTED] & has carried on a long affair with Fiscus. he even [REDACTED] [REDACTED] and still uses her a lot as his personal driver of his corvette if you know what I mean. I even heard [REDACTED] caught him with another woman hugging and kissing in his office a while ago and got mad as hell. And his [REDACTED] and he use

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

sickening pet names for each other. There's a long list of other Usaf women Fiscus had romances with and then rewarded them with promotions and good assignments. Try [REDACTED] for starters, And [REDACTED] in the Pentagon whose also a Jag reserve. Everyone knows Fiscus is [REDACTED]

suspect that he has abused his rank for years to get his way with women but they're scared to turn him in. I'm scared too to be sending this but somebodys got to. Oh he's a real smooth operator alright and can come accross as real charming & sincere. But the truth is he is disgusting embarrassment to the Air Force and a pathological liar and probably a security risk too. Please sir make him stop. (Ex 2:2)

The complainant included as an attachment a string of nine emails purportedly sent to Maj Gen Fiscus from Maj [REDACTED] a judge advocate currently serving [REDACTED] (Ex 2:3-6) These communications suggested that by the end of Apr 02 the two had already had at least one "date" at a pub across the street from Maj [REDACTED] (Ex 2:3), and that subsequently a romantic affair bloomed, with Maj [REDACTED] referring to Maj Gen Fiscus as "Sweetie," "Babe," or "Homey," and referencing time spent in his arms. (Ex 2:4)

[REDACTED] SAF/IGS, conducted a complaint analysis (Ex 3) and recommended investigation of two allegations of engaging in unprofessional relationships: one each against Maj Gen Fiscus and Maj [REDACTED] On 30 Aug 04, The Inspector General, Lt Gen Polk, approved the full investigation of the allegations against Maj Gen Fiscus and Maj [REDACTED] with the proviso that, if the other Air Force members cited in the complaint were implicated, allegations could be framed against them. (Ex 3:7)

The director, SAF/IGS, assigned the case to [REDACTED] and [REDACTED] as investigating officers (IOs), and they collected evidence and testimony through 25 Oct 04. On 12 Oct 04, through his defense counsel, Maj Gen Fiscus exercised his right against self-incrimination under Article 31 of the UCMJ and declined to provide testimony. (Ex 4)

II. SCOPE AND AUTHORITY

The Secretary of the Air Force has sole responsibility for the function of The Inspector General of the Air Force.¹ The Inspector General performs duties prescribed by the Secretary or the Chief of Staff and has the authority to inquire into and report upon the discipline, efficiency,

¹ Title 10, United States Code, Section 8014.

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

and economy of the Air Force.² The Inspector General must cooperate fully with the Inspector General of the Department of Defense (DoD-IG).³ Pursuant to AFI 90-301, *Inspector General Complaints*, paragraphs 1.9.3.1 and 3.2.1, the Director of Senior Official Inquiries (SAF/IGS), is responsible for overseeing and managing investigations of senior officials. (Ex 85:14, 80)

The term "senior official" is defined as "any Air Force active duty, retired, Reserve, or ANG military officers in the grades of O-7 (brigadier general) select and above; current and former civilians above the grade of general schedule (GS) or general manager (GM)-15; current or former members of the Senior Executive Service (SES); and current or former Air Force civilian Presidential appointees." (Ex 85:127)

Thus, because Maj Gen Fiscus holds the grade of O-8, the investigation of allegations against him falls under the purview of SAF/IGS. The IOs, [REDACTED] and [REDACTED] hold SAF/IG appointment letters dated 9 Dec 03. (Ex 1:1-2)

III. INVESTIGATIVE PROCESS

Since the complaint included sexually suggestive emails purportedly sent to Maj Gen Fiscus's official government email account, [REDACTED] SAF/IGS, initiated a request to the Air Force Pentagon Communications Agency (AFPCA) commander to capture the government email files of both Maj Gen Fiscus and Maj [REDACTED] (Ex 61:2-3) The resultant data delivery on 30 Aug 04 consisted of eight compact discs (CDs): seven containing Maj Gen Fiscus's email files, including archives dating back to 1999, and one with Ma [REDACTED] (Ex 61:5)

In addition to validating that the email notes supplied by the complainant were consistent with those in Maj Gen Fiscus's personal email files kept on the government servers⁴, the AFPCA-supplied CDs provided documentary evidence of notable relationships with 20 women, military and civilian, including the ten listed in the complaint. (Ex 41 through Ex 60) Later, as a result of witness interviews during the investigation, four women were added to the list, bringing the number to 24; then following the leak of case details to the national media (Ex 68:1), an additional woman called SAF/IGS to report similar misconduct by Maj Gen Fiscus (Ex 7, Ex 21), for a total of 25.

The information thus acquired during the fact-finding part of the investigation provided *prima facie* evidence of further wrongdoing by Maj Gen Fiscus, and, on 13 Sep 04, The Inspector General approved adding allegations that Maj Gen Fiscus made improper sexual advances toward military women and had improper relationships with civilian women. At the same meeting he made the decision that the additional Air Force women implicated in unprofessional

² These authorities are outlined in Title 10, United States Code, Section 8020.

³ Title 10, United States Code, Section 8020(d).

⁴ Compare Exhibit 2, pages 3-6, with Exhibit 55, pages 3-4 and 11-16.

or improper relationships with Maj Gen Fiscus would not be pursued as subjects of additional allegations in this case.

Furthermore, amid concerns that the remaining female subject, Maj ██████████ could claim her right against self-incrimination and refuse both to validate the incriminating emails and to testify to her relationship with Maj Gen Fiscus, The Inspector General authorized SAF/IGS to request testimonial immunity for her. (Ex 64) Finally, on 28 Sep 04, The Inspector General directed that Maj ██████████ be removed as a subject in the investigation, and that the allegation against her be stricken, so that the report of investigation would address only the alleged misconduct by Maj Gen Fiscus. (Ex 77:1)

Thus this investigation addressed three allegations against Maj Gen Fiscus:

ALLEGATION 1. That Maj Gen Thomas J. Fiscus wrongfully engaged in unprofessional relationships with female subordinate members of the Air Force in violation of AFI 36-2909, *Professional and Unprofessional Relationships*, and Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*.

ALLEGATION 2. That Maj Gen Thomas J. Fiscus made inappropriate sexual advances toward female subordinates, in violation of the Secretary of the Air Force and Chief of Staff policy on *Commander Responsibility for Equal Opportunity*, AFI 36-2706, *Military Equal Opportunity Program*, and Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*.

ALLEGATION 3. That Maj Gen Thomas J. Fiscus wrongfully engaged in improper relationships with female civilians, in violation of Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*, and Article 134, UCMJ, *General Article*.

Based upon the data drawn from Maj Gen Fiscus's email files and interviews with 35 witnesses, the IOs ruled out improper or unprofessional relationships with four of the women listed in the complaint: Col ██████████ (Ex 5, Ex 41), Lt Col (Ret) ██████████ (Ex 8, Ex 42), Col ██████████ (Ex 17, Ex 46, Ex 70), and Ms. ██████████ (Ex 56). These relationships evidenced long-term professional and personal friendships and did not appear suspect. In the case of Lt Col ██████████ the friendship was especially deep and enduring, and, in addition to Maj Gen Fiscus, the close-knit group included Mrs. Fiscus and Lt Col ██████████ (Ex 8:1-2) Of the remaining relationships, 13 strongly evidenced the possibility of wrongdoing by Maj Gen Fiscus and were divided up for analysis as follows:

- **Suspected unprofessional relationships (Allegation 1):**
 - SMSgt ██████████ (Ex 12, Ex 43)
 - Maj ██████████ (Ex 22, Ex 52, Ex 73)
 - Maj ██████████ (Ex 27, Ex 29, Ex 31, Ex 37, Ex 55, Ex 72, Ex 79)

- Lt Col [REDACTED] (Ex 34, Ex 35, Ex 58)
- TSgt [REDACTED] (Ex 10, Ex 38, Ex 60)

- **Suspected improper advances (Allegation 2):**

- Lt Col [REDACTED] (Ex 7, Ex 21)
- Maj [REDACTED] (Ex 18, Ex 48, Ex 72)
- TSgt [REDACTED] (Ex 19, Ex 49)
- Maj [REDACTED] (Ex 28, Ex 74)

- **Suspected improper relationships (Allegation 3):**

- Lt Col (Ret) [REDACTED] (Ex 13, Ex 44)
- Ms. [REDACTED] (Ex 47, Ex 71)
- Ms. [REDACTED] (Ex 20, Ex 50)
- Ms. [REDACTED] (Ex 35, Ex 59)

This is a privileged document. It will not be released in whole or part, reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

5

FOR OFFICIAL USE ONLY (FOUO)

IV. CHRONOLOGY

Jun 91	Lt Col Fiscus becomes TJAG's exec (Ex 80:2)
late 1991	Capt [REDACTED] meets Col (sel) Fiscus during TJAG's Article 6 visit [REDACTED] (Ex 34:2)
1 Apr 92	Effective date of Lt Col Fiscus's promotion to Col (Ex 80:2)
Aug 93	Col Fiscus and Capt [REDACTED] meet for a sexual rendezvous at his apartment in the DC area (Ex 34:17, Ex 80:2, Ex 81:50A)
May 94	Ms. [REDACTED] accepts Col Fiscus's offer to stay at his apartment while she is in DC [REDACTED]. His sexual advances toward her upset her so badly that she moves to a hotel for the remainder of her stay in DC. (Ex 35:1-2, Ex 59:49)
Jun 94	Col Fiscus marries his present wife, Carolyn (Ex 8:2)
Jun 94	Col Fiscus becomes 15 AF/JA (Ex 80:2)
1994	Col Fiscus convinces SSgt [REDACTED] to remain in the Air Force. Begins an email and telephonic mentoring and personal relationship with her (Ex 38:1-2; Ex 60:1)
Aug 96	Col Fiscus becomes PACAF/JA (Ex 80:2)
Late 98 to early 99	Col Fiscus makes an official visit to [REDACTED] makes a sexual advance towards MSgt [REDACTED] (Ex 12:9)
Feb 99	Col Fiscus becomes ACC/JA (Ex 80:2)
Feb 99 to Jun 99	During a visit to [REDACTED] AFB, Col Fiscus upsets Capt [REDACTED] by giving her kisses on the cheek and commenting on the beauty of her hands (Ex 28:1-3)
30 Mar 99	Via email, former JAG officer Ms. [REDACTED] responds to Brig Gen (sel) Fiscus's pin-on invitation and acknowledges attraction and jealousy as influences on their friendship (Ex 50:1-2)
16 Apr 99	Via email, Ms. [REDACTED] tells Brig Gen (sel) Fiscus, "Strangely, I care about you." (Ex 50:8)
1 May 99	Effective date of Col Fiscus's promotion to Brig Gen (Ex 80:3)
3 May 99	Actual date of Fiscus's Brig Gen Pin-on ceremony (Ex 50:6)
1 Jun 99	Via email, Brig Gen Fiscus opines that Ms. [REDACTED] is "disappointed either in me or your visit," laments not being able to spend more time together (Ex 50:10)
14 Jun 99	Via email, Brig Gen Fiscus tells Ms. [REDACTED] that "in a perfect world, [you] would have been standing with me" at his promotion ceremony. He advises her that he will be staying by himself in DC the week of July 5 th , and hopes she will be in town during that same time. His weekends and evenings will be free. He tells her he is never without a thought of her and "I love you." (Ex 51:1)

6

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

27 Jul 99	Via email, Brig Gen Fiscus offers an "olive branch," asks to stop by Ms. [REDACTED] office in [REDACTED] "if you are willing." (Ex 44:1)
Jul 99-Jul 00	While on an Article 6 visit, Brig Gen Fiscus invites Capt [REDACTED] to have drinks with him in his DV quarters around midnight; Col [REDACTED] is also present (Ex 28:4-5)
5 Sep 99	Via email, Brig Gen Fiscus tells Capt [REDACTED] he is "...not one who has stood much on limiting my correspondence or my friendships to my exact peers..." (Ex 48:2)
12 Sep 99	"Tom" tells [REDACTED] that "...since our conversation I've been experiencing what I can only describe as a kind of longing." (Ex 43:1)
12 Nov 99	Via email, Brig Gen Fiscus [REDACTED] "Thought we had developed a friendship that was independent of that I have with you. Guess I was wrong." (Ex 58:9)
23 Nov 99	Via email, Brig Gen Fiscus tells Ms. [REDACTED] she has been selected as Deputy Judge Advocate General (DJAG) and will be moving [REDACTED] [REDACTED] offers to drive to [REDACTED] to see her (Ex 50:14)
Dec 99	Via email, Ms. [REDACTED] advises Maj Gen Fiscus of her relocation from [REDACTED] (Ex 44:3)
10 Dec 99	When she visits his room before the [REDACTED] party at AFB, Brig Gen Fiscus makes sexual overtures toward MSgt [REDACTED] by kissing and steering her towards the bedroom (Ex 12:3-4, Ex 43:8)
15 Dec 99	Brig Gen Fiscus expresses his regret to MSgt [REDACTED] for the 10 Dec 99 advance. He tells her, "I apologize if you were made to feel that I had any expectations of you." (Ex 43:8)
20 Dec 99	Via email, Brig Gen Fiscus attempts to set up a rendezvous with MSgt [REDACTED] at [REDACTED] AFB, but is unsuccessful (Ex 43:10-11)
Feb 00	Brig Gen Fiscus becomes Deputy TJAG (Ex 80:2)
1 Mar 00	Effective date of Brig Gen Fiscus's promotion to Maj Gen (Ex 80:2)
May 00	Maj Gen Fiscus and [REDACTED] for an evening out together; he takes her to a hotel room; they embrace and kiss. When she tells him she is concerned that he is putting his career on the line for having an inappropriate relationship with her, he tells her he knows what he is doing (Ex 12:15, Ex 43:14-15)
25 May 00	"Tom" writes [REDACTED] a solicitous email from his AOL account: "I have this fond memory of having seen you here - I wasn't dreaming, was I?" (Ex 43:15)

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

7

FOR OFFICIAL USE ONLY (FOUO)

1 Jun 00	"Tom" writes [REDACTED] an email: "Sure would like to hear your voice...see your face...well, you know. If there is sometime I could call this weekend (would probably have to be after 1500 your time either day) just tell me the time and the number and I'll try." (Ex 43:14)
3-4 Jun 00	Maj Gen Fiscus takes Ms. [REDACTED] with him to two-day on-track driver education session at Virginia International Raceway, Roanoke, VA (Ex 35:7, Ex 34:8, Ex 43:14)
2 Aug 00	Capt [REDACTED] begins her tour as [REDACTED] (Ex 81:44)
28 Aug 00	Capt [REDACTED] reports that her email account is up after her PCS to the DC area from [REDACTED] AFB, and asks when she and Maj Gen Fiscus can begin running together (Ex 52:2)
18 Dec 00	Via email, Maj Gen Fiscus agrees to divulge to Capt [REDACTED] the results of the [REDACTED] (Ex 52:2A)
12 Feb 01	Via email, Maj Gen Fiscus tells Ms. [REDACTED] that he has always had a "crush" on her. (Ex 56:1)
May 01	Maj Gen Fiscus takes SMSgt [REDACTED] to a park in DC; they walk, hold hands, embrace—she pushes him away (Ex 12:16-21)
2 May 01	In their email correspondence, Maj Gen Fiscus is now "Cootie" to Capt [REDACTED] (Ex 52:3)
15 Jun 01	Capt [REDACTED] begins tour as [REDACTED] (Ex 81:32)
16 Aug 01	Maj Gen Fiscus [REDACTED] SSgt [REDACTED] SSgt [REDACTED] begins signing her emails to Maj Gen Fiscus with Xs [kisses] (Ex 60:1, Ex 38:10)
20 Aug 01	At the [REDACTED] during the [REDACTED] [REDACTED] Maj Gen Fiscus grabs the front of Maj [REDACTED] pants, approximately one inch from her crotch, and tugs while talking to her for several minutes (Ex 7:4-5, Ex 62:1)
12 Sep 01	Maj Gen Fiscus adopts an informal [REDACTED] relationship with SSgt [REDACTED] in email exchanges (Ex 60:2)
3 Sep 01	Via email, Maj Gen Fiscus contacts [REDACTED] [REDACTED] expresses "regret that our lives diverged along the way." (Ex 47:1)
12 Sep 01	Via email, Ms. [REDACTED] contacts Maj Gen Fiscus to tell him her relief at hearing his voice after the 11 Sep Pentagon attack was "unlike anything I have ever felt before... I long to see you again." (Ex 59:1)
9 Nov 01	Maj Gen Fiscus's nomination as TJAG announced (Ex 57:5)
17 Nov 01	When SSgt [REDACTED] leaves [REDACTED] AFB for an assignment [REDACTED] AFB, [REDACTED] Maj Gen Fiscus stops by her quarters to hug her goodbye. (Ex 10:4, Ex 38:9, Ex 60:2)

2 Jan 02	Via email, Ms. [REDACTED] tells Maj Gen Fiscus that she realizes his internal struggle and did not mean to question his feelings. What she told him two days earlier was "...out of pure love." Maj Gen Fiscus replies that he "wept on reading your note, ...partly out of admiration and longing." (Ex 59:9)
3 Jan 02	Via email, Maj Gen Fiscus tells Ms. [REDACTED] that "[b]eing near you without intimacy would be unbearable." (Ex 59:13)
4 Jan 02	Via email, Ms. [REDACTED] replies that if he wanted to give her a special gift, his leaving his wife for her "would be the best gift I ever got." (Ex 59:12)
8 Jan 02	Via email, Maj Gen Fiscus tells Ms. [REDACTED] that the death of [REDACTED] reinforces that he does not want to lose touch with her and he cherishes her (Ex 50:32)
28 Jan 02	Via email, Ms. [REDACTED] advises she wants her last words to Maj Gen Fiscus to be: "I love you more than anyone I have ever loved. Good luck and goodbye." (Ex 59:16)
30 Jan 02	Via email, Maj Gen Fiscus tells Ms. [REDACTED] that he "just can't bear to hurt and disappoint you with an unsatisfying, part-time relationship." He needs to figure out how to do that (Ex 59:19)
31 Jan 02	Via email, Ms. [REDACTED] writes back that she "was trying desperately to understand why your love for me could not lead to something more..." (Ex 59:18)
13 Feb 02	Via email, Maj Gen Fiscus tells Maj [REDACTED] "I hate being [REDACTED] without you... Plus you smell good." (Ex 48:6)
13 Feb 02	In their email correspondence, Capt [REDACTED] is now [REDACTED] to Maj Gen Fiscus (Ex 52:4)
14 Feb 02	Via email, Maj Gen Fiscus invites Ms. [REDACTED] to dinner "tomorrow night to celebrate Valentine's Day..." On 15 Feb they agree to meet outside the Reagan Washington National Airport terminal when he arrives on a return flight from a temporary duty (TDY) assignment (Ex 59:20-21)
19 Feb 02	Via email, Maj Gen Fiscus tells Maj [REDACTED] "I treasure the time we spend together." (Ex 48:10)
25 Feb 02	Maj Gen Fiscus installed as TJAG (Ex 50:37)
25 Feb 02	Via email, Maj [REDACTED] responds to Maj Gen Fiscus' [REDACTED] as TJAG. She thanks Maj Gen Fiscus for letting her drive his car (Ex 55:1)
27 Feb 02	Via email, Maj [REDACTED] thanks Maj Gen Fiscus for [REDACTED] and tells him she wanted to "give you a hug before you left, so I guess this e-hug will have to suffice for now!" (Ex 48:13)

8 Mar 02	Via email, Ms. [REDACTED] tells Maj Gen Fiscus she is "trying hard to be patient. And I love you." (Ex 59:25)
28 Mar 02	Via email, Ms. [REDACTED] reports [REDACTED] Maj Gen Fiscus responds, "How come I love strong women?" She replies, "...you always loved me, we just never admitted it!" He expresses "the need to see you," vows to look for time to get together (Ex 50:54, 58)
9 Apr 02	Via email, Maj Gen Fiscus asks Ms. [REDACTED] to meet him at baggage claim upon his 10 Apr arrival at Dulles IAP (Ex 59:27-29)
10 Apr 02	When Maj Gen Fiscus arrives at Dulles, he finds he is met by Ms. [REDACTED] as well as—unanticipated by Maj Gen Fiscus—his wife, who took off from work to come greet him. (Ex 59:30)
11 Apr 02	Via email, Ms. [REDACTED] apologizes to Maj Gen Fiscus for her anger at seeing Mrs. Fiscus at the airport. Maj Gen Fiscus replies that it was a cruel blow to him, as well, as he wanted to see [REDACTED] and "did not anticipate that Carolyn would call off work in order to be there – it's never happened before." He asks to pick her up after her last appointment that day (Ex 59:30)
15 Apr 02	Via email, Cootie tells [REDACTED] she misses her face (Ex 52:11)
15 Apr 02	Maj Gen Fiscus and Ms. [REDACTED] meet for dinner (Ex 50:60-62)
18 Apr 02	Via email, Maj Gen Fiscus apologizes to Ms. [REDACTED] for raising "my voice to you last week... That had only to do with my struggle and was not a commentary on how I felt about you." (Ex 59:32)
22 Apr 02	Via email, Maj Gen Fiscus describes the evolution over the last two years of his feelings for Ms. [REDACTED] He enjoyed her company so much that he questioned "the commitment I had made... Worse, I began to delude myself that I could ease out of my situation at home simply and cleanly..." He feels lonely and beset by problems (Ex 59:33)
25 Apr 02	Via email, Maj [REDACTED] schedules a Sunday, 28 Apr 02, run for her and Maj Gen Fiscus at 0830 at [REDACTED] (Ex 52:12)
30 Apr 02	Via email, Maj Gen Fiscus, "Homey," agrees to meet Maj [REDACTED] for an "attitude check" at a pub across from [REDACTED] (Ex 55:2-4)
5 May 02	Via email, [REDACTED] acknowledges upcoming "attitude check" with Homey on 6 May 02, prior to her departure for [REDACTED] (Ex 55:5)
May 02	While Cap [REDACTED] is at [REDACTED] Maj Gen Fiscus [REDACTED] and gives her a hug in front of everyone (Ex 28:11)
10 May 02	Via email, [REDACTED] tells Homey "...somehow we've lost control." Homey responds that he'll call her for a "brief telephonic" attitude check (Ex 55:7-8)

15 May 02	Via email, Maj Gen Fiscus tells Ms. [REDACTED] she saw a woman in the hallway who looked like her and "[i]t made me ache." (Ex 59:35)
28 May 02	Via email, [REDACTED] reports to Homey that she is "taken in by your actions," doesn't know where her head or her heart are right now. She'll save other comments for "the other email address," but would rather "keep you and just spend time... in your arms and not apart." (Ex 55:11)
12 Jun 02	Via email, [REDACTED] reports that she sends big hugs and kisses "...—and we know where they lead to—more of everything!!!" She will see him Friday, 14 Jun (Ex 55:13)
24 Jun 02	Via email, Ms. [REDACTED] tells Maj Gen Fiscus that she has heard he has "left a string of women in your past believing that they were 'the one.'" Maj Gen Fiscus replies that his feelings for her were genuine and he "would have been happy to try with you 10 years ago, but you weren't at a point to do so." She responds that she believed he was "the one" for her and believed he felt the same. She thinks the relationship is over. "You gave me words but no actions." (Ex 59:41)
Jul 02 – Jul 04	In his Pentagon office, Maj Gen Fiscus kisses Maj [REDACTED] on the mouth (Ex 18:33)
1 Jul 02	Via email, [REDACTED] reports her arrival in [REDACTED] Maj Gen Fiscus's voice will "make me take cold showers—I guess it depends on how much of a tease you want to be!" (Ex 55:14-15)
2 Jul 02	Via email, [REDACTED] passes on direct-line phone number, reminiscing about "days like Sunday" (Ex 55:16)
3 Jul 02	Via email, [REDACTED] tells Maj Gen Fiscus that she keeps "thinking about your unruly hands!!" (Ex 55:17)
4 Jul 02	Via email, [REDACTED] tells Maj Gen Fiscus, "I need your body to heat." (Ex 55:19)
6 Jul 02	Via email, Homey tells [REDACTED] he looks forward to cooking for her wearing "apron only!" He's noticed "something missing in my arms." (Ex 55:20-21)
8 Jul 02	Via email, [REDACTED] asks "Sweetie" the condition of his "six." Later, she tells him she needs "spooning" and declares his "six" to be "mine...[a]ll mine!!" (Ex 55:23)
9 Jul 02	Alerted by [REDACTED] Maj [REDACTED] reads the opening lines of four suggestive emails from Maj [REDACTED] to Maj Gen Fiscus (Ex 72:3-5)
12 Jul 02	Via email, [REDACTED] tells "Sweetie" that she enjoyed his telephone call and her office is "... [REDACTED]" (Ex 55:27)

15 Jul 02	Via email, [REDACTED] tells Maj Gen Fiscus that she sleeps better when she's heard his voice, and that he should keep his "six" in check for her "until I have a chance to do the real thing." Later "Homey" replies that he will get and fax his calendar to [REDACTED] as long as she can be "at the fax machine to receive it." (Ex 55:29-31)
15 Jul 02	Maj [REDACTED] counsels Maj Gen Fiscus about the emails she saw from Maj [REDACTED]. Tells him she was worried about his reputation and the welfare of the JAG department. Maj Gen Fiscus says he is sorry she had to talk to him about "such a heavy burden." (Ex 72:3-6, 27-30, Ex 18:11)
28 Jul 02	[REDACTED] and Cootie scheduled run together (Ex 52:16)
Aug 00 to Apr 02	During visit to [REDACTED] AFB, [REDACTED] Maj Gen Fiscus gives Capt [REDACTED] two kisses on the cheek during the last day. Whispers in her ear, "I'm so lucky. Today I got two kisses." (Ex 28:6, Ex 81:38)
9 Aug 02	Via email, Maj Gen Fiscus tells [REDACTED] that he's bored sitting in a meeting ("I could jam sticks in my eyes") and would rather be doing "ACs, facetime, six checking, laptime, etc." (Ex 55:34)
11 Aug 02	[REDACTED] and Cootie scheduled run together (Ex 52:19)
18 Aug 02	[REDACTED] and Cootie scheduled run together (Ex 52: 21)
8 Sep 02	[REDACTED] and Cootie scheduled run together (Ex 52:22)
23 Nov 02	Maj Gen Fiscus spends the evening with Ms. [REDACTED] in [REDACTED] (Ex 47:4-6)
9 Dec 02	Via email, Maj Gen Fiscus tells Maj [REDACTED] that he can meet with her on 10 Dec 02 to turn "a frown into a smile!" (Ex 48:14)
14 Dec 02	[REDACTED] and Cootie scheduled run together (Ex 52:26)
22 Dec 02	[REDACTED] and Cootie scheduled run together (Ex 52:28)
12 Jan 03	[REDACTED] and Cootie scheduled run together (Ex 52:29)
28 Jan 03	At his request, SSgt [REDACTED] re-sends Maj Gen Fiscus her cell phone number after his Palm Pilot crashes (Ex 60:7)
4 Mar 03	SSgt [REDACTED] writing via email from [REDACTED] asks Maj Gen Fiscus to help get Col [REDACTED] "a good job" (Ex 60:13)
17 Mar 03	Via email, [REDACTED] tells Cootie she has arrived at her [REDACTED] (Ex 52:30)
26 Mar 03	Via email, Ms. [REDACTED] declines to meet with Maj Gen Fiscus on Saturday, 29 Mar 03. Tells him she is not looking for intimacy. (Ex 47:10)
27 Mar 03	Via email, Maj Gen Fiscus tells Ms. [REDACTED] that he is thinking of her and that he and Mrs. Fiscus [REDACTED] (Ex 51:3)
28 Mar 03	Via email, Maj Gen Fiscus tells Ms. [REDACTED] he's having marital problems (Ex 50:74)

29 Mar 03	Via email, Ms. [REDACTED] invites Maj Gen Fiscus for an overnight visit during her [REDACTED] (Ex 50:77)
25 Apr 03	Maj Gen Fiscus attends the [REDACTED] and later goes out to dinner with Ms. [REDACTED] (Ex 20:4, Ex 50:77)
13 May 03	Via email, Ms. [REDACTED] tells Maj Gen Fiscus she wants to send him photos but does not want her husband to know she is in contact with him (Ex 51:7)
1 Apr 03	Via email, Ms. [REDACTED] tells Maj Gen Fiscus "...why I can't see you. ...[I]t is because I still care a lot." (Ex 44:11)
8 Apr 03	Via email, Ms. [REDACTED] tells Maj Gen Fiscus, "I think your big mistake was not waiting for me." (Ex 44:12)
8 May 03	Via email, [REDACTED] sends Cootie photos of her running (Ex 52:31-34)
25-27 Jun 03	Time blocked for travel for Maj Gen Fiscus to attend last days [REDACTED] Maj [REDACTED] (Ex 72:1)
12 Jul 03	[REDACTED] and Cootie scheduled run together (Ex 52:37)
30 Jul 03	Via email, [REDACTED] asks Cootie to go for a weekend run (Ex 52:39)
28-29 Aug 03	Via email, Maj Gen Fiscus schedules 2 Sep 03 evening date with Ms. [REDACTED] for "...Sitting on a porch swing? Laying [sic] in the grass? Walking in the rain?" (Ex 47:15)
2 Sep 03	Via email, Maj Gen Fiscus cancels date with Ms. [REDACTED] (Ex 47:16)
7 Nov 03	Via email, Maj Gen Fiscus schedules 11 Nov 03 lunchtime date with Ms. [REDACTED] (Ex 47:20)
10 Nov 03	Via email, Ms. [REDACTED] tells Maj Gen Fiscus to show up wearing "shoes only" for their Veterans Day rendezvous (Ex 47:22)
11 Nov 03	Veterans Day date between Maj Gen Fiscus and Ms. [REDACTED] (Ex 47:23-24)
12 Nov 03	Via email, Maj Gen Fiscus reports to Ms. [REDACTED] that he is "content with yesterday... Hope you weren't too sore for your run today." Ms. [REDACTED] responds "I have not stopped smiling... [REDACTED] ...I just hope [the man who interrupted their interlude] didn't notice my—HAIR!!" (Ex 47:23-24)
Dec 03	Maj Gen Fiscus gives Maj [REDACTED] a full-body hug in the Pentagon E-ring where it intersects with Corridor 1. Lt Col [REDACTED] witnesses the hug and discusses it with Maj [REDACTED]. Afterwards, she counsels Maj Gen Fiscus for a second time on the appearance of impropriety (Ex 36:6-7, Ex 18:19-20)
11 Dec 03	Via email, [REDACTED] asks Cootie to go for a weekend run (Ex 52:40)

16 Dec 03	Maj Gen Fiscus writes to TSgt [REDACTED] "Forget you? Yeah, like that's going to happen....not! ...As to your new assignment: I'm happy, I'm sad, I'm bereft, I'm mad that we haven't been able to have any time together..." (Ex 60:23)
16 Dec 03	Via email, Ms. [REDACTED] tells Maj Gen Fiscus that [REDACTED] [REDACTED] [REDACTED] ...My love speaks from my heart and I refuse to allow my head to rule my heart as I have let it over the past too-many years." (Ex 44:27)
17 Dec 03	Via email, [REDACTED] asks Cootie to go for a weekend run (Ex 52:41)
23 Dec 03	Via email, Maj Gen Fiscus tells [REDACTED] that he remembers dancing with her: "The image of the beautiful girl with the incredibly long silky hair who felt so light under my touch..." (Ex 54)
29 Dec 03	Via email, Maj Gen Fiscus reports getting stopped in his Corvette by police while he was talking to [REDACTED] (Ex 44:28)
19 Mar 04	Via email, Cootie tells [REDACTED] he can't go for a Sunday run with her (Ex 52:44)
25 Mar 04	Via email, [REDACTED] asks Cootie to go for a weekend run (Ex 52:45)
Apr 04	TSgt [REDACTED] drops a staff package off in Maj Gen Fiscus's office. He kisses her on the lips. She backs away and leaves (Ex 19:18-21)
7 Apr 04	Via email, [REDACTED] asks Cootie to go for a weekend run (Ex 52:46)
16 Apr 04	Maj Gen Fiscus takes a Friday for leave (Ex 80:55)
21 Apr 04	Via email, Maj Gen Fiscus tells Ms. [REDACTED] "The hotel in [REDACTED] charged my credit card. Did you get back over to check out the next morning?" Ms. [REDACTED] responds that the charge should have been taken off his credit card and put on hers (Ex 47:31-33)
26 Apr 04	Via email, Maj Gen Fiscus advises Ms. [REDACTED] that she "...can be in charge of arrangements next time. :-)" (Ex 47:34)
27 Apr 04	Via email, Maj Gen Fiscus tells Ms. [REDACTED] he'll look for an available opportunity to get together with her soon (Ex 47:35)
3 May 04	Maj Gen Fiscus gives Maj [REDACTED] hug and kiss on the cheek at [REDACTED] retirement dinner (Ex 28:14, Ex 80:64)
7 May 04	Via email, Cootie asks [REDACTED] to discuss weekend run plans (Ex 52:47)
10 Jun 04	Via email, [REDACTED] asks Cootie for a Sunday run in the park. Cootie replies on 11 Jun that he's in Europe and can't make it (Ex 52:53)
22-25 Jun 04	While on a trip to [REDACTED] Maj Gen Fiscus meets TSgt [REDACTED] at the visitors' quarters (Ex 10:11-12, Ex 80:88-89)
28 Jun 04	Via email, Ms. [REDACTED] tells Maj Gen Fiscus she "would love to see you if your schedule allows." (Ex 47:42)

29 Jun 04	Via email, Cootie invites [REDACTED] for Friday morning coffee and run around the lake (Ex 52:63)
Jul 04	While standing in the hallway outside his office, Maj Gen Fiscus massages Maj [REDACTED] neck (Ex 28:8-9)
12 Jul 04	Maj [REDACTED] reports for Pentagon assignment (Ex 81:42)
22 Jul 04	Via email, Maj Gen Fiscus advises Mrs. Fiscus he has safely arrived in Qatar. (Ex 55:42) Three minutes later, "Homey" sends a similar message to [REDACTED] (Ex 55:43) Maj [REDACTED] responds that "any melting [due to high temperatures] should be left for when you're in my arms. We'll do that when you get home. ...I love you." (Ex 55:46)
25 Jul 04	Via email, Maj Gen Fiscus tells Maj [REDACTED] that sleeping is the best thing to do if he doesn't have "...your six to check. ...I'm missing you." (Ex 55:47) Maj [REDACTED] responds to "Baby" that she wishes she were with him to "check his six-I'll have that pleasure soon!!!!" Later in the day Gen Fiscus advises her to write him on his official email account, and that he misses "her six and all else about you." She warns him of "huge" plans when he gets back. "HUGE, HUGE plans. Lots of XOXOXOXOX and more of that and then some!!" (Ex 55:47, 52)
26 Jul 04	Via email, Maj [REDACTED] tells Maj Gen Fiscus, "I sure do love you!!" (Ex 55:55)
27 Jul 04	Via email, [REDACTED] tells Sweetie, "The girls aren't happy, my six is drooping ...Just a few more days!!!" (Ex 2:12)
5 Aug 04	Maj [REDACTED] drives Maj Gen Fiscus to BWI airport, Maj Gen Fiscus hugs her and kisses her. An observer calls Mr. [REDACTED] to complain about the unprofessional behavior (Ex 37:1-2)
o/a 15 Aug 04	Via telefax, CSAF receives anonymous complaint against TJAG (Ex 2:1)
17 Aug 04	Maj [REDACTED] tells Maj Gen Fiscus, "Coffee was delicious and so were you. Curbing the kissing is not easy." (Ex 55:64)
19 Aug 04	Approximately 0900, CSAF shows telefaxed anonymous complaint to Maj Gen Fiscus (Ex 3:20)
23 Aug 04	Maj [REDACTED] has deleted all notes to Maj Gen Fiscus from her email (.pst) file (Ex 55:66-68)
30 Aug 04	Lt Gen Polk notifies Maj Gen Fiscus that SAF/IGS has begun an investigation on him concerning unprofessional relationships (Ex 3:10)
30 Aug 04	AF/CV issues No Contact Order to Maj Gen Fiscus and Maj [REDACTED] forbidding them communication with each other (Ex 3:18-19)
1 Sep 04	Maj Gen Fiscus gives Maj [REDACTED] a ride home after [REDACTED] [REDACTED] During the ride, he puts his hand on her knee (Ex 28:9-10)

V. ALLEGATIONS, FINDINGS, ANALYSES AND CONCLUSION

ALLEGATION 1. That Maj Gen Thomas J. Fiscus wrongfully engaged in unprofessional relationships with female subordinate members of the Air Force in violation of AFI 36-2909, *Professional and Unprofessional Relationships*, and Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*.

FINDINGS.

1. Maj Gen Fiscus maintained email files on his government computer system documenting relationships with SMSgt (Ret) [REDACTED] (1999-2001), Maj [REDACTED] (2000-2004), Maj [REDACTED] (2002-2004), Lt Col [REDACTED] (1999-2002), and TSgt [REDACTED] (2001-2004). (Ex 43, Ex 52, Ex 55, Ex 58, Ex 60)
2. In Aug 93, then-Col Fiscus and then-Capt [REDACTED] met for a sexual encounter at Fiscus's Washington, DC, apartment. (Ex 34:17, Ex 80:2, Ex 81:50A)
3. In approximately Jun 94, then-Col Fiscus married for the second time. (Ex 8:2)
4. In late 98 or early 99, during an official visit to [REDACTED] then-Col Fiscus made a sexual advance on then-MSgt [REDACTED] (Ex 12:9)
5. From late 98 or early 99 until about May 01, Maj Gen Fiscus pursued an unprofessional, romantic relationship with MSgt, later SMSgt, [REDACTED] (Ex 12, Ex 43) This relationship also meets the definition of fraternization for purposes of the Uniform Code of Military Justice.
6. From 3 Mar 99 to 25 Dec 02, Maj Gen Fiscus participated in an unprofessional relationship with Maj, later Lt Col, [REDACTED] (Ex 58, Ex 34)
7. On or about 10 Dec 99, at or near [REDACTED] then-Brig Gen Fiscus made sexual overtures toward then-MSgt [REDACTED] by embracing her, attempting to kiss her on the lips and guiding her toward the bedroom of his visitors' quarters suite. (Ex 12:3-4, Ex 43:8)
8. In or about May 00, in Washington, DC, Maj Gen Fiscus took then-MSgt [REDACTED] on an evening date, and back to his hotel room. (Ex 11:15, Ex 43:14-15)
9. On 18 Dec 00, Maj Gen Fiscus agreed to divulge to then-Capt [REDACTED] the results of the [REDACTED] outside of normal notifications procedures. (Ex 52:2A)
10. In or about May 01, in Washington, DC, Maj Gen Fiscus took SMSgt [REDACTED] on a daytime date to a local park. (Ex 12:16-21)

11. From 2 May 01 to 9 Aug 04, Maj Gen Fiscus and Maj [REDACTED] participated in an unprofessional relationship, employing nicknames, "Cootie" and [REDACTED] respectively, for their correspondence. (Ex 52)

12. From 12 Sep 01 to 9 Aug 04, Maj Gen Fiscus engaged in an unprofessional relationship with SSgt, later TSgt, [REDACTED] (Ex 38, Ex 60) This relationship also meets the definition of fraternization for purposes of the Uniform Code of Military Justice.

13. On or about 17 Nov 01, Maj Gen Fiscus stopped by then-SSgt [REDACTED] quarters at or near [REDACTED] to give her a goodbye hug or kiss. (Ex 10:4, Ex 38:9, Ex 60:2)

14. From Apr 02 until Maj [REDACTED] change of station in Jul 04, Maj Gen Fiscus regularly scheduled weekend runs with her, "...if he was in town." (Ex 22:3, Ex 52, Ex 81:31-32)

15. On or about 30 Apr 02, Maj Gen Fiscus and Maj [REDACTED] went out on their first date, an evening at an Irish Pub across from [REDACTED] (Ex 55:2-4)

16. From 30 Apr 02 through the issuance of a no-contact order on 30 Aug 04, Maj Gen Fiscus participated in an unprofessional, ultimately romantic, relationship with Maj [REDACTED] (Ex 31, Ex 55:4-64, Ex 3:18-19)

17. On or about 11 May 02, Maj Gen Fiscus, as "Homey," encouraged Maj [REDACTED] to send him hugs and kisses via email. (Ex 55:9)

18. Early in the morning, on or about Sunday, 23 Jun 02, Maj Gen Fiscus drove to Maj [REDACTED] apartment to "sleep" with her, repeating the exercise on Tuesday, 25 Jun 02. (Ex 31:137)

19. On or about 9 Jul 02, Maj [REDACTED] viewed parts of four sexually suggestive emails between Maj Gen Fiscus and Maj [REDACTED] (Ex 72:3-5)

20. On or about 15 Jul 02, Maj [REDACTED] counseled Maj Gen Fiscus on the inappropriateness of his apparent relationship with Maj [REDACTED] (Ex 72:3-6, 27-30, Ex 18:11)

21. On or about 25-27 Jun 03, Maj Gen Fiscus attended an [REDACTED] at [REDACTED] during the session. (Ex 72:1, Ex 31:61-62)

22. During the period 22-25 Jun 04, while on an official trip to [REDACTED] Maj Gen Fiscus met with TSgt [REDACTED] and the two spent time together in visitors' quarters. (Ex 10:11-12,

Ex 80:88-89)

23. On 22 Jul 04, during a trip to Southwest Asia, Maj Gen Fiscus notified his wife that he had safely arrived in Qatar. Three minutes later, he sent a nearly identical message to Maj [REDACTED] (Ex 55:42-43)

24. On 5 Aug 04, an anonymous observer reported to Mr. [REDACTED] that he saw Maj Gen Fiscus, in civilian clothes, and Maj [REDACTED] in uniform, engage in a public display of affection at Baltimore-Washington International Airport. (Ex 37:1-2)

25. On 17 Aug 04, Maj Gen Fiscus and Maj [REDACTED] met for a morning "coffee and kissing" attitude check. (Ex 55:64)

STANDARDS.

AFI 36-2909, *Professional and Unprofessional Relationships*, 1 May 99, states in part:

1. General. Professional relationships are essential to the effective operation of all organizations, both military and civilian, but the nature of the military mission requires absolute confidence in command and an unhesitating adherence to orders that may result in inconvenience, hardships or, at times, injury or death. This distinction makes the maintenance of professional relationships in the military more critical than in civilian organizations. While personal relationships between Air Force members are normally matters of individual choice and judgment, they become matters of official concern when they adversely affect or have the reasonable potential to adversely affect the Air Force by eroding morale, good order, discipline, respect for authority, unit cohesion or mission accomplishment. Professional relationships are those interpersonal relationships consistent with Air Force core values: integrity first, service before self, and excellence in all we do. Military members understand that the needs of the institution will sometimes outweigh personal desires. (Ex 84:2)

2.2 Unprofessional Relationships. Relationships are unprofessional, whether pursued on or off-duty, when they detract from authority of superiors or result in, or reasonably create the appearance of, favoritism, misuse of office or position, or abandonment of organizational goals for personal interest. Unprofessional relationships can exist between officers, between enlisted members, between officers and enlisted members, and

18

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

between military personnel and civilians employees or contractor personnel. Fraternalization is one form of unprofessional relationship and is a recognized offense under Article 134 of the Uniform Code of Military Justice (UCMJ). (Ex 89:2)

2.2.1. Fraternalization. Fraternalization, as defined by the Manual for Courts-Martial, is a personal relationship between an officer and an enlisted member that violates the customary bounds of acceptable behavior in the Air Force and prejudices good order and discipline, discredits the armed services, or operates to the personal disgrace or dishonor of the officer involved. The custom recognizes that officers will not form personal relationships with enlisted members on terms of military equality, whether on or off-duty. Although the custom originated in an all male military, it is gender neutral. (Ex 84:2)

3.1. Relationships Within an Organization. Familiar relationships between members in which one member exercises supervisory or command authority over the other can easily be or become unprofessional. Similarly, differences in grade increase the risk that a relationship will be, or will be perceived to be unprofessional, because senior members in military organizations normally exercise authority or some direct or indirect organizational influence over the duties and careers of more junior members. The danger for abuse of authority is always present. The ability of the senior member to influence, directly or indirectly, assignments, promotion recommendations, duties, awards, and other privileges and benefits, places both the senior member and the junior member in vulnerable positions. Once established, such relationships do not go unnoticed by other members of a unit. Unprofessional relationships, including fraternalization, between members of different services, particularly in joint service operations, can have the same impact on morale, discipline, respect for authority and unit cohesion, as if the members were assigned to the same service, and must be avoided. (Ex 84:3)

3.3. Dating and Close Friendships. Dating, courtship, and close friendships between men and women are subject to the same policy considerations as are other relationships. Like any personal relationship, they become matters of official concern when they adversely affect morale, discipline, unit cohesion, respect for authority, or mission accomplishment. Members must recognize

that these relationships can adversely affect morale and discipline, even when the members are not in the same chain of command or unit. The formation of such relationships between superiors and subordinates within the same chain of command or supervision is prohibited because such relationships invariably raise the perception of favoritism or misuse of position and erode morale, discipline and unit cohesion. (Ex 84:3)

3.4. Shared Activities. Sharing living accommodations, vacations, transportation, and off-duty interests on a frequent or recurring basis can be, or can reasonably be perceived to be, unprofessional. These types of arrangements often lead to claims of abuse of position or favoritism. It is often the frequency of these activities or the absence of any official purpose or organizational benefit which causes them to become, or to be perceived to be, unprofessional. While an occasional round of golf, game of racquetball or similar activity between a supervisor and a subordinate could remain professional, daily or weekly activities could result at a minimum in the perception of an unprofessional relationship. Similarly, while it might be appropriate for a first sergeant to play golf with a different group of officers from his or her organization each weekend, in order to get to know them better, playing with the same officers every weekend might be, or reasonably be perceived to be, unprofessional. (Ex 84:3-4)

5. Specific Prohibitions Relating to Officers (Fraternization). Unprofessional relationships between officers and enlisted members have a high potential for damaging morale and discipline and for compromising the standing of officers. Consequently, officers have an ethical and a legal obligation to avoid certain relationships and activities. Officers must not engage in any activity with an enlisted member that reasonably may prejudice good order and discipline, discredit the armed forces or compromise an officer's standing. The custom against fraternization in the Air Force extends beyond organizational and chain of command lines. In short, it extends to all officer/enlisted relationships. (Ex 84:5)

5.1.3. Officers Will Not Engage in Sexual Relations with or Date Enlisted Members. Dating as set out here includes not only traditional, prearranged, social engagements between two members, but also includes more contemporary social activities

that would reasonably be perceived to be a substitute for traditional dating. (Ex 84:6)

6. Individual Responsibility To Maintain Professional Relationships. All military members share the responsibility for maintaining professional relationships. However, the senior member (officer or enlisted) in a personal relationship bears primary responsibility for maintaining the professionalism of that relationship. Leadership requires the maturity and judgment to avoid relationships that undermine respect for authority or impact negatively on morale, discipline, respect for authority, or the mission of the Air Force. This is especially true of officers and noncommissioned officers who are expected to exhibit the highest standards of professional conduct and to lead by example. The senior member in a relationship is in the best position to appreciate the effect of that particular relationship on an organization and in the best position to terminate or limit the extent of the relationship. However, all members should expect to be and must be held accountable for the impact of their conduct on the Air Force as an institution. (Ex 84:6)

The Manual for Courts-Martial, 2002 Edition, discusses articles of the UCMJ and states in part:

Article 133—Conduct unbecoming an officer and gentleman

...Conduct violative of this article is action or behavior in an official capacity which, in dishonoring or disgracing the person as an officer, seriously compromises the officer's character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer. There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice, or cruelty. Not everyone is or can be expected to meet unrealistically high moral standards, but there is a limit of tolerance based on customs of the service and military necessity below which the personal standards of an officer, cadet, or midshipman cannot fall without seriously compromising the person's standing as an officer, cadet, or midshipman or the person's character as a gentleman. (Ex 89:IV-93, 94)

ANALYSIS.

SMSgt (Ret) [REDACTED]

Then-MSgt [REDACTED] a paralegal on her way to [REDACTED] first met then-Col Thomas Fiscus when she visited his office at HQ PACAF/JA in [REDACTED] 98. (Ex 12:8, 13) Fiscus later told her that when he made her acquaintance there, "...I felt that we would be immediate friends." (Ex 43:1)

[REDACTED] recalled that he pressed that friendship on his next official visit to [REDACTED]. She and he conversed at a social event, discussing personal problems, and he invited her to his room. There the talk continued, and [REDACTED] distinctly remembered getting signals that if she cared "to engage in sexual relations with him, ...that I could've pursued that avenue." She said that she did not care to do so, however, but she was overwhelmed by the attention he gave her: "...I was taken a little off guard in the position that I was in because of who he was, and I, in my course of life have never considered myself to be an attractive individual, so I was more thrown back that someone would actually—oh, gosh, especially in his position—take that type of interest..." (Ex 12:8-10)

Shortly thereafter, in early 1999, then-Brig Gen (s) Fiscus was transferred to Langley AFB, Virginia, to serve as ACC/JA. (Ex 80:2) He stayed in contact with MSgt [REDACTED] who sought him out for counsel after [REDACTED] (Ex 12:12) They chatted on the phone about it, and afterwards, on 12 Sep 99, "Tom" told [REDACTED] in an email that "...since our conversation I've been experiencing what I can only describe as a kind of longing." (Ex 43:1)

This "longing" manifested itself in what [REDACTED] considered sexual overtures a few months later at [REDACTED] to which MSgt [REDACTED] had returned following the [REDACTED] assignment. Brig Gen Fiscus was scheduled to make an official visit to [REDACTED] during the second week in December, and MSgt [REDACTED] thought it would be fun [REDACTED] (Ex 43:5) Fiscus agreed, and on Friday, 10 Dec 99, [REDACTED] came to his DV suite to bring him [REDACTED] (Ex 43:6, Ex 12:3) Upon her arrival at his room,

...he embraced me and he attempted to kiss me on the lips and I know that we, he kind of guided me to where the, where the bedroom was and I was feeling, I was feeling very uncomfortable and it didn't go any further than that. And, primarily, it didn't go any further than that because we were on a time constraint. I, I let him know that although, it, it's awfully flattering, you know, I'm not gonna engage in that type of activity... (Ex 12:4)

Thus rebuffed, and back at Langley AFB, Brig Gen Fiscus cogitated long and hard about his approach to her and her response. The next Tuesday, 14 Dec 99, Fiscus tried to call her at work to talk about it, but MSgt [REDACTED] had stayed home [REDACTED] so he sent her an email giving her his office phone number. Then, on Wednesday, 15 Dec 99 [REDACTED] responded back that she "was curious if I would hear anything from you." (Ex 43:8)

Gen Fiscus admitted:

I have spent a considerable amount of time thinking about my [REDACTED] trip and I think it would be better for me to discuss it with you rather than try to write it down. Of course, you are free to choose not to have that discussion with me. I can say that I was most upset with myself, not you. I somewhat expected your decision, though I had allowed myself to hope otherwise. ...I apologize if you were made to feel that I had any expectations of you. (Ex 43:8)

MSgt [REDACTED] still somewhat flattered by the attention, left the relationship door open, and Brig Gen Fiscus looked for times in which their schedules might allow future get-togethers. (Ex 12:6, Ex 43:10-13) Although he tried in January and February, he wasn't able to meet her again until around the May time frame, after [REDACTED] had been promoted to senior master sergeant and was in Washington, DC, to attend [REDACTED]. By this time, Fiscus had been promoted to major general and assigned to the Pentagon as Deputy Judge Advocate General (DJAG). (Ex 80:2)

One evening, SMSgt [REDACTED] thought it was probably during the third week of May 00, Maj Gen Fiscus picked her up in his car and took her out to dinner, then to a hotel room. (Ex 12:7, 15; Ex 43:15) At the hotel room, SMSgt [REDACTED] recalled "...hugging and kissing"—passionate kisses on the lips—but no sexual activity; "but that was it because I, I just felt way too uncomfortable." (Ex 12:15)

SMSgt [REDACTED] discomfort at Maj Gen Fiscus's advances stemmed from her awareness that Fiscus was engaging "...in inappropriate conduct with subordinates," which she recalled from previous courts-martial for officers who had done the same thing. She knew what she had done was wrong, but, she thought, "...this isn't the first time. He must really be interested because he's putting his career on the line." (Ex 12:16)

Although Maj Gen Fiscus responded to her concerns by telling her that he knew what he was doing, she felt too uncomfortable to go past hugging and kissing, and left it at that. (Ex 12:16)

In a reaction similar to that following his previous attempt at [REDACTED] "Tom" wrote [REDACTED] a solicitous email from his America Online (AOL) account on 25 May 00, looking for feedback: "I have this fond memory of having seen you here - I wasn't dreaming, was I?" (Ex 43:15)

Following her neutral answer nearly a week later, he responded with flattery:

I think about that evening (a gentle memory) as well. I've wondered why the guy didn't give me the ticket... Actually, he saw what a fox I was with and forgot what he was doing... Sure would like to hear your voice...see your face...well, you know. If there is sometime I could call this weekend (would probably have to be after 1500 your time either day) just tell me the time and the number and I'll try. (Ex 43:14)

The relationship stagnated as SMSgt [REDACTED] reported that she and her husband were "on a better track," and although "Tom" sent [REDACTED] from another trip to [REDACTED] in Dec 00, the two would have only one more encounter. (Ex 43:16)

On another trip to Washington—SMSgt [REDACTED] did not remember the date—Maj Gen Fiscus took her for a walk in a park. She reminisced that they held hands, he put his arm around her waist, and she remembered "...kind of pushing him off because it's like, well, what if someone saw us?" (Ex 12:17) She didn't "...want him to feel like I was leading him on, because I could see how he might get that—he might get that impression because I never directly came out and said, 'No I'm not interested,' ... because I was interested." (Ex 12:16) Nevertheless, she told him that this was the end of the dating:

You know, this has now been ...a couple times that we've had an opportunity and, ...all I recall is me having the sense ...that I need to make it clear to him that, yes, I do like him, but I, in no future contact will ...anything come of it sexually..., and I wish I could say it's because I was such a nice person and I didn't want to hurt my family and all that stuff. But it was, it was more along the lines of, ...if we ever did anything and it ever came out, that it's his job that's on the line, and I refused to do that. ...I just knew it was wrong... (Ex 12:21)

Additionally, she recalled telling him:

..."Boy," you know, "your wife wouldn't appreciate knowing this."

And him saying something to the effect of, "Well," you know, "it probably wouldn't matter because we're not that close anyway."

I had the impression, and I remember meeting her just once because it was at one of the banquets during [REDACTED]

[REDACTED] And, you know, seeing her and the first thing thinking of is, "Oh, my gosh," you know, "how could anybody even think of, think of straying away?" because she was a very pleasant, very attractive lady. But my impression ...was almost as though it was, ...I hate to say a marriage out of convenience, but it was like they were together, but they, ...they kind of just existed. (Ex 12:26)

From that point on, SMSgt [REDACTED] remembered, their relationship was limited to email correspondence. She scheduled her retirement for [REDACTED] and asked him to officiate, but "that didn't come to pass." (Ex 12:19-20)

Thinking back on it, she was mystified by his attraction to her: "...I just find it hard to believe, of all the people that he meets and of all the travels that he does, that he would just single me out—and not just a one-time situation—and only target me." She felt that "...he's probably hitting on a couple other people, too," (Ex 12:26) although she hoped not, "...because it's not gonna take long before it comes out and he's gonna be in trouble." (Ex 12:25)

The romantic relationship that developed between Maj Gen Fiscus and SMSgt [REDACTED] as illustrated by testimonial and documentary evidence, clearly exceeded the bounds of a professional relationship put forth in AFI 36-2909. (Ex 84:2) The casual, first-name basis of communication encouraged by Gen Fiscus led to dating and sexual advances by him, a relationship made all the more serious by the fact that both members were married, the rank differential, and Gen Fiscus's position at the helm of the JAG community to which both belonged. The relationship contained all the hallmarks of fraternization as well. AFI 2909 specifically states, "Officers will not engage in sexual relations with or date enlisted members. (Ex 84:6)

Maj [REDACTED]

Maj [REDACTED] is an Air Force judge advocate currently assigned to [REDACTED]

[REDACTED] (Ex 22:3, Ex 80:2) described herself as athletic, and she seized upon [REDACTED] as a way to communicate daily issues to him while helping him rehabilitate his knee following surgery:

...[W]hen he first got to [REDACTED] he had been recovering from a knee surgery, and so part of the recovering from the knee surgery, I was

[REDACTED] with him in the morning, partially to rehab his knee and also because we [REDACTED] like that maybe about two times a week we'd try to go running in the morning. (Ex 22:3)

Maj Gen Fiscus moved to Washington, DC, to become DJAG in Feb 00 (Ex 80:2), and Maj [REDACTED] (Ex 81:32) [REDACTED] a few days after her arrival, she contacted him to see if she and he could continue running together. (Ex 52:2) They explored running at the Pentagon and residential neighborhoods, and Maj [REDACTED] stated that they eventually settled on a routine of running at a trail [REDACTED]

[REDACTED] "[o]n Saturday mornings or Sunday mornings as long as he was in town. When he became TJAG, obviously he was out of town a lot, but I would either call up his secretary and see if he was in town and ...put it on his schedule for him to run or, if he wasn't in town, obviously, we wouldn't run." (Ex 22:3-4, Ex 73:1)

Often, however, Maj [REDACTED] and Maj Gen Fiscus arranged their weekend running through emails. Maj Gen Fiscus's email file on Maj [REDACTED] contained at least 17 examples of this kind of scheduling, and, shortly after the regular runs began, the emails—instead of being between a major and a major general—became notes between [REDACTED] and "Cootie." (Ex 52) Maj [REDACTED] explained the nicknames:

Maj [REDACTED] Oh, from the, yeah. From the one email that, gosh, I forgot—it came around through everybody that you would have, based on what letter of your name it was or whatever. But that was just when we were, when we would email, but we would, I would never call him that when we were together. ...His was "Cootie" and mine was [REDACTED]

IO: Okay. So you used this on email?

Maj [REDACTED] Just on email.

IO: (Affirmative). But when you went running with him, you didn't call him Cootie...

Maj [REDACTED] No.

IO: and he didn't call you [REDACTED]...

Maj [REDACTED] No. (Ex 22:5-6)

Maj [REDACTED] regarded "Cootie" and [REDACTED] names derived from an email formula sent to her by her brother, as something akin to call signs in a fighter squadron. (Ex 73:2) To at least one observer, however—the anonymous complainant—the nicknames portended a suspicious relationship: [REDACTED] Maj [REDACTED] [sic] and he use sickening pet names for each other." (Ex 2:2)

Maj [REDACTED] however, insisted that the relationship, even out on the jogging trail, remained professional:

...[H]e was still the general. I mean, I would, it was still, he's still "Sir" and, you know, he's, he's still the general, you know. It was never, there was never a... I don't know it was just never a, I mean, I understood that he was a general and we, we would just, we would go run because his, you know, he wasn't able to get out during the regular day because of his schedule. (Ex 22:5)

Based upon her understanding of AFI 36-2909, *Professional and Unprofessional Relationships*, Maj [REDACTED] further maintained that, although a major's regular habit to run on weekends with a major general might appear to be unprofessional, in her case it was professional, because [REDACTED] (Ex 22:12) Moreover, there was little affectionate physical contact—the running sessions were the only times that Maj Gen Fiscus would give her hugs or kiss her on the cheek. "Sometimes if I didn't turn my face, sometimes I got a peck on the lips instead. ...It wasn't anything that was unusual." She said she never felt that she needed to pull away. (Ex 73:1)

Notwithstanding that she [REDACTED] Maj Gen Fiscus's regular running sessions with her were nearly the textbook symptom of an unprofessional relationship: "While an occasional round of golf, game of racquetball or similar activity between a supervisor and a subordinate could remain professional, daily or weekly activities could result at a minimum in the perception of an unprofessional relationship." (Ex 84:3-4)

Another symptom was "the appearance of favoritism, misuse of office or position, or abandonment of organizational goals for personal interest" (Ex 84:2), borne out by Maj Gen Fiscus's breach of confidentiality when he agreed to reveal prematurely to Maj [REDACTED] the results of the [REDACTED] on [REDACTED] (Ex 52:27)

Finally, the consistent, long-term use of "Cootie" and [REDACTED] in emails between the two was a blatant violation of the customary protocol between an O-8 and an O-4, and, despite Maj [REDACTED] recollection that they only used the informal communication in matters dealing with physical workouts, it is clear from Maj Gen Fiscus's files that the unduly familiar nickname use extended to other personal and professional matters. (Ex 52:3, 10, 30, 42, 60, 69) Further evidence that the relationship was unprofessionally familiar, and that they both realized it, lies in the fact that when other people were the intended viewers of their correspondence, they reverted to the accepted level of formality. (Ex 52:23) Thus, although it may not have been sexual, the relationship pursued by Maj Gen Fiscus with Maj [REDACTED] was unprofessional.

Maj [REDACTED]

Maj Gen Fiscus's alleged relationship with Maj [REDACTED] largely furnished the grist for the anonymous complaint that launched this investigation. The attachment to the complaint consisted entirely of purported emails from Maj [REDACTED] to Gen Fiscus.⁵ (Ex 2) According to the complainant, Maj Gen Fiscus "...is currently having [an affair] with [REDACTED] who is in his chain of command... He even has the gall to use his Pentagon computer for his love letter emails with [REDACTED] as you can see." (Ex 2:2)

[REDACTED] (Ex 81:43-44, Ex 31:1)

Col [REDACTED] noted that Maj [REDACTED] became closely acquainted with Maj Gen Fiscus during the pressure packed days following the 11 Sep 01 terrorist attack:

[REDACTED] So in a time of crisis she was one of the ones in the foxhole and became quite close to those members in the front office at the time... Maj [REDACTED]

[REDACTED] We had a gap, in addition, we had a gap in personnel in that position, that [REDACTED] for a while, and then Maj [REDACTED] was ...

[REDACTED] In that time period [REDACTED]

[REDACTED] She's a very personable individual, so she was considered, I think, one of the office personnel, and she was a ready volunteer for all sorts of additional duties and activities. So she ended up becoming what I [REDACTED]

[REDACTED] ...So during that time period, post 9/11 until, I think, about the time of my departure [REDACTED] Maj [REDACTED] and was heavily involved in volunteering her services to help us with all our various

⁵ In her testimony, Maj [REDACTED] verified that the emails attached to the complaint, and all the others discussed in this portion of the investigation, were in fact genuine. (Ex 31:18-19, 66-220)

functions. ...[S]he was there and involved. So I don't consider her just a typical subordinate. I think she developed a quite close professional relationship with everybody in that office, to include Gen Fiscus and, to some extent, myself... (Ex 15:23)

When Maj Gen Fiscus moved from the DJAG position to become TJAG, Maj [REDACTED] helped with both celebratory events—the open house at Maj Gen Fiscus's residence and the investiture ceremony. She wrote him an effusive thank-you note on 25 Feb 02, and told him, "...if I have someone like you to follow, I'm more than willing to go the distance." (Ex 55:1)

Two months later, the two arranged for an "attitude check," or "AC," at an Irish pub [REDACTED] Maj [REDACTED]. By this time, although Maj [REDACTED] was [REDACTED] to Maj Gen Fiscus, he was still "Sir" to her. (Ex 55:2) This formal, professional relationship was shattered by the AC at the pub, and that evening, 30 Apr 02, Maj Gen Fiscus became "Homey," and all reference to "Sir" went away. Maj [REDACTED] remarked that she would make time to get together with him, and hoped that after her approaching move to [REDACTED] they could still keep in touch by email. (Ex 55:4)

On 5 May 02 [REDACTED] emailed Homey that she looked forward to their date the next day, and was happy that he could "...relax a little when we're talking and just kicking back being friends." (Ex 55:5)

The ACs continued through a temporary duty assignment at [REDACTED] and on 10 May 02, she asked him if she could close her emails with hugs and kisses—"Hs and Ks—if that's allowed!!"

The major general responded, "Allowed? Encouraged!!" and signed his note, "Homey." (Ex 55:9)

Between the initial encouragement and the date she left for her new assignment in [REDACTED] the two had several more ACs—including more dates at the Irish Pub—leaving Maj [REDACTED] to wonder "...where my head is at right now. Not to mention my heart," and confided that she was "...getting to the point where I don't like to see you go. I'd rather keep you and just spend time making sense of all this, but in your arms and not apart..." (Ex 31:38, Ex 55:11) She testified that on Sunday, 23 Jun 02, Maj Gen Fiscus came to her apartment early in the morning and the two slept together for the first time. He did the same thing again on Tuesday, 25 Jun 02. However, her version of "sleeping together" did not include sexual intercourse—she said it was what the two referred to as "spooning," or fitting their underwear-clad bodies together in her bed, like two spoons fitting together in a drawer, and when he came over early and got in bed with her, their code for that was a "wake up call." (Ex 31:136-137, 188)

Maj [REDACTED] reported that they also engaged in "face time" and "lap time," which meant that she sat on his lap while they kissed and his hands roamed all over her. Maj [REDACTED] testified that one of these lap time sessions was the opportunity for her to let Maj Gen Fiscus know that sexual intercourse was forbidden— [REDACTED] and she was not willing to take that step for this relationship. (Ex 31:55-56, 115, 190-191) She asserted:

Hmm [REDACTED]

[REDACTED] I didn't want the sex because I didn't want, it's hard enough for me with the, the emotions and the feelings and, and I know how I am, so if I'm gonna throw sex into it, it's, you know, then it becomes a crap shoot for me. I take a chance with this guy just dumping me, so I thought, "Well, don't go there. You're afraid of it, just keep it like it is. He's all right with it, I'm certainly all right with it. I just want it to be nice." I didn't want it to be a crap shoot, you know, you know, kind of a notch in the old man's, you know, bedpost. (Ex 31:199)

The sexual gratification then, stopped at fondling—through their clothes. Maj [REDACTED] recalled:

Maj [REDACTED] All I've said is that we've not had sex. I've never, ever said that we have not spooned, that we haven't touched, that we haven't kissed or hugged. We've done all of those. I told [REDACTED] no sex, and there has not been any sex.

IO: Now ...what does "sex" mean to you?

Maj [REDACTED] Intercourse.

IO: Okay. So anything other than intercourse is sex, or is not sex?

Maj [REDACTED] Sir, I'm going with the spooning, the kissing, and the lap time. That's all we ever did. Shorts were always on or boxers were always on. I mean, there was none, nothing. There wasn't...

IO2: You've never been naked with each other?

Maj [REDACTED] Never been naked with each other. Not going there.

IO: And he did not fondle you through your clothing?

Maj [REDACTED] I can't say he didn't, you know, [REDACTED] rub my, my back I suppose...

IO: Did you ever fondle him through his clothing?

Maj [REDACTED] On his lap. Yes, on his lap. But I mean sitting on his lap and rubbing up against him. (Ex 31:164-165)

To keep the passion alive despite their separation—she was transferred to [REDACTED]—she sent him sexually charged email notes, beginning with her arrival at [REDACTED]. They understood, however, that they should avoid using the government email system for their love notes. She told him on 1 Jul 02, "I'll email more later on your AOL account." (Ex 55:14)

Nevertheless, the suggestiveness of the emails she continued to send to his official address got the attention of [REDACTED] who could see the first few lines of Maj Gen Fiscus's emails through the "AutoPreview" feature of the Outlook email software without actually opening the emails. On 9 Jul 02, Ms [REDACTED] alerted Maj [REDACTED] to the presence of four suspicious emails on the computer screen. (Ex 72:3) The emails referred to Maj [REDACTED] and Gen Fiscus's having their "hands on each other," "cooking naked," and "lap time," which Maj [REDACTED] (Ex 72:5) described herself as dumbfounded at what she considered "quite possibly an adulterous relationship," and anguished for several days over what duty required her to do in response. (Ex 72:5-6) At length she decided to take Gen Fiscus to task over the email, and she did so on Monday, 15 Jul 02 (Ex 72:29). She testified that

I basically just confronted him, and not with a lot of specificity, I told him that I had seen an email—I didn't tell him how. [REDACTED]

[REDACTED] So I didn't tell him where I had seen it, how I had seen it, I just told him that I needed to talk to him about something.

We sat down. I told him that I had seen an email that I didn't know what the context was. I had not read the full email, but that it appeared to me that what I had seen was inappropriate, and I'm pretty sure that I mentioned that it was between him and [REDACTED]. I mean, I think I identified her as the recipient.

Actually, I don't even know, I'm assuming it was from her to him since it was in his inbox. I basically just told him— as much as a major can do this to a major general—that I was disappointed and that I felt he had put me in a very difficult position, and that while I didn't know what was going on, I didn't want to know what was going on, that if something was going on that I thought he needed, not just for his own self-preservation, but for the good of the JAG department, that he needed to do the right thing, basically.

[REDACTED] on a lot of issues and there was a lot of consternation in the department, and I remember I brought that up and said, "There's so much out there right now that," you know, "the JAG department is being—I don't know if criticized is the right word—but," you know, "there was so much going on out there, we don't need you," you know, "giving us another issue in the JAG Corps."

And so I guess I was trying to appeal to perhaps not only his personal interests, but also the interests of the JAG department that he was running, and he never said one word during the inter... I mean during the, ah, my comments. He listened.

I told him, I said, I didn't, I wasn't looking for anything. I just wanted him to know how I felt about it and that I thought he had put me in a very difficult situation. I think I also told him that as much as I respected him and had worked for him—and there is a certain sense of loyalty I think you have, [REDACTED]—that I wasn't going to risk my career or my integrity or my responsibilities to protect him. And I think that was about it. (Ex 18:11)

On the same day that Maj [REDACTED] counseled Gen Fiscus about the emails and the appearance of impropriety, 15 Jul 02, Homey emailed [REDACTED] (Maj [REDACTED] that he would fax his calendar to her as long as she could be "at the fax machine to receive it." (Ex 55:29-31) Maj [REDACTED] stated that she needed his calendar so that she knew when to call him, and could let him know when to call her. (Ex 31:154) She remarked that her office was "[REDACTED]" (Ex 55:27)

One effect of Maj [REDACTED] counseling effort was that Maj Gen Fiscus warned Maj [REDACTED] not to continue sending her suggestive emails on the government email account. Once Maj [REDACTED] became settled in [REDACTED] and got a commercial email hookup from her quarters, the couple established email connectivity through their AOL accounts, and the relationship went underground. (Ex 31:46)

Maj [REDACTED] testified that she had no more face time or lap time for the two years she was stationed [REDACTED]. She did acknowledge, however, seeing him on several occasions. In [REDACTED] but she reported that they did not have an AC. (Ex 31:54) She also indicated that she saw him a couple more times [REDACTED] but she said there was never the time for romance. (Ex 31:56-57)

Maj [REDACTED] stated that during her [REDACTED] tour she returned [REDACTED] several times—for leave in [REDACTED] and so forth—but said she only saw Maj Gen Fiscus twice. She encountered him during [REDACTED] and despite the fact that that he attended the [REDACTED] she said, again, there was no time for an AC. (Ex 31:61-62, Ex 72:1) Additionally, in May 04 she attended [REDACTED] at which he spent time, but she said she had to share Fiscus's company at dinner with a host of others. (Ex 31:171)

The email relationship remained hidden on AOL until after Maj [REDACTED] 12 Jul 04 [REDACTED] when it was forced out on 22 Jul 04 by Maj Gen Fiscus's official travel to Southwest Asia. Since AOL was inaccessible via his handheld computer, he had to advise Maj [REDACTED] of his safe arrival in Qatar by means of his official email account—three minutes after he had likewise notified his wife. (Ex 55:42-43, Ex 81:42) Maj [REDACTED] responded to "Sweets" that "any melting [due to the desert's high temperatures] should be left for when you're in my arms. We'll do that when you get home. ...I love you." (Ex 55:46)

She testified that, in the course of the relationship, she believed they were in love; not only did she profess her love for him, but "[h]e told me that he loved me," too. (Ex 31:172)

In her new job [REDACTED] Maj [REDACTED] [REDACTED]. On 4 Aug 04, as Col [REDACTED] recalled from a conversation with Maj Gen Fiscus, she telephoned and asked to speak to Fiscus:

Col [REDACTED] He just said that ...she had called him and said, "Can I talk to you?"

And he said, "Well, sure, you can talk to me."

"Well, can, can we go get a cup of coffee?"

And he said, "...I don't know, ...what's this about?"

"Well, I really need to talk to you." She was being evasive and was not telling him.

"Well, could I drive you to the airport?" And he said okay.

IO: And she would've found out that he was going to the airport because he would've told her that, "I'm getting ready to leave"?

Co: [REDACTED] Don't know the answer to that. Maybe so. And ...he agreed. And she told him that she felt like she was being [REDACTED] and wouldn't tell him who it was. (Ex 11:20)

Early in the morning of 5 Aug 04, Maj [REDACTED] telephoned Mr [REDACTED] with a request to take some time to drive "a friend" to the Baltimore-Washington International (BWI) airport:

...And on the morning of the 5th, Maj [REDACTED] called me from her home or wherever she was, I think it was on a cell phone, and asked if she could take a friend to the airport. There had been, she had been scheduled [REDACTED] that day and the [REDACTED] apparently had been called off, and I said, "Sure, go ahead," you know, "if you need some time off to take somebody to the airport."

Later that day as I was leaving work, the phone rang out in the front. I was at the front door; I was leaving. It was between 6:15 and 6:30, and I picked up the phone and somebody said, they either said, "This is Al Somebody," or something close to that, but I didn't catch the name immediately. The connection wasn't great. It sounded like they were on a cell phone and they said something to the effect—and I don't remember the exact words—"Just wanted to let you know I was out at BWI airport this morning, and I saw Gen Fiscus out there with an Air Force major and they engaged in what I thought was unprofessional conduct. He hugged her and kissed her and then the two parted."

He said he thought it was totally inappropriate, and he said he was going to get in touch with the IG, perhaps, and then call me back to find out what I had done about it. Well, I was—I didn't know who this was, and he hung up—I mean, it wasn't a dialogue. It was more of a one-way, one-way thing. So I was rather stunned. (Ex 37:1-2)

Mr [REDACTED] became even more upset when he found that Maj [REDACTED] had brought Maj Gen Fiscus's car back to her house and parked it in her driveway. (Ex 79:2-5) Since Maj Gen Fiscus was obviously out of town, the next day he reported the accusation to Col [REDACTED] who spoke to Maj Gen Fiscus about it, and then, as Mr [REDACTED] recalled, Fiscus called [REDACTED]:

...He did not deny the hugging and kissing at the airport and then later that morning, I got a call from Gen Fiscus and I told him, I said, you know, "What are the odds of somebody recognizing you at the airport at BWI and observing this?" and, you know, "You can't do this kind of stuff, Boss—not smart." And he didn't deny it.

He said he took responsibility for it, it was just a friendly peck on the cheek and a hug for taking him over there. Didn't get into the reasons that they were together, why she was doing this at all because it's—from here it's an hour and a half in rush hour traffic, which it was, and an hour and a half or two hours back, and she was going to do it again on Sunday. So I didn't get into that. I just told him that I didn't think it was real smart to get into this situation and assumed that he would accept a word from the wise and that was the end of it. (Ex 37:3)

The complaint to Mr. [REDACTED] however, did not end the relationship, though Fiscus and [REDACTED] made an effort to cut back. On 17 Aug 04, Maj [REDACTED] wrote Maj Gen Fiscus following a morning AC, "Coffee was delicious and so were you. Curbing the kissing is not easy." (Ex 55:64)

After receiving the 15 Aug 04 telefaxed complaint (Ex 2), CSAF reportedly called Maj Gen Fiscus into his office on Thursday, 19 Aug, to discuss the allegations. (Ex 3:20) By the next Monday, 23 Aug 04, Maj [REDACTED] had deleted all notes to Maj Gen Fiscus from her official email files (Ex 55:66-68), and Maj Gen Fiscus's account likewise no longer contained evidence of their correspondence. (Ex 40:2-5)

In summary of her testimony, Maj [REDACTED] acknowledged that her relationship with Maj Gen Fiscus was unprofessional. She acknowledged that although the affair had begun as more or less "mentoring," it evolved to cuddling. She said their attitude checks progressed to lap time and face time. She testified that on at least two occasions Fiscus showed up at her apartment early in the morning and actually got into bed with her—spooning—but she was adamant that no sexual intercourse occurred. Eventually, she said, the relationship evolved to the point where he touched her a few times intimately, touched [REDACTED] and kissed [REDACTED]. During at least one of the lap time sessions, she said he became sexually aroused, but she would not allow him to consummate it by intercourse. In her mind, regardless of what he was thinking, it was a romantic relationship in that she loved him. (Ex 212:213)

She described three visits by Fiscus to her home following her return [REDACTED] although by this time in the relationship, she said, the spooning had stopped. (Ex 31:189) She also said that by that time the ardor—on the general's part as well as hers—had cooled:

You know, I, I have to say over the last two years I've put this all into perspective. Certainly the tour to [REDACTED] has been very lonely, but I'm not stupid, you know, so I certainly can figure that ...a man's not in something because he's happy... Certainly there's got to be something more there, but I've got to say for myself, you know, I, I can't say that it's in love anymore and hasn't been for a while, but I guess I wanted to convince myself that something was there, because how could I be so inclined to do this if it wasn't? So, and I don't want to be the kind of person who just goes cold, I guess, but I can't say that, that I'm in love with him. A lot of, you know, I just, of course after this I've certainly got a lot of questions but, you know, I'm not, you know, torn up by what I've heard but I'm certainly disappointed with what I've heard. (Ex 31:191-192)

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

37

FOR OFFICIAL USE ONLY (FOUO)

Lt Col [REDACTED]

Lt Col [REDACTED]

[REDACTED] She first met Maj Gen Fiscus in 1991 when she was a captain stationed in [REDACTED] and he was a colonel-select serving as executive officer to TJAG. They established an acquaintance during TJAG's Article 6 visit to [REDACTED] that year and remained in touch after Fiscus returned to the United States. (Ex 34:2, Ex 80:2, Ex 81:50) She recalled:

In the very beginning of my relationship with him and he, he was single at the time when we first met and we're corresponding with each other, I think I had developed feelings for him. Romantic feelings. ...I put it behind me and, but it was, there was one time, and I think it was when I was coming back from, from my assignment in [REDACTED] where, and I now forget what, he, he might've still been the exec for TJAG at the time. I did actually stay with him for a couple of days in his apartment. ...[T]here was a romantic relationship, but only for a very brief period of time... (Ex 34:16)

Lt Col [REDACTED] testified that the romantic interlude in 1993, when Fiscus was a colonel and she still a captain, included sexual intercourse. (Ex 34:17, Ex 80:2, Ex 81:50) She expected more from the relationship, and she was stunned when Fiscus married the next year:

I had developed feelings for him and in fact that's why when he had sent me the invitation to his wedding... not that I, I knew anything would happen, but, but when I got the invitation to his wedding it, it basically crushed me because he had never told me that he was dating anyone, that he was thinking about getting married, and it just, and at that point I had basically decided to end our friendship and basically called him and left a message on his answering machine telling him that and just the next time he was in, this was in [REDACTED] in [REDACTED] we met for dinner and he basically said, "Hey," you know, "let's try to still stay friends," and we actually did. (Ex 34:16)

She maintained contact with Fiscus, and [REDACTED]

[REDACTED] (Ex 34:2, Ex 59:49) Eventually, Lt Col [REDACTED] stated, by the time Maj Gen Fiscus became TJAG, they "...had basically notched down our friendship to be more one of mentorship and that was it [REDACTED]" (Ex 34:9)

Nevertheless, as Gen Fiscus became more of a family friend, she continued her informal, friendly relationship with him, and he condoned it:

Lt Col [REDACTED] I would say it's even like one [email] a year, though I, I sent him a birthday card. I, I'll send him a small Christmas gift for him and his family, but yeah. As far as, yeah, emails, it may be just like one a year and basically a, you know, as a mentor more like, you know, "I have an upcoming assignment. What can you recommend that I, that I do?" Yeah. It's, it's more become like a mentor relationship.

IO: So it's not a, "Hey, Tom, what's shaking? Love, [REDACTED]" It's nothing like that?

Lt Col [REDACTED] Well, it is a "Tom," and it is not a "Love, [REDACTED]" but it's a [REDACTED]" but it's more like a, "I'm considering doing whatever. Oh, and by the way how, you know, how's your family? What, these are the movies I've seen lately," but yeah, it has evolved more into a—yeah—a mentor relationship.

IO: So you have this relatively informal relationship that developed between you and Gen Fiscus that's, that's kind of less professional and more, "I've known you for," you know, "like 13 or 14 years," and so therefore you feel comfortable addressing him on a familiar basis? Is that the sort of thing I'm getting?

Lt Col [REDACTED] Yes, but I've been very, very careful, and I think he has too. I would never use that relationship or friendship to, to ever try to get an assignment or, or anything. I, I know that basically I, I'm in with a big pool of every other people out there trying to get assignments, you know. I, I work through my, my immediate boss here. I, I get nothing special from my friendship with, with Gen Fiscus, and I just know that's how life is. (Ex 34:7)

The emails from Lt Col [REDACTED] that Maj Gen Fiscus saved did in fact reflect more than just mentorship. (Ex 58) The pair exchanged birthday greetings, talked about movies and family problems, and remained very much "Tom and [REDACTED]":

Tom,

Thank you so much for the care package! It was greatly appreciated by everyone here...

[REDACTED] are taking such good care of them...

It looks like there are a lot of good movies opening in the States now. I hate to be missing them...

Well, let me run. It's near the end of my shift and I'm getting very tired. Take care and happy holidays!

(Ex 58:20)

Regardless of the care put into the relationship, the two former lovers maintained a cozy acquaintance—unprofessional relationship—that exceeded the bounds of propriety for a JAG lieutenant colonel with the senior officer, TJAG, responsible for approving her assignments. As AFI 36-2909 points out, “[t]he formation of such relationships between superiors and subordinates within the same chain of command or supervision is prohibited because such relationships invariably raise the perception of favoritism or misuse of position and erode morale, discipline and unit cohesion.” (Ex 84:3)

TSgt [REDACTED]

[REDACTED] (Ex 81:56) Soon after training, she found that she "...hated being a paralegal, I hated everything about this career field and I hated my job..." (Ex 38:1) Maj Gen Fiscus, then a colonel and the 15th Air Force Staff Judge Advocate, visited [REDACTED] spent about fifteen minutes with her, and turned her career attitude around completely:

We had a really bad morale and I was getting out of the Air Force any way that I could. When he came as Staff Judge Advocate for 15th Air Force he had made an appointment with everyone in the office to talk to them and he was the first person I'd met in this, in the JAG Corps, who seemed like a real person. He was funny and nice and kind and a gentleman and he, caring enough to ask me why I hated my job, made all the difference. It was really at that moment that, that changed whether or not I got out of the Air Force or not... (Ex 38:2)

Thus remotivated, TSgt [REDACTED] began corresponding with Gen Fiscus, via email and telephone, whenever she felt the need for career guidance:

...[H]e did say to me that if any, if any time I, I was gonna get out of the Air Force or not be a paralegal anymore that no matter where he was that I, that he wanted me to call him first before making any kind of decision. And he also did give me a lot of advice on how to handle my position in the office. How to, how to prioritize my work, just things that might not seem real important or deep or smart, but to me at the time coming out of [REDACTED] it was, it made a big difference. So what had happened is I had very bad experiences at [REDACTED] and [REDACTED] and at that time I, that might've been months later, I called him at 15th Air Force, I mean, at PACAF, and just, just to get like an, "Oh, my God, what should I do?" Because, to me, probably since the first time I met him, he has been really the only mentor I've ever had. (Ex 38:2)

The acquaintance continued through Aug 01, when Maj Gen Fiscus [REDACTED] then-SSgt [REDACTED] at [REDACTED] and she began to sign her emails with kisses ("x"). (Ex 60:1) By the next month, Maj Gen Fiscus had adopted an informal [REDACTED] "Tom" relationship with her (Ex 60:2), and on 17 Nov 01, [REDACTED] for an assignment at [REDACTED] AFB; [REDACTED] Maj Gen Fiscus stopped by her quarters to kiss or hug her goodbye. (Ex 10:4, Ex 38:9, Ex 60:2)

41

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

So comfortable was the relationship by 4 Mar 03 that [REDACTED] felt she could ask TJAG to get "a good job" for Col [REDACTED], the SJA at [REDACTED] (Ex 60:13)

Although in some of her emails to Maj Gen Fiscus, TSgt [REDACTED] used respectful salutations and closings (Ex 60:1, 4, 6, 15, 16), the tone of the relationship was decidedly casual. Maj Gen Fiscus, as the senior member was charged by AFI 36-2909 with "...responsibility for maintaining the professionalism of that relationship. Leadership requires the maturity and judgment to avoid relationships that undermine respect for authority or impact negatively on morale, discipline, respect for authority, or the mission of the Air Force." (Ex 84:6)

Yet, in fact, Maj Gen Fiscus encouraged the friendly, peer-level relationship: "Forget you? Yeah, like that's going to happen....not! ...As to your new assignment: I'm happy, I'm sad, I'm bereft, I'm mad that we haven't been able to have any time together..." (Ex 60:23)

That the relationship undermined respect for his authority in the JAG Corps was amply demonstrated by the testimony of MSgt [REDACTED] who had heard first-hand from TSgt [REDACTED] about the friendship. (Ex 10:4) During her assignment at [REDACTED] TSgt [REDACTED] familiar relationship with Maj Gen Fiscus became the stuff of legend, and [REDACTED] did nothing to allay the office rumors. She told her coworkers about the parting gesture (Ex 10:4, 11-13, Ex 38:9-10), and said she may even have said, in jest, "...I was going to marry him." She was also certain that she told others "...that I loved him." (Ex 38:10)

MSgt [REDACTED] who replaced TSgt [REDACTED] a few months before [REDACTED] moved to [REDACTED] recalled that just prior to [REDACTED] departure [REDACTED] [REDACTED]. While there, TSgt [REDACTED] told her she met Maj Gen Fiscus in the visitors' quarters. [REDACTED] (Ex 10:11-12) Maj Gen Fiscus's calendar fixed the date within the period 22-25 Jun 04. (Ex 80:88-89)

The last of TSgt [REDACTED] emails examined during the investigation showed that the friendly banter continued in a tone wholly inappropriate for a technical sergeant to use with a major general. In its entirety, the 9 Aug 04 note said:

Good Morning!

I thought you were mad at me...it was nice to get your email

Everything went well. [REDACTED]
[REDACTED]...the fixing of everything in the house...that was hell but we are now "homeless" [REDACTED]

[redacted] [sic] for a week before going back through [redacted] to [redacted]

How are you doing? How was the trip to the sandbox? I can't believe that finally happened...you must have called in the big guns!

Happy Monday to you!

x

(Ex 60:25)

When asked to explain the relatively informal communicative relationship, TSgt [redacted] attributed it to "...my sense of humor, probably. ...I'm not even saying that it's entirely professional, and, really, that might be part of my problem in the Corps is that maybe I'm not as military or professional as I should be..." (Ex 38:4-5)

She disavowed any romantic or sexual relationship with Maj Gen Fiscus, but acknowledged deep feelings nonetheless: "He's a fabulous man. I'm not gonna say he's not. He truly is, and I do love him as a human being and he's a fine gentleman..." (Ex 38:4)

As in his relationship with SMSgt [redacted]—but apparently without the "dates"—Maj Gen Fiscus cultivated an unprofessional and fraternal relationship with TSgt [redacted]. The undue familiarity between the officer and the NCO violated Maj Gen Fiscus's "...ethical [and legal] obligation to avoid certain relationships and activities. Officers must not engage in any activity with an enlisted member that reasonably may prejudice good order and discipline, discredit the armed forces or compromise an officer's standing. The custom against fraternization in the Air Force extends beyond organizational and chain of command lines." (Ex 84:5)

CONCLUSION.

The investigation concluded that Maj Gen Fiscus developed, encouraged, and pursued unprofessional relations with two noncommissioned officers, SMSgt [REDACTED] and TSgt [REDACTED] that also qualified as fraternization. His romantic overtures to SMSgt [REDACTED] and his "dates" with her, were especially egregious and unbecoming, since both he and she were married to other people at the time. Likewise, he developed and encouraged undue familiarity with two JAG officers, Lt Col [REDACTED] and Maj [REDACTED]. His relationship with Maj [REDACTED] however, was singularly disgraceful. Romancing another woman, not his wife, surpassed "unprofessional" and although in this case may have stopped short of adultery—[REDACTED]

[REDACTED]—the relationship was romantic and sexual, as described by Maj [REDACTED]. In all five examples Maj Gen Fiscus compromised his standing as an officer and the leader of the Air Force JAG Corps.

By a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that Maj Gen Fiscus wrongfully engaged in unprofessional relationships with female subordinate members of the Air Force in violation of AFI 36-2909, *Professional and Unprofessional Relationships*, 1 May 99, and Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*, was **SUBSTANTIATED**.

ALLEGATION 2. That Maj Gen Thomas J. Fiscus made inappropriate sexual advances toward female subordinates, in violation of the Secretary of the Air Force and Chief of Staff policy on *Commander Responsibility for Equal Opportunity*, AFI 36-2706, *Military Equal Opportunity Program*, and Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*.

FINDINGS.

1. Maj Gen Fiscus maintained email files on his government computer system documenting his communications with Maj [REDACTED] (1999-2004) and TSgt [REDACTED] (2003-2004). (Ex 48, Ex 49)
2. During the period Feb 99 to Jun 99, at [REDACTED] then-Col Fiscus made unwanted advances on then-Capt [REDACTED] by kissing her and making comments about her physical appearance. (Ex 28:1-3)
3. During an official visit to [REDACTED] Maj Gen Fiscus kissed then-Capt [REDACTED] twice during the day and, at a later social event, whispered in her ear that he was lucky to get two kisses that day. (Ex 28:6; Ex 81:38)
4. On 20 Aug 01, at the [REDACTED] Maj Gen Fiscus sexually harassed then-Maj [REDACTED] by grasping the front of her pants, approximately one inch from her crotch, and tugging, throughout a several-minute-long conversation. (Ex 7:4-5, Ex 62:1)
5. During May 02, at a [REDACTED] Maj Gen Fiscus embraced then-Capt [REDACTED] in front of her [REDACTED] mates. (Ex 28:11)
6. Between Jul 02 and Jul 04, in his Pentagon office and unsolicited by her, Maj Gen Fiscus kissed Maj [REDACTED] on the mouth. (Ex 18:33)
7. In or about Dec 03, Maj Gen Fiscus gave Maj [REDACTED] a "full body hug" in the Pentagon E-ring where it intersects with Corridor 1. (Ex 36:6-7, Ex 18:19-20)
8. In or about Mar 04, when she entered his office to drop off a staff package, Maj Gen Fiscus kissed TSgt [REDACTED] on the mouth.
9. On 3 May 04, during a social event in or near Washington, DC, and unsolicited by her, Maj Gen Fiscus embraced and kissed Maj [REDACTED] (Ex 28:14, Ex 80:64)
10. During Jul 04, in the hallway outside his Pentagon office, and unsolicited by her, Maj Gen Fiscus briefly massaged Maj [REDACTED] neck. (Ex 28:8-9)

11. On 1 Sep 04, following her acceptance of his offer [REDACTED] from a social event [REDACTED] Maj Gen Fiscus put his hand on Maj [REDACTED] knee. (Ex 28:9-10)

STANDARDS.

The joint Secretary of the Air Force and Chief of Staff policy letter on *Command Responsibility for Equal Opportunity*, 12 Apr 02, states, in part:

...We could not be the world's greatest Air Force if any of our people were subjected to discrimination or harassment. We must all be alert to any indication of discrimination or harassment and ensure that any offense is corrected. This is a commander's responsibility but it is a duty we must all take personally. (Ex 90)

AFP 36-2705, *Discrimination and Sexual Harassment*, 28 Feb 95, states in part:

Any person in a supervisor or command position who uses or condones any form of sexual behavior to control, influence or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Any military member or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment. (Ex 86:30)

AFI 36-2706, *Military Equal Opportunity Program*, 29 Jul 04⁷, states in part:

1.1. Program Policy. It is Department of Defense (DOD) and Air Force policy not to condone or tolerate unlawful discrimination or sexual harassment within the Armed Forces or in the civilian workforce. (Ex 83:8)

1.8. Judge Advocate General of the Air Force (HQ USAF/JA).

1.8.1. Provides legal opinions, instructions and guidance concerning MEO policies and procedures.

1.8.2. Provides guidance on MEO policies and procedures to Air Force legal officers. (Ex 83:12)

⁷ The previous version of AFI 36-2706, dated 1 Dec 96, does not differ substantially with reference to the standards cited in this report. The two versions may be compared at Exhibit 83.

Sexual Harassment—A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career or (quid pro quo harassment).
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person or (quid pro quo harassment).
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.

This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive—and the victim does perceive—the work environment as hostile or offensive. ("Workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day.) Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence or affect the career, pay or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments (such as slurs or jokes), written communications (such as emails or cartoons), gestures or physical contact of a sexual nature in the workplace is also engaging in sexual harassment. (Ex 83:78)

The Manual for Courts-Martial, 2002 Edition, discusses articles of the UCMJ and states in part:

Article 133—Conduct unbecoming an officer and gentleman

...Conduct violative of this article is action or behavior in an official capacity which, in dishonoring or disgracing the person as an officer, seriously compromises the officer's character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer. There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice, or cruelty. Not everyone is or can be expected to meet unrealistically high moral standards, but there is a limit of tolerance based on customs of the service and military necessity below which the personal standards of an officer, cadet, or midshipman cannot fall without seriously compromising the person's standing as an officer, cadet, or midshipman or the person's character as a gentleman. (Ex 89:IV-93, 94)

ANALYSIS.

Lt Col [REDACTED]

Following the announcement in the national press that Maj Gen Fiscus was under investigation for "...inappropriate sexual relationship with a female subordinate and perhaps with other women," (Ex 68:1), Lt Col [REDACTED]

[REDACTED] telephoned SAF/IGS—in tears—to give sworn testimony that she had been sexually harassed by Maj Gen Fiscus while she was stationed at [REDACTED] in 2001. (Ex 7) She related that at the [REDACTED]

[REDACTED], on 20 Aug 01 (Ex 62), Maj Gen Fiscus stood close to her at the [REDACTED] and for several minutes while they were alone, tugged on the fabric of the front of her pants while he talked to her:

...I was assigned to be Gen Fiscus's [REDACTED] when he came to visit as part of the [REDACTED]

[REDACTED] and it was held at [REDACTED] and so I had your typical [REDACTED]

[REDACTED] The very first night of the, of the conference, we typically have in the JAG Corps, and I'm sure it's similar in other career fields as well, and [REDACTED] And that year, they decided they were going to have [REDACTED] and so [REDACTED] Gen Fiscus and his exec officer, and [REDACTED] them to the [REDACTED] And because I was his [REDACTED] I was on Gen Fiscus's team...

...And the other two members of the team had stepped away to get refreshments and Gen Fiscus and I were just, were standing there to the side. And we were all casually dressed. [REDACTED]

[REDACTED] I was wearing jeans and a polo type shirt and, well, actually [REDACTED]

[REDACTED] So, I was trying to chit chat and, so he wasn't standing there by himself and, and then while I was talking to him and this is kind of hard to explain, I'll do the best I can, suddenly I felt his hand on my pants. Specifically, it was not on my crotch, although it was crotch level, but it was at the very top of the leg, next to my crotch. He grabbed the material of my, my pants. So, as he was talking to me, he would pull on my pants. As you can imagine, this was quite disconcerting to me, and after a few minutes, he subsequently stopped... (Ex 7:1-2)

[REDACTED] then, Maj Gen Fiscus faced her, within about an arm's length. As they talked about nothing in particular, perhaps about how frequently he [REDACTED] he

grabbed the fabric of the front of her pants, "...about an inch from my crotch. ...And he kept it in his hand and he pulled it the entire time. He would—kept tugging it as he was talking to me. He would release and pull, release and pull." (Ex 7:2, 4-5)

She reported that she was stunned—"...so shocked, I did not know what he was doing. I didn't know what to do." (Ex 7:2) Her participation in the [REDACTED] was ruined; she felt that the environment at the [REDACTED] had suddenly and decidedly become hostile—from then on, she said, "I was a nervous wreck any time I knew I had to interact with him." (Ex 7:6)

Lt Col [REDACTED] testified that on 21 Aug 01, the day following the traumatic event, she told her supervisor, Lt Col (Ret) [REDACTED] about it. (Ex 7:5) [REDACTED] corroborated that she had informed him of the incident the next day, and his memory of the details dovetailed with Lt Col [REDACTED]

I think she was pretty, pretty shocked that he would intentionally touch her leg to her belief. Now, this happened, and my understanding was that this occurred, and you can verify this with Col [REDACTED]. My understanding was that this occurred while they were, you know, [REDACTED]

[REDACTED] It wasn't a case of they were, you know, they were somewhere else. My understanding from [REDACTED] coming to me was that this occurred specifically [REDACTED] (Ex 21:5)

[REDACTED] stated he believed that since Lt Col [REDACTED] did not formally report the harassment, no action was taken in 2001 (Ex 21:4), and he thought it understandable: "...[T]o the best of my knowledge, [REDACTED] never went forward at that time, which I think you can understand, probably her personal reluctance in light of the fact that they were in a public area and she was very, you know, surprised that this occurred, and I'm sure it was very traumatic from her standpoint..." (Ex 21:7)

Lt Col [REDACTED] said that until now, when she has not been able to avoid attending JAG Corps events—ceremonies, galas, dinners—that would put her in proximity to Maj Gen Fiscus, she has hidden from him. She testified, "...I'll be quite honest. Any event that I've had to attend since, that involved his presence, I'd do anything either to not go or to stay so far in the back of the room that I, he doesn't know I'm there, or I don't, and I don't have to interact with him." (Ex 7:7)

Maj [REDACTED]

Maj [REDACTED]

81:26)

(Ex

[REDACTED] (Ex 18:6) Maj [REDACTED] was also one of the women specifically mentioned in the complaint as currently having an affair with Maj Gen Fiscus, although throughout the course of the investigations, the IOs found no evidence to support that claim. (Ex 2:2)

When Col [REDACTED] in 2002, he found Maj [REDACTED] to be an outstanding officer, and was impressed not only by her dedication to Maj Gen Fiscus but also by his reliance on her:

...Maj [REDACTED] is a very efficient person. ...Some people would probably say anal in terms of you know her attention to detail and attentiveness, and she was very protective of Gen Fiscus. Now because of the way that I started the job [REDACTED]

[REDACTED] That made me a bit uncomfortable first of all because I saw some of what [REDACTED] and I didn't want him to rely upon her. One reason I didn't want him to rely upon her is that she is an attractive female and I didn't want my boss to be put in a position where people could start rumors or come to assumptions and such because they see him spending so much time with her. (Ex 14:19)

Maj [REDACTED] for her part, observed that Maj Gen Fiscus was a very affectionate person with people he met, especially women [REDACTED] and noted:

For instance [REDACTED] and when he would see a female that he knew from, you know, from whatever—a previous assignment or what have you, enlisted as well as officer, he would many times engage in a hug you know or put his arm around her or something like that. So, yes, I saw that kind of stuff fairly regularly. I think Gen Fiscus was sort of known as a touchy-feely kind of person. He's a very personable person and I think

that sometimes raised people's eyebrows because he was so familiar. (Ex.18:2)

Yet not only was Gen Fiscus physically "familiar" with those he met [REDACTED] but he also proved embarrassingly affectionate to Maj [REDACTED]. Col [REDACTED] reported:

On at least one occasion, I had a colleague of mine come to me and say that there's word on the street that Gen Fiscus may be having an unprofessional relationship with Maj [REDACTED] and that, you know that, you know there's something more than just a mentor-mentee or mentor-protégée relationship there. [REDACTED]

[REDACTED] After getting that information, I went to Gen Fiscus and I provided that information to him, that and basically it was along the lines of, "Sir, I want you to be aware of this, because I want the very best for you. This is information that's coming to me and I want you to be aware that there are people that believe this to be the case that are outside of this office." He thanked me for that information. (Ex 14:7)

Maj [REDACTED] too, was aware of the rumors surrounding her, and Fiscus's demonstrative nature concerned her vis-à-vis the rest of the JAG Corps:

IO: Did they talk to you about that? [REDACTED]

[REDACTED] Did you ever worry about that sort of thing—what people thought about you? Like I would imagine you were the recipient of hugs as well?

Maj [REDACTED] ... [T]o say that I had never thought about that would be a lie. Of course I thought about it. I was concerned about it from the point of view that I didn't want people to think that I got the job because I was, you know, one of his whatever-you-want-to-call-them. Again, I don't know, I never, I don't have any information that says that he ever had affairs with these people or anything like that, but I also know how rumor travels, especially in our small JAG Corps. And, you know, my guess is that people did talk and that was, yeah, that was a concern of mine, I think, but only in the sense of probably heightening my sensitivity to it in terms of how I did interact with him and probably why I was more critical of that kind of behavior when I did see it. ...And I would say that he was not shy at all about a full body hug with, like I said, lots of people. I mean ...when we would talk about it, ...I said, "Even if your intentions are purely ...good intentions, people will

take it the wrong way," and we talked about the fact that he had a reputation of sorts... (Ex 18:16-17)

Maj Gen Fiscus's reputation, she thought, sprang from the time he had been single, between marriages, in the early 1990s. She denied that anyone in the JAG Corps had approached her to discuss his overfriendly nature, yet her own discomfort with the affection made her feel called upon to bring it up with Gen Fiscus himself.

[Y]ou asked me ...did anybody ever say anything to me about his reputation or about their concerns about what they saw, and what I was going to say to that is no, I don't recall anybody actually coming to me and saying, you know, "You need to get him to knock that off," or, I mean, it wasn't anything like that. It was purely my perception of the fact that he was too affectionate to people in public and that he had just a general reputation of being a bit of a player which was something that stemmed from his days before he was ever married—well, he had been married and then he was divorced and during his single years—he fully admits that, you know—that's part of when he got his reputation because he did date some folks, which I don't really have any specific information on that, but he told me specifically when I talked to him about it that he felt that that reputation of sorts stemmed from his time between his two marriages when he did date and he was single and coming up in the JAG Corps and stuff. So again, those were just perceptions. (Ex 18:17-18)

Maj [REDACTED] believed that duty required her to counsel him on it when she saw the need to do so.

...I felt that he respected my opinion and gave me the, I guess, the latitude to be that honest with him and when I had the general conversations with him just about appearances and people may perceive things differently than you intend them, that, that kind of conversation, [REDACTED]
"You may not be seeing this the same way everybody else does."
And he, he at least encouraged me to give him that kind of feedback. (Ex 18:28)

She recalled two traumatic events that caused her to warn Maj Gen Fiscus sternly that he was overstepping the bounds of propriety with respect to female judge advocates—once when she had viewed sexually suggestive emails between Maj [REDACTED] and Fiscus, and one following an aggressive display of affection for her in a Pentagon hallway.

Maj [REDACTED] dealt with the first situation—the emails discovered on 9 Jul 04 involving Maj [REDACTED]—as described in the narrative for the first allegation: [REDACTED]

On 29 Jul 02, Maj [REDACTED] began work as [REDACTED] she worked for Lt Col [REDACTED] (Ex 36:1)

[REDACTED] (Ex 36:3) He became worried about the appearance of impropriety and recalled that he had talked to Maj [REDACTED] about it:

Like I said, I understand that people always talk about these kinds of things in the military or in the civilian world when a senior person is present with a junior person and they're alone and I don't think of myself as a suspicious person, but I became concerned over that period of time and when I addressed it with her she was immediately, I don't want to say, receptive. She immediately understood what I was talking about. I, I tried to raise the topic gently and she said, "I'm aware of what you're talking about, about TJAG's reputation with females in the Corps."

And I said, "Well, if you're aware of it, are you not concerned about the fact that you're down there with the door closed [REDACTED]?"

And she said, "Yes, I am, and I've raised that with TJAG." (Ex 36:4)

A few months later, in Dec 03, Lt Col [REDACTED] himself witnessed what he considered an improper advance by Maj Gen Fiscus on Maj [REDACTED]

Lt Col [REDACTED] So we were working very hard. In the week or two at the end of November or first part of December, I'm not sure of the exact timeframe, there had been a couple more of those situations where she stayed behind, I guess. I, I can't remember the exact dates, but there came a time when she went to lunch with TJAG, and I don't remember how I even knew that. I, I don't know that I knew it except that I think I went down to the front office to see him and [REDACTED] told me he was at lunch and I knew [REDACTED] was at lunch and I went back up to my office to get something and came back down and I was walking through this corridor out here on the fourth floor, whatever that is. ...Corridor

One, walking this way and standing in the intersection of the E ring and Corridor One was TJAG and [REDACTED] face to face.

I'm walking straight at them and their sides are to me and since I'd been down, I was coming down there to see him, I started walking faster. I had walked out of the, the doorway for the stairwell there, and he leaned over and hugged her there in the E ring. This is in, it's toward the middle, first part of December [2003].

...And I, I stopped for a moment, thinking, "Okay, that's not them. I, I've misidentified them," but when he stepped back away from her, it was a hug of, I don't know, three seconds.

I didn't time it, but it was a full body hug. He reached around her and hugged her with both arms. I just stared at him and stopped and they parted and she stepped away and they said something and she turned to walk down the corridor towards where I was standing and I just stood completely still and she looked up and saw I was standing there and walked on up to me and he went on down the corridor towards his office.

And she walked up to me and started talking about some [REDACTED] issue that they had just discussed, I guess. She talked about something. I don't even remember what she said. I was just flabbergasted and...

IO: Flabbergasted because it was a lingering kind of hug or you just thought it was inappropriate, or?

Lt Col [REDACTED] Because the man's a two star general and he hugged a major in the hallway of the Pentagon and she—he's her [REDACTED] and because he spent the last three or four months behind closed doors with her and I've been worried about that and I'm looking at him hugging one of my people and I'm trying to decide whether I need to go down there and grab him by the throat and say, "*You keep your hands off my majors. They're not for your entertainment,*" because I just don't believe senior officers should do that. That's the only way I can explain it. I was just taught that you don't do that. If that's wrong, I apologize. That's just, that's the way I was taught. (Ex 36:6-7, emphasis added)

That "full body hug" earned Maj Gen Fiscus his second sit-down counseling session from Maj [REDACTED].

...[T]here was an incident where somebody saw him hug me in the hallway and it was right around Christmas, it was right after I had gotten back from the Christmas holidays or something like that and so it was a, you know, I don't... well, I don't know how to phrase it but, yes, my, my immediate supervisor saw a hug, expressed concern to me, there was a lot of conversation about it and I had a conversation with Gen Fiscus after that. ...[I]t was a behind-closed-doors, sit-down conversation. It wasn't a comment in passing. I mean I had a sit down conversation with him where I told him that, you know, I thought that that kind of interaction was inappropriate and that, again, I mean it was the same theme that we had talked about before and that was, "Whereas your intentions may be purely," ah you know, "good meaning, somebody else seeing it, which in this particular case happened, is not what somebody else will perceive," and that was my concern all along. (Ex 18:19-20)

Although she professed no offense at private hugs, she drew the line at public hugging and kissing because of the embarrassment it might cause the JAG Corps. Moreover, when Maj Gen Fiscus kissed her on the lips, she felt distinctly uncomfortable, backed away and left him. As she described it, "I guess, if I'm, if I'm putting a definition on it and saying what felt, made me feel uncomfortable, I would say that a hug didn't make me uncomfortable. A kiss made me uncomfortable. And a hug made me uncomfortable if it was in public." (Ex 18:20)

Worse than that, she felt that his kissing her exceeded the bounds of her close personal working relationship and created such a hostile environment that she was forced to leave [REDACTED]:

Maj [REDACTED]: I was just going to say yes, but I didn't take the kiss as, I mean, the kisses are what made me uncomfortable, and the hugs I just saw him giving everybody, so I didn't think anything of it. So I just want to clarify that I didn't, if, you know—the kiss is what would have put it outside the realm of, you know, just our close personal relationship [REDACTED] ...I would say the kiss on the cheek probably made me uncomfortable; I didn't see it as a suggestive sexual thing like I had to return anything. The kiss on the lips, totally, totally made me uncomfortable.

IO: Okay, but it's not something that you gave him overture or anything—he just kissed you on the lips and you didn't respond and that was the end of that.

Ma [REDACTED] I responded in the sense of backing off and leaving the office but I didn't say anything to him, no sir.

IO: Okay, but did you push him away or did you just back off?

Ma [REDACTED] I just backed off and walked out. (Ex 18:32-33)

TSgt [REDACTED]

TSgt [REDACTED]

[REDACTED]
(Ex 19:1, Ex 2:2)

[REDACTED]
[REDACTED] and Maj Gen Fiscus called her in to his office from time to time, encouraging her to talk [REDACTED]. She noted that Gen Fiscus was an affectionate person and would occasionally give her a hug. (Ex 19:2-4) When she left that position to work in [REDACTED] Maj Gen Fiscus continued his interest in her, taking her out to lunch at the Pentagon Executive Dining Room, or the American Café outside the Pentagon, maybe three times—just Fiscus and [REDACTED]—to “catch up” (Ex 19:14):

Occasionally we'd have lunch together or something just to like catch up. It's kind of funny. He said sometimes he went, you know, just to have someone treat him not just as Gen Fiscus, but just as a person, and that was part of what, I think a lot of people like about him, he's very personable, you know, and he referred to, like, just being invited somewhere because he's TJAG—not necessarily him as a person. So it was kind of interesting.
(Ex 19:4)

TSgt [REDACTED] testified that, with Maj Gen Fiscus's encouragement, [REDACTED]

[REDACTED] She described herself as, “...pretty picky, I guess, as far as stuff like that goes. I'm not really big on being a big hugger.”
[REDACTED] (Ex 19:6)

Some time after she began her job [REDACTED] she stopped by Maj Gen Fiscus's office to deliver a staff package, and she was stunned when he kissed her on the mouth, and thought it so strange that she felt necessary to discuss it with a close friend:

TSgt [REDACTED] Yeah. Because maybe I did think it was a little odd but...

IO2: Why'd you think it was odd?

TSgt [REDACTED]

IO: So if that was the case when Gen Fiscus hugged you, did it make you uncomfortable?

TSgt [REDACTED] Um, well. I knew he did it out of caring, not out of abuse or trying to make me feel uncomfortable...

IO: (Affirmative) So you were receptive to it when he hugged you—I mean you didn't stiffen up and push him away or anything like that?

TSgt [REDACTED] I don't think so. I think when he kissed me on the cheek, I thought it was a little odd, but I think it was kind of affection and, "I care," you know, kind of thing, but not like, it didn't seem like anything sexual to me which I...

IO: And again, was there ever anything more intimate than a hug or a kiss on the cheek?

IO2: He never kissed you on the mouth?

TSgt [REDACTED] (Sigh)

IO2: Do you remember him ever kissing you on the mouth?

TSgt [REDACTED] (Sigh) <long pause> (Sigh) There was one time I stopped by the office and he did and I, I backed away. Just that time... kissed me on the cheek. (Sigh)

IO2: Did you kiss him back?

TSgt [REDACTED] No. I kind of backed away. I kind of gave him a look and he asked if that was okay, and I just, it was kind of kind of like, I don't know. That seemed a little odd to me, but I'm not one that typically kisses friends on the lips. So I just think that's strictly for like a boyfriend kind of situation, but I see a lot of people do that though, it's just not me. [REDACTED]

[REDACTED] I'm just not being open, you know he was kind of into like hugging strangers and I just, I wasn't, you know you hug good friends. And so...

IO2: So that's what your [REDACTED] complained about?

TSgt [REDACTED] That I wasn't really affectionate with strangers; yeah, I think that's unusual.

IO: ...Okay, so you came into his office. You dropped off a package, he kissed you on the lips, and you...

TSgt [REDACTED] He gave me a hug and kissed me on the lips.

IO: And you backed away, and then or gave him some signal that...

TSgt [REDACTED] Yeah—he saw the expression on my face that it was kind of, kind of odd.

IO: And then what did he say?

TSgt [REDACTED] He asked, "Was that okay?" Was that, you know... I think he, he saw the expression on my face and... (Ex 19:18-21)

TSgt [REDACTED] didn't think that anybody had seen him kiss her on the mouth, even though the door was open and [REDACTED]. She believed that her reaction had been enough to give him the message that he had exceeded her comfort level, and she did not expect him to try it again (Ex 18:25), "...because of my facial expression. I was just like, there was really, I mean—I don't have a poker face to save my life, so... I don't think he has [tried to kiss me again] because of that—I don't think he wants to offend me." (Ex 19:32-33)

However, she suffered recriminations because, other than the expression on her face, she had not provided him direct feedback that what he had done was offensive. She thought it was

her responsibility to tell Maj Gen Fiscus that his kissing her on the mouth was unacceptable behavior, and she had failed to put him on notice:

TSgt [REDACTED] ... I was really struggling, on the fact that I don't think I had really talked to Gen Fiscus that I thought it was really unprofessional. I just told him I wasn't really sure how I felt about it. And I think that's why I was kind of feeling bad ... talking about it. Because I hadn't really discussed it with him and I don't feel I was really open with him to tell him how that made me feel. That bothered me. I was thinking, ma'am [REDACTED]

[REDACTED] I guess I don't really see how I... see that separately as being professional. Um, I have a lot of respect for Gen Fiscus. I really like him and I wish that he wouldn't have done that.

IO: Done what? Tried to talk to you?

TSgt [REDACTED] Um, had tried to kiss me, because it bothered me. I, I've tried to be okay with it.

IO: You were trying to be okay with his trying to kiss you, you mean?

TSgt [REDACTED] Yeah, because I was, trying to somehow try to separate it as far as, well, it wouldn't be as professional, it would be as friendly affection, kind of, and it's just not something I see as acceptable in me [in] either circumstance, I guess, really. It's just not something I typically do with friends and maybe other people, but I don't, and I just feel kind of bad that I just never talked to him about it, that how much it bothered to me, and now talking to somebody else about it just feels a little awkward to me, but he was never given a chance to say he was sorry. (Ex 19:37-38)

Maj [REDACTED]

In Jul 04 Maj [REDACTED]

[REDACTED] (Ex 81:38) She recalled meeting Maj Gen Fiscus, while he was ACC/JA, during his official visit to [REDACTED] in 1999. (Ex 28:1, Ex 81:16, 38) She noted that he was instantly affectionate and admired her hands:

I don't remember a lot of any of the details surrounding the visit, but I do recall [REDACTED] that General Fiscus kissed me on the cheek several times, you know, throughout that [REDACTED] visit, I'm sorry, and made comments that at the time I just, honestly I didn't think too much about it. I just, I don't know. I don't know what I thought, actually, but made comments that I had pretty hands and, and little things like that and, and that was pretty much the extent of my interaction with General Fiscus at that time. ... I just remember in my mind thinking at the time, "That's a little odd." But it didn't, besides me thinking that, I just let it go. I mean, it was like, the kisses seemed a little odd because he didn't kiss everybody on the cheek during that [REDACTED] visit. And some of the male JAGs in the office had made comments about him kissing me... (Ex 28:1-2)

During her follow-on assignment to [REDACTED] Ma [REDACTED]

[REDACTED] She encountered Gen Fiscus again during another official visit to that base, and he "... had given me a hug and had said, you know, 'You don't have to get out of the Air Force. [REDACTED] and,' you know, 'who might need extra consideration when it comes to their duty hours,' and things like that..." Fiscus offered to help [REDACTED] when Gen Fiscus gave her the hug in the base SJA's office, "...I, honestly I thought that he was just trying to comfort me at that point—and I didn't think that, you know, there was anything bad happening or anything like that." (Ex 28:5)

Later in the visit, however, as she went about the base on the various duties for which she had volunteered, "...I remember General Fiscus kissing me on the cheek one time in the morning during one of these functions, and then one time at night, and then leaning over and whispering

[REDACTED]

This is a privileged document. It will not be released in whole or part, reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

into my ear something to the effect of 'I'm so lucky. Today I got two kisses.' Which I immediately told my husband about, because I knew that was wrong." She recalled that this action shocked her so much that she did not reply or acknowledge the comment, and added:

I know that for sure, and I had been going through so much personally with everything in my personal life at that time, I felt badly that I would—I thought—just the whole situation made me feel bad and I just couldn't understand why he would say something like that, really, and, you know, I mean, at the same time, you know, struggling with and feeling conflicted about the fact that I'm an attorney—[REDACTED]—and wanting to believe that this general officer who, you know, everybody admires and respects, would actually say that. (Ex 28:6)

Her next assignment was as [REDACTED]

[REDACTED] There, she had an additional duty as the official greeter and when Maj Gen Fiscus, now TJAG, came to visit, she stated, "I remember him giving me a hug in front of everybody [REDACTED] which was a little odd because he didn't hug everybody else..." (Ex 28:11)

[REDACTED] took part in a series of meetings in Washington, DC, and while in the area she also attended a retirement ceremony for [REDACTED]. During the retirement festivities, Maj [REDACTED] testified, Maj Gen Fiscus noticed her, approached her, and gave her a hug and a kiss. A former supervisor of hers, Col [REDACTED] noticed the embrace, came up to her, and remarked, "Oh, so you're coming to [REDACTED] ...I knew General Fiscus always liked you." (Ex 18:14)

Shortly after Maj [REDACTED] arrival in the Pentagon [REDACTED] she encountered Gen Fiscus in the hallway:

...[H]e had stopped me and we, we were just talking about stuff and he was asking me how, you know, the moving-in process was going and whatnot and I was telling him how beautiful this, you know, region is and how neat it is to come to work and see the White House and see the Washington Monument and things like that and he took his hand and he was standing fairly close to me to my left and he put his hand on my neck and started massaging my neck a little bit. (Ex 28:8-9)

Maj [redacted] testified that a few weeks later, on [redacted] Maj Gen Fiscus made one additional unwanted advance (Ex 74), and this one triggered Maj [redacted] to add up all the others and put the whole situation in perspective:

I had been stranded [redacted] after one of the ceremonies recently where he was the presiding official and he had asked me how I was [redacted] and [Gen Fiscus is] like, "Well, don't worry about it," you know. "I'm happy to drive [redacted] It's no big deal."

And I was like, "No," you know, "it's no, really, I don't want to bother you. You, you've got a busy schedule."

And he said, "No, that's okay. I'll drive you home."

And I said, "Okay."

And he had his Corvette that day and he asked me if I wanted to drive and I said no, you know, I don't really, I don't want to drive his car, but thank you. And I was sitting to his right and at some point during the drive, as we were talking about different things, he put his right hand on my knee and held there long enough that I thought it was odd and made me feel uncomfortable, but, you know, I don't remember him massaging it, or, you know, anything like that. I just remember, you know, "Why would he put...?" (Ex 28:9)

Much like TSgt [redacted] before her, Maj [redacted] found herself feeling as if she, somehow, had failed in her duty to hold Maj Gen Fiscus accountable for his actions. Upon reflection, she felt naïve:

...[A]nd the other irony for me is that I was the person who at [redacted] had been [redacted] and, you know, had put a lot of work into that to help people and, not that this amounts necessarily to rape or anything like that obviously but, you know, I have worked with victims, and here I, I'm, you know, it's hard to accept yourself as being a victim and it's hard for you to, for me to understand and really put together the fact that I was being victimized during this time, and throughout some of the things as they were happening, you know, I questioned what I was seeing and what I was going through. I didn't, you know, you think somebody who's been to law school should be smart but...

The bottom line is that ...I don't want to hurt the Air Force and this is obviously something that with all the work that I've done, especially at [redacted] you know, you worry about the

implications of these types of things and how they're gonna affect, you know, where the Air Force is and where the Air Force is going and, and in addition to all of the other part of this, which is that it, I have felt so hypocritical and stupid, really, for letting all this stuff happen and never, never reporting it or never saying, you know, "General Fiscus, what are you doing?" (Ex 28:10-11)

CONCLUSION.

The sworn testimony of victims and witnesses makes clear that Maj Gen Fiscus repeatedly made unwanted advances and unprofessional public displays of affection toward female JAG Corps members. He inappropriately touched Lt Col [REDACTED] and Maj [REDACTED], and inappropriately kissed TSgt [REDACTED] and Maj [REDACTED] on the mouth. His actions, for the women he victimized, created a hostile work environment, as defined by AFI 36-2706. Furthermore, it is also clear that one of the victims of his advances, Maj [REDACTED], made multiple efforts to correct his behavior, to no avail, while two more, TSgt [REDACTED] and Maj [REDACTED] suffered guilt because they did not. Additionally, in view of his AFI 36-2706 role as the Air Force provider of guidance for the prevention of sexual harassment, Maj Gen Fiscus exhibited stunning hypocrisy by his own sexual harassment of JAG Corps subordinates.

By a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that Maj Gen Fiscus made inappropriate sexual advances toward female subordinates, in violation of the Secretary of the Air Force and Chief of Staff policy on *Commander Responsibility for Equal Opportunity*, AFI 36-2706, *Military Equal Opportunity Program*, and Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*, was **SUBSTANTIATED**.

ALLEGATION 3. That Maj Gen Thomas J. Fiscus wrongfully engaged in improper relationships with female civilians in violation of Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*, and Article 134, UCMJ, *General Article*.

FINDINGS.

1. Maj Gen Fiscus maintained email files on his government computer system documenting relationships with Lt Col (Ret) [REDACTED] (1999-2004), Ms [REDACTED] (2001-2004), Ms [REDACTED] (1999-2003), and [REDACTED] (2001-2002). (Ex 44, Ex 47, Ex 50, Ex 59)
2. Beginning 30 Mar 99 with the preparation for his promotion to brigadier general, Maj Gen Fiscus reestablished a friendly, and ultimately inappropriate, relationship with Ms. [REDACTED] that lasted until approximately Aug 03. (Ex 50:2-93)
3. From about May 00 through about May 02, Maj Gen Fiscus carried on an adulterous affair with Ms. [REDACTED] dating once or twice a month, and engaging in sexual intercourse approximately ten times. (Ex 58:48, Ex 35:10)
4. On 3-4 Jun 00, Maj Gen Fiscus took Ms. [REDACTED] with him to Roanoke, VA, while he participated in a two-day on-track driver education session at Virginia International Raceway. (Ex 35:7, Ex 34:8, Ex 43:14)
5. On or about 15 Apr 02, Maj Gen Fiscus met Ms. [REDACTED] for dinner in or near [REDACTED] (Ex 50:60-62)
6. On 23 Nov 02, Maj Gen Fiscus spent an evening alone with Ms. [REDACTED] in [REDACTED] (Ex 47:4-6)
7. From 23 Nov 02 through about 14 Jun 04, Maj Gen Fiscus and Ms. [REDACTED] engaged in an inappropriate, off-and-on romantic, and likely adulterous, relationship. (Ex 47:4-37)
8. On 25 Apr 03, Maj Gen Fiscus attended the [REDACTED] with Ms. [REDACTED] then went out for dinner with her, [REDACTED] at a restaurant in [REDACTED] (Ex 20:4, Ex 50:77)
9. On 11 Nov 03, Maj Gen Fiscus and Ms. [REDACTED] shared time together at her home in or near [REDACTED] during which the evidence suggests they became intimate. (Ex 47:23-24)
10. On 16 Dec 03, Ms. [REDACTED] acknowledged spending romantic time with Maj Gen Fiscus. (Ex 44:27)

11. During the month of Dec 03, Maj Gen Fiscus engaged in an inappropriate, possibly adulterous, relationship with Ms. [REDACTED] (Ex 44)

12. Between 16 and 21 Apr 04, Maj Gen Fiscus and M [REDACTED] spent romantic time together, either at her home or at a hotel nearby in which Maj Gen Fiscus had reserved a room. (Ex 47:31-33)

STANDARDS.

The Manual for Courts-Martial, 2002 Edition, discusses articles of the UCMJ and states in part:

Article 133—Conduct unbecoming an officer and gentleman

...Conduct violative of this article is action or behavior in an official capacity which, in dishonoring or disgracing the person as an officer, seriously compromises the officer's character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer. There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice, or cruelty. Not everyone is or can be expected to meet unrealistically high moral standards, but there is a limit of tolerance based on customs of the service and military necessity below which the personal standards of an officer, cadet, or midshipman cannot fall without seriously compromising the person's standing as an officer, cadet, or midshipman or the person's character as a gentleman. (Ex 89:IV-93, 94)

Article 134—General article (Adultery)

Elements.

- (1) That the accused wrongfully had sexual intercourse with a certain person;
- (2) That, at the time, the accused or the other person was married to someone else; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(Ex 89:IV-97)

ANALYSIS.

Lt Col (Ret) [REDACTED]

The anonymous complainant cited Lt Col (Ret) [REDACTED] by name in the telefax sent to CSAF on 15 Aug 04: "He is currently having [an affair] with ... a former Jag name [REDACTED]" (Ex 2:2) [REDACTED] Col (Ret) [REDACTED] She transferred to [REDACTED] in 1986, but kept in touch with Fiscus by telephone and, later, email. (Ex 11:10, Ex 13:1, Ex 80:2) They occasionally met, and [REDACTED] (Ex 13:2)

After that point, the two apparently had a falling out, and stopped communicating until 27 Jul 99, when then-Brig Gen Fiscus sent her a peace offering—an email "Olive Branch." (Ex 44:1) In their correspondence the two never quite spelled out what split them apart, but it may have occurred because Fiscus later married another woman instead of [REDACTED] Ms. [REDACTED] dropped a large hint to that effect when she told him, "I personally think you made only one gigantic mistake... I think your big mistake was not waiting for me." (Ex 44:11-12)

Ms. [REDACTED] relocated to [REDACTED] in Dec 99, and eventually crossed paths with Maj Gen Fiscus [REDACTED] (Ex 13:2-3) Maj Gen Fiscus several times expressed a desire to see her (Ex 44:2, 4, 7), but she put him off and communicated with him rather stiffly until Apr 03, when she finally explained to him that the reason she "can't see you" was that she still cared about him "a lot" but was hurt by his "not waiting for me." (Ex 44:10-12)

That exchange warmed the relationship a bit, and the two began talking on the telephone. (Ex 44:14-25) By Dec 03, Maj Gen Fiscus and Ms. [REDACTED] were going out together, and she told him that [REDACTED]—that Fiscus had made her "come alive again":

[REDACTED]
How silly! ...

[REDACTED] Even if [REDACTED] had not been so accepting, it would not have mattered. It just makes things easier. My love speaks from the heart and I refuse to allow my head to rule my heart as I have let it over the past too-many years. Now that I have come alive again, I can't ever go back.
(Ex 44:27)

When asked about this apparently now-romantic association, Ms. [REDACTED] became evasive. She admitted that she and Gen Fiscus had gone out together for meals at restaurants—just the two of them—but would not characterize these meetings as “dates.” (Ex 44:2-3, 6) She testified that “I view my relationship with Tom Fiscus to be a friendship and that is all it is to me and if he’s expressed something other than that to me, then I’ve most likely dispelled it, I think... I can’t say that I haven’t sent emails that—I don’t know what I’ve said in emails.” (Ex 44:5)

Ms. [REDACTED] flatly refused to confirm or deny a sexual relationship with Maj Gen Fiscus and terminated her sworn testimony rather than discuss it. (Ex 44:6-7)

Ms. [REDACTED]

[REDACTED] was almost certainly one of the women referenced in the anonymous complaint: “[Maj Gen Fiscus] is currently having [an affair] with ... a woman named [REDACTED]”

(Ex 2:2)

[REDACTED] He sent [REDACTED] offered her his assistance, noting that hearing her voice “...conjured up a flood of pleasant memories of our times together and, of course, regret that our lives diverged along the way.” (Ex 47:1)

A year later, Ms. [REDACTED] and Maj Gen Fiscus began dating. They made plans to see each other on Saturday, 23 Nov 02, and, judging by their reports the next week, the “convergence” was successful. On Monday, Maj Gen Fiscus wrote her, “Either I was having a wonderful dream, or I had a delicious evening on Saturday.” (Ex 47:6)

Ms. [REDACTED] answered, “I can’t stop thinking about our evening. What has happened?” (Ex 47:6)

The holiday season and the level of activity required to sustain [REDACTED] on Ms. [REDACTED] part, and TJAG’s duties, on Maj Gen Fiscus’s part, presumably made subsequent liaisons difficult, but in Feb 03, they tried again, but could not manage an outing together. (Ex 47:7-8) Another attempt to schedule a rendezvous on 29 Mar 03, likewise failed. Then Ms. [REDACTED] had second thoughts about their developing romance, and decided they needed to cool down: “[A]nything more than [friendship] is not good for me. I am not in a rush for anything more than an understanding friend. Intimacy takes on a whole new avenue that I am not wanting for us.” (Ex 47:10)

Ms. [REDACTED] and Gen Fiscus kept up a friendly correspondence through the spring and into summer, and by the end of Aug 03, they were making plans to get together on Tuesday, 2 Sep 03. (Ex 47:14-15) Maj Gen Fiscus was ecstatic: “Great! Do you want to meet somewhere or have me pick you up? What is your preferred activity: Dinner? Drinks? Bowling? A quiet talk? A loud disco? Sitting on a porch swing? Laying [sic] in the grass? Walking in the rain?...” (Ex 47:15) But, once again, schedules got in the way and the event was cancelled. (Ex 47:16)

The next meeting between the two that Maj Gen Fiscus documented in his email files occurred on Veterans’ Day, 11 Nov 03. Ms. [REDACTED] advised Gen Fiscus to show up at 1100 wearing “[s]hoes only and I will have the heat on.” (Ex 47:22)

In his post-date analysis of what appeared to be a romantic encounter, Maj Gen Fiscus advised [REDACTED] that "I'm content with yesterday and hope you are too," and in an especially suggestive statement, hoped "...you weren't too sore for your run today." (Ex 47:23)

Ms. [REDACTED] responded, "I have not stopped smiling ... However, [REDACTED]" (Ex 47:24)

Both drew attention to the fact that they had been interrupted by [REDACTED] coming to the [REDACTED] home just in time to break up the couple's diversion. Ms. [REDACTED] told Fiscus, "I just hope he didn't notice my—HAIR!!!" (Ex 47:24)

Fiscus, in turn, acknowledged that the [REDACTED] timing was poor and apologized for her [REDACTED] (Ex 47:23-24)

Between Nov 03 and Mar 04 Maj Gen Fiscus's email file documented sporadic notes between the two expressing their wishes to get together again, with phone calls interspersed. (Ex 47:25-30) Then, some time in Apr 04—perhaps Friday, 16 Apr, a day on which Maj Gen Fiscus took leave—the correspondence suggests that he drove to a hotel in [REDACTED] near [REDACTED] residence. (Ex 47:2, Ex 80:55) In what may have been a bid to avoid a repeat of the 11 Nov interruption of their activities at Ms. [REDACTED] home, Maj Gen Fiscus apparently checked into the hotel and only used the room for their liaison, for he depended on Ms. [REDACTED] "to check out the next morning" using her own credit card. (Ex 47:31) They ultimately determined that they had both been charged for the hotel room, and Fiscus suggested to her that "...you can be in charge of arrangements next time. ;-)" (Ex 47:32-34)

The two continued to look for opportunities to spend time together through Jun 04, and Fiscus's email file on Ms. [REDACTED] ended with a note on 9 Jul 04. (Ex 47:43)

When the IO asked Ms. [REDACTED] if she would give a statement describing the nature of her relationship with Maj Gen Fiscus, she refused, saying, "[REDACTED] I'm such a small... you know, I'm not, I'm not a big part of anything, so..." (Ex 71:2)

Ms. [REDACTED]

Then-Capt [REDACTED] met then-Maj Fiscus in Jul 85 when he moved to [REDACTED]

(Ex 20:1)

[REDACTED]
(Ex 14:2-3)

[REDACTED] remembered that Fiscus remained at [REDACTED] for three years, and testified that she left the Air Force following her tour at [REDACTED] staying in sporadic touch with Fiscus. (Ex 20:1-2) In Mar 99, he invited her to the 3 May pin-on ceremony marking his promotion to brigadier general, which she planned to attend [REDACTED]. In responding to his invitation, on 30 Mar 99, she admitted that she was attracted to him, and also acknowledged "jealousy" as an influence on their friendship. As the event approached, she added, "Strangely, I care about you." (Ex 50:2, 8)

Ms. [REDACTED] felt that the ceremony was almost like a reunion of the SJA folks from [REDACTED] AFB, since there were other JAGs in attendance [REDACTED] who had served with her on active duty. (Ex 20:2, Ex 50:1, 6) Brig Gen Fiscus, however, expressed frustration that he had not been able to spend more time with her: "I'm sorry if you were disappointed either in me or your visit... I regret that we couldn't spend more time together... We never really got the chance to discuss the things we had written about in our correspondence, which more nearly depicts who we are, versus the faces we show in public..." (Ex 50:10)

Following the ceremony, Gen Fiscus attempted through several emails to keep the relationship alive, but his files showed no response from Ms. [REDACTED] (Ex 50:10-14) On 23 Nov 99, Fiscus told her he had been selected as DJAG, and would be moving [REDACTED]. He hoped they could get together, and he offered to drive to her home in [REDACTED] to see her. (Ex 50:14)

For the next year, they still could not manage a meeting, though Maj Gen Fiscus told her he had driven through her part of [REDACTED] thinking about her. (Ex 50:15) She only occasionally wrote back, and in Jul 01, promised not "...to ignore you any longer..." (Ex 50:23) In Oct 01 she emailed him that the problems in their relationship were caused by "...two great minds clashing. Yours, hell bent on success. Mine. Never hell bent on anything. Ruled by my heart. Confused by the cold and ruthless actions of others." (Ex 50:26)

72

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

Ms. [REDACTED] testified that their mutual attraction was based upon their superior intelligence, a phenomenon that lesser intellects would find difficult to understand:

...It, that, there is ah, well this is going to be really hard to describe to you. There is an attraction between Tom and I [sic], but it's not physical. It's not romantic. It is—it's intellectual. It's—he's very, very intelligent, and I'm not trying to say this in a bragging way, but I've always been very intelligent also, and you don't actually run into that many people that you can have an enjoyable, intelligent conversation with in your life. He's one of the few, and I think I'm probably one of the few that we could talk about a million different topics on a very intelligent, high plane.

I really don't know how to describe this to anybody who doesn't experience it. So I would say there's this attraction of intellectual stimulation and we enjoy talking to each other and we enjoy being together and having these conversations, but it's, that's all it's ever been. It's never been romantic. It's never been sexual. It's never been physical. It's really hard to describe. I mean it's very hard to describe. I've never been able to explain it to anyone but my mother and she understands it perfectly.

...[I]t's definitely platonic, but it's unique. I don't have any other friends like him because I can't have the same level of conversation with anyone that I can have with him. And I think whenever, like when we're apart for a long time and we don't have a chance to email, it's very refreshing for us to be able to talk again... (Ex 20:3-4)

In Jan 02, Maj Gen Fiscus invited Ms. [REDACTED] to his investiture as TJAG, and she looked forward to it with great anticipation. She reminded him, "It is a rare and wonderful thing for me when I interact with someone who is able to understand my thinking. You are one of the very few I have known in my life, and I think of the lost opportunities often." (Ex 50:33) As the ceremony date approached, he asked her on 22 Jan 02 if he could [REDACTED] Sunday evening to take her out to dinner. She told him that she would be busy [REDACTED]

[REDACTED] but expressed hope that she could see him some other weekend. (Ex 50:36)

Ms. [REDACTED] missed the 25 Feb 02 ceremony on account of [REDACTED] (Ex 50:37, 41) Maj Gen Fiscus told her, "My sadness is that I won't get to put arms around you and celebrate what a dear person you have become to me." (Ex 50:42)

By 28 Mar 02, however, Ms. [REDACTED] had suffered another setback—[REDACTED] Maj Gen Fiscus told her that he loved strong women and, "I'd be there in a minute if I could." (Ex 50:54)

She replied that she knew "...you always loved me, we just never admitted it." (Ex 50:57)

Maj Gen Fiscus and Ms. [REDACTED] finally were able to effect a meeting on the evening of 15 Apr 02, over dinner, and Fiscus replied the next day that "[t]he hugs weren't bad either!" (Ex 50:60-62).

Nearly a year later, on 26 Mar 03, Ms. [REDACTED] complained that the war had perhaps kept Maj Gen Fiscus from writing to her. She told him that she had thought of him every day, and hoped he could come to [REDACTED] at the end of April. She added, "And the proper part of me asks how your wife is, though the selfish part of me would rather not." (Ex 50:76)

Maj Gen Fiscus responded on 28 Mar that he and Mrs. Fiscus were experiencing marital problems and attending counseling to see if they "...can get the energy going again," and he promised to work his schedule so that he could attend the [REDACTED] to be with her. (Ex 50:74)

When Fiscus had arranged it all and reported that he could attend, she told him that she loved him. The 25 Apr 03 meeting was a success, and Ms. [REDACTED] and Gen Fiscus went out to dinner with [REDACTED] (Ex 20:4, Ex 50:77) A few weeks afterward, she answered Fiscus's thank-you note with, "...behaving badly? No, but if we hadn't stopped..." (Ex 50:86)

By Aug 03 Maj Gen Fiscus reported that things were back on track with Mrs. Fiscus. (Ex 50:93)

In her testimony, Ms. [REDACTED] reiterated that their whole relationship was purely intellectual, and never once strayed into the sexual realm:

IO: ...[H]e told you at one point that he loved strong women and then you told him that he always loved you, you just never admitted it, so, is that what you were referring to—that kind of intellectual attraction between a couple of "six sigma"-kind of brains?

Ms. [REDACTED] Yeah. It's very hard to explain to people... I mean we, we always had this mental attraction. The arguments were adversarial but in their own way they were fun. They were stimulating.

IO: ...It is stimulating and, and I get one hundred percent that you were attracted to him in that, that cranial way, not a physical way, but I wonder if there would be a way for you to help me establish that the opposite feeling from him would've been the same thing. In other words, did, did he ever...

Ms. [REDACTED] He never made a pass at me. (Ex 20:5-6)

IO2: ...Never kissed you on the mouth? Not even a peck hello or goodbye?

Ms. [REDACTED] No, I don't think so. We're pretty much, you know, the hug and cheek smooch kind of people.

IO2: Okay. Has he put his arm around you to walk you someplace?

Ms. [REDACTED] Oh, absolutely.

IO2: ...But he's never given you any indication that he would be interested in a more personal or more intimate relationship with you?

Ms. [REDACTED] You know, we've never talked about it, so no. I mean he hasn't said he wouldn't and he hasn't said he would. It's just never really been, it, it's never been an issue.

IO2: And you've never had sexual relations with him?

Ms. [REDACTED] No. (Ex 20:10-11)

Despite that she insisted there was no sexual feature to the relationship, Ms. [REDACTED] seemed fairly sure that Mrs. Fiscus knew nothing about the "intellectual affair" going on between her husband and Ms. [REDACTED]

IO: Ma'am, do you have any confidence that Mrs. Fiscus understands the cerebral attraction between you two?

Ms. [REDACTED] You know, honestly, I have never thought about her even thinking about any relationship between he and I [sic].

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the A-100 For without the approval of The Inspector General, SAF/IG.

75

FOR OFFICIAL USE ONLY (FOUO)

IO: But she knows that you exist and that you're a friend of his, right?

Ms. [REDACTED] I know that she knew that [when I attended the ceremony at Langley AFB] Virginia.

IO: Okay.

Ms. [REDACTED] I don't know that she knows that he or I have seen each other or talked to each other ever since.

IO: So, to your knowledge, she wouldn't be aware that he had come up there to see you a couple times?

Ms. [REDACTED] No. But he, but he's never spent the night. (Ex 20:11)

Ms. [REDACTED]

Ms. [REDACTED]

(Ex 35:1) [REDACTED] met then-Col Fiscus (Ex 80:2) in May 94 (approximately a month before his marriage to Carolyn, the current Mrs. Fiscus) when she traveled from her home in [REDACTED] to Washington, DC, to [REDACTED] Fiscus, who was a friend of [REDACTED] offered his own apartment as a place for [REDACTED] to stay while she was in town. (Ex 34:2, Ex 35:1, Ex 59:49, Ex 80:2)

Initially hesitant to stay with a virtual stranger, Ms. [REDACTED] acceded to [REDACTED] suggestion that she accept Fiscus's hospitality and flew to Washington, where he met her at the airport. (Ex 35:2) She reported that after a couple of days in his apartment, she found his romantic advances too aggressive and decided to stay in a local hotel instead:

...[H]e had called me, I think, from work and said, one day, and said, "Well, you finished [REDACTED] and he said, "Well, you finished [REDACTED] It was great that you made it here so let me take you to dinner and we'll drive around town."

And so we get in his car and we were driving around and he was chatting with me and then at a certain point, he put his hand on my knee, and I brushed it off. And then later on he put his hand on my knee again, and, and then I think when we went to the restaurant there was a big puddle, and so he just picked me up all of a sudden and carried me over the puddle and it was at that point I said, "This is enough. I can't do this anymore." And so I, the next day I said, "I'm checking into a hotel." Or it might've even been that night. I can't remember.

He did not try to kiss me then, but when as I was leaving to go to the hotel I think he did try to kiss me at that point, and I turned my face. He was trying to kiss me on the lips and I think, if I remember, I turned my face and he just, he looked a little bit unhappy but I went to the hotel and that was it. (Ex 35:12)

When she returned to [REDACTED] Fiscus telephoned Ms. [REDACTED] once, and then the relationship lapsed for several years, with Maj Gen Fiscus continuing a friendly banter [REDACTED] [REDACTED] planned to attend Fiscus's pin-on to brigadier general at Langley AFB in May 99. (Ex 35:2, Ex 58:1-7)

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

By Nov 99, Gen Fiscus [REDACTED]

[REDACTED] Thought we had developed a friendship that was independent of what I have with you. Guess I was wrong. [REDACTED]

[REDACTED] Thanks." (Ex 58:9)

In Feb 00, then-Brig Gen Fiscus moved to the national capital region, a time in which [REDACTED] (Ex 80:2, Ex 58:7-9)

[REDACTED] she occasionally saw Maj Gen Fiscus, who, she stated, was very openly flirtatious with her. She wrote it off to, "Well, this is his way," and felt sorry for him because "...he kept telling me that he was kind of lonely at work and that he felt people were just nice to him because of his position..." (Ex 35:3)

Ms. [REDACTED] recalled that Gen Fiscus frequently talked about his physical attraction to women on these occasions, once telling her that, "It's too bad you're not in the Air Force, [REDACTED] because you're so attractive that you would go really far, really fast." (Ex 35:3) Nevertheless, "...we started to be friends and I can't remember really how it developed from there, but, yeah, I think that's how this all kind of started." (Ex 35:3)

As a gift, Maj Gen Fiscus's wife, Carolyn, signed him up for a two-day on-track driver education session at Virginia International Raceway, Roanoke, VA, on the weekend of 3-4 Jun 00. (Ex 34:8; 43:14) Ms. [REDACTED] was having problems [REDACTED] so Maj Gen Fiscus invited her to accompany him over the weekend so she could study while he drove. She testified, "I really did study while he was driving, and as far as I remember nothing else happened during that time. I think it was after that time when we started to become romantically involved." (Ex 35:7)

Then, later, she recalled, he suggested that she meet him for drinks, and he tried to kiss her when the date was over. (Ex 35:2, Ex 58:48) Ms. [REDACTED] testified that, upon this attempt, she said, "No, I'm not going to kiss you because you're a married man." (Ex 35:3)

Fiscus reportedly responded, "Oh, this doesn't stop anyone else in Washington." (Ex 35:3)

That summer, she testified, he took her on a picnic, and the pair became sexually intimate. As she recalled:

...That might've been the first time that we kind of had our "date," and I, which I think was when we went on a picnic somewhere,

78

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

and, yeah. He initiated and I, but I don't remember exactly. I think we were in his car and again he attempted to kiss me and again I did the "You're married" thing, and then it just broke down. I just, I think I just gave up at that point. ... I think I was just wearing a dress with no sweater or anything... (Ex 35:8)

From that point in 2000, Ms. [REDACTED] testified, until mid-2002, the two dated "...maybe once or twice a month," and when weekend opportunities arose, she said, they occasionally rendezvoused for sex at "...a hotel near [REDACTED]" (Ex 35:4, 7; Ex 59:48)

By 3 Jan 02, a year and a half into the affair, the two professed love for each other, with Ms. [REDACTED] ultimately urging him to make good on her understanding from him that he would leave his wife for her. When he stonewalled, she responded with hurt and anger, and when she relented, Maj Gen Fiscus wrote to her that he "...wept ...partly out of relief... and partly out of admiration and longing." (Ex 59:9-11)

The next day, 4 Jan 02, Ms. [REDACTED] argued that if he really cared about his family, and if his marriage really was irreparable, he could "give me a special gift, [and] your doing this would be the best gift I ever got." She believed that "...Carolyn could start over... She is younger than [REDACTED] she is intelligent and beautiful, and she has a career." [REDACTED]

(Ex 59:12)

Although he refused to divorce Mrs. Fiscus for her, he soothed her feelings with an admission that he needed contact with her—"...[b]eing near you without intimacy would be unbearable"—and they struggled to continue the relationship. (Ex 59:13)

They fought again at the end of the month. Ms. [REDACTED] tried to break off the affair on 28 Jan 02, but Maj Gen Fiscus professed his love for her and they went out again on 15 Feb to celebrate Valentine's Day. (Ex 15-22) On his way back from a trip to Europe, Fiscus asked her to meet him upon his arrival at Dulles Airport on 10 Apr 02. (Ex 59:27-30) When she arrived at baggage claim, she saw that his wife had arrived, so she turned around and left. (Ex 59:5) Trying to assuage Ms. [REDACTED] anger and recover from the disaster, Maj Gen Fiscus wrote her the next day:

First and foremost, I'm sorry that it happened. I know that you wanted to see me, as I did you. I did not anticipate that Carolyn would call off work in order to be there—it's never happened before. You made a wonderful effort and it was not only dashed, but the reality of the situation was thrown in your face again. I'm saddened and embarrassed that it happened. (Ex 59:30)

And he followed up by asking her out that evening. (Ex 59:30)

Throughout the two-year affair, Maj Gen Fiscus and Ms. [REDACTED] had sexual intercourse around ten times—"Something like that," according to Ms. [REDACTED]—and she grappled with guilt:

Ms. [REDACTED] But I kept trying, every once in a while I would say to him, "We can't do this anymore because you're married, because [REDACTED], for so many reasons."

And he would just stop me. He would keep trying to stop me and he would just, he wouldn't let that happen. He wouldn't let it end. So finally at the very end [REDACTED] well, I, I guess that was much, much later, but I just, you know, we stopped communicating with each other and then I joined the [REDACTED]

IO: Ms. [REDACTED] it looks, it looks to me like at some point during that first part of 2002 Gen Fiscus led you to believe he would leave his wife for you.

Ms. [REDACTED] He said that a lot, and not just to me. He said that a lot and not just to me, that's for sure [REDACTED]

[REDACTED] But he was not happy in his marriage at all and often talked about that, and he did say several times that he wanted to do that and even talked about how he was gonna try to do that, but I knew he never would. And one of the reasons why I knew he never would was that he had told me early on in our friendship even, I asked him if he had ever had extramarital affairs, and he told me that he had had three—and this was prior to us having any kind of romantic relationship, so...

IO: Would you characterize your relationship with him as an affair, also?

Ms. [REDACTED] Yes. (Ex 35:4)

Thus she admitted that she knew from the very beginning of the sexual relationship that he was not actually going to leave his wife for her—Maj Gen Fiscus confessed to her that he had already had three extramarital affairs by the time their romance bloomed—but she guessed that she succumbed to his advances out of loneliness. (Ex 35:5)

By May 02, although his "love" had subsided somewhat, Maj Gen Fiscus still let Ms. [REDACTED] know he cared for her. He claimed to have seen a woman in a Pentagon hallway who, from a distance, looked like her, and "[i]t made me ache." (Ex 59:35)

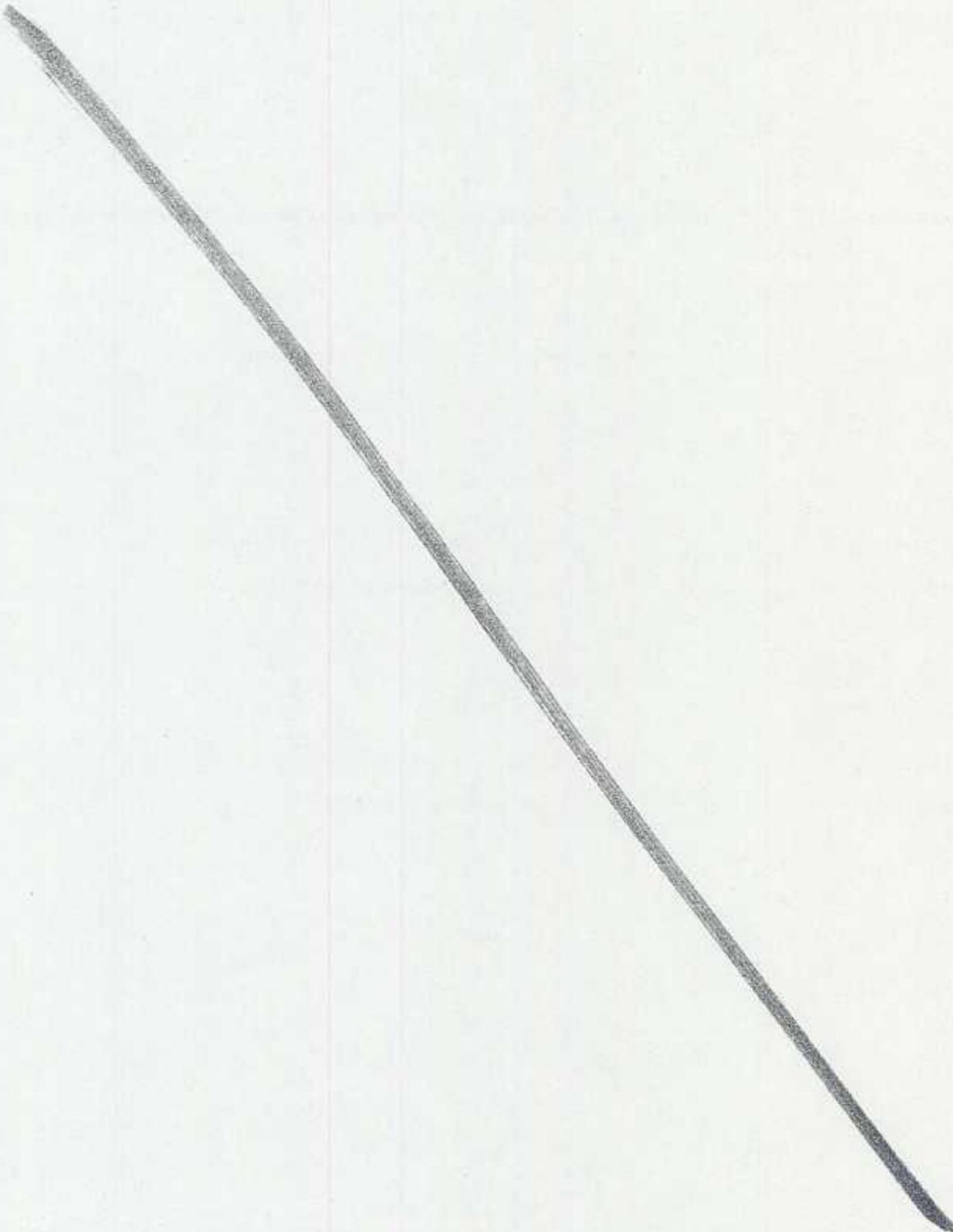
At the end of their two-year affair, in Jun 02, she told him that she might have believed that he was "the one" for her, but he gave her "words but no actions." (Ex 35:40-46) Even after the couple broke up romantically, Ms. [REDACTED] maintained, Maj Gen Fiscus tried to continue a relationship:

He, he had continued to try to maintain a friendship but I have not wanted to and I told him that. But even out here he has sent me, he sent me a birthday card last year and I was pretty displeased because I had made it pretty clear that I didn't think he just, he wanted a friendship or was capable of maintaining one so, and I never gave him my email address out here— [REDACTED] He's never attempted to call me here, but he did send a card, and before I came out to [REDACTED] he asked me if I would meet for him, with him for lunch or something one time, and we did, but *I spent the dinner telling him that what we had done was wrong, and that he should tell his wife, and that I was ashamed and was going to be ashamed of it for the rest of my life, and that I really didn't want to be friends with him, and so that was our last encounter.* (Ex 35:10, emphasis added)

CONCLUSION.

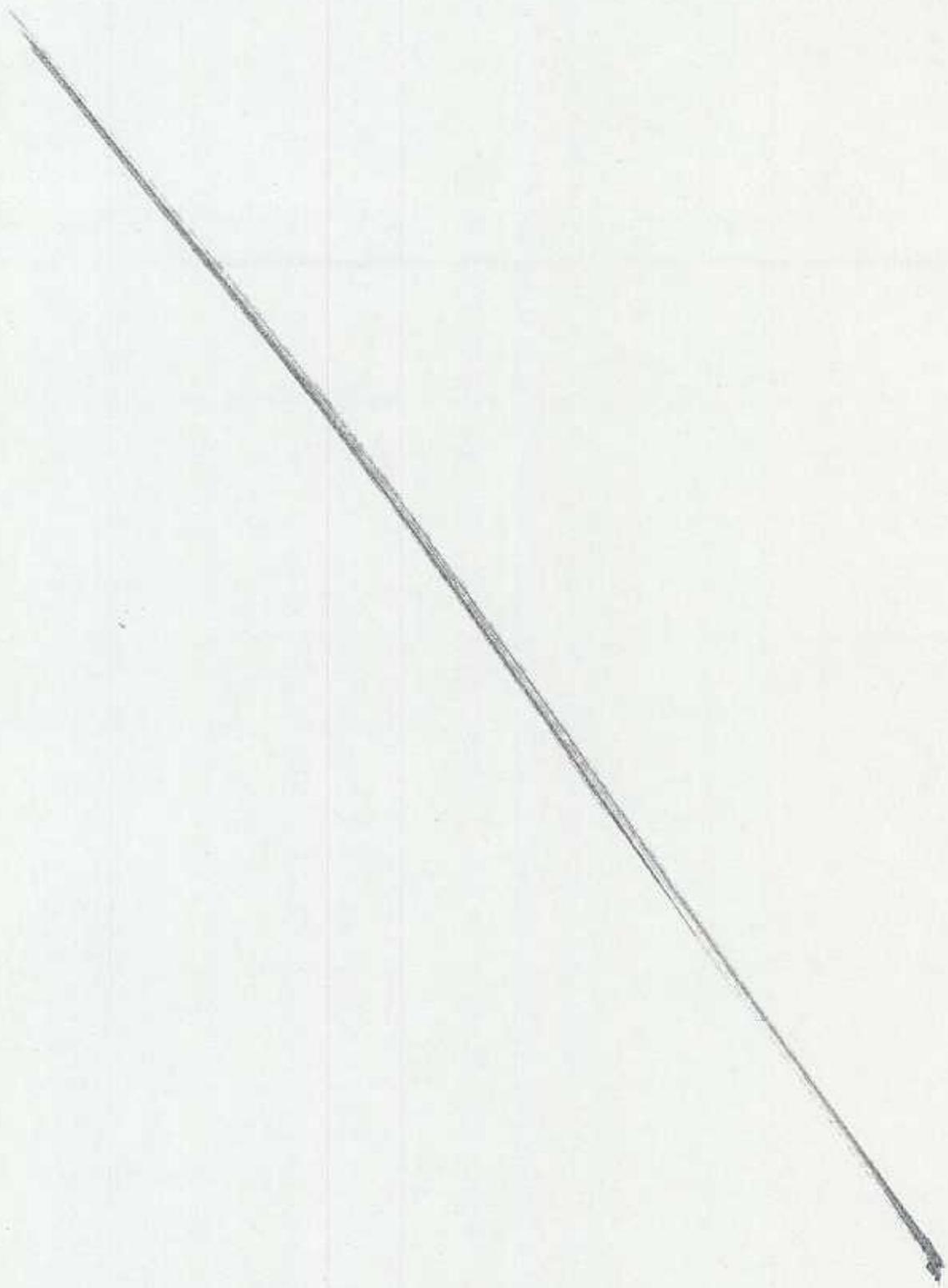
Maj Gen Fiscus, a married man, wrongly pursued romantic relationships with several single women. Documentary evidence from Maj Gen Fiscus's official email files and the testimony of Ms. [REDACTED] support a finding that he had a two-year adulterous relationship with Ms. [REDACTED]. Documentary evidence strongly suggests that he also committed adultery with Ms. [REDACTED] and that his relationship with Ms. [REDACTED] was also romantic, and quite possibly sexual. Although his relationship with Ms. [REDACTED] may not have been sexual, his aggressive pursuit of a one-on-one, loving relationship with her was also a violation [REDACTED] below the standards expected of an Air Force officer and gentleman. Additionally, his position as the Air Force's Judge Advocate General ensured that any such sexual misconduct would bring tremendous disgrace to the armed forces.

By a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that Maj Gen Fiscus wrongfully engaged in improper relationships with female civilians, in violation of Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*, and Article 134, UCMJ, *General Article*, was **SUBSTANTIATED**.



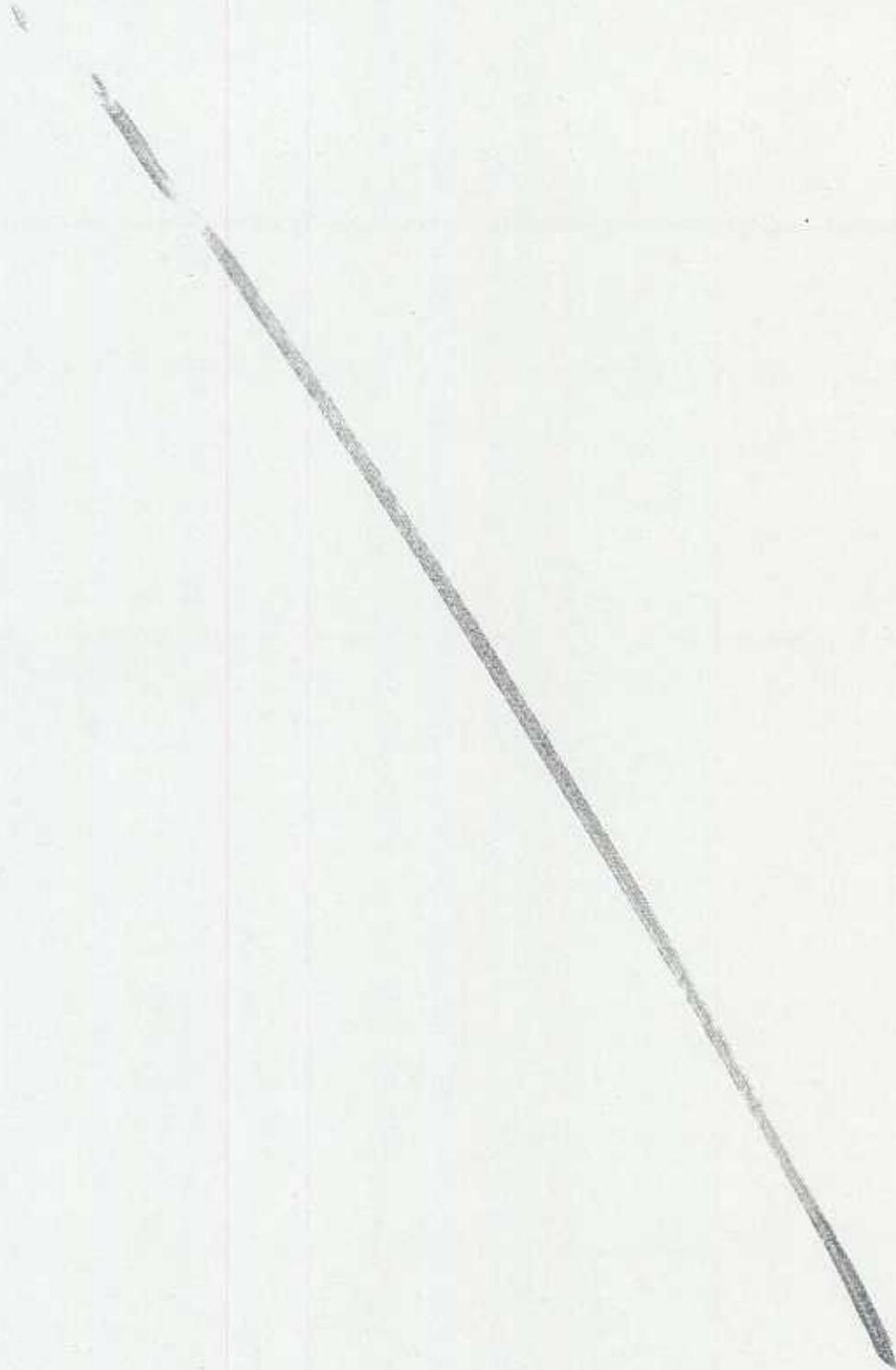
This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)



This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

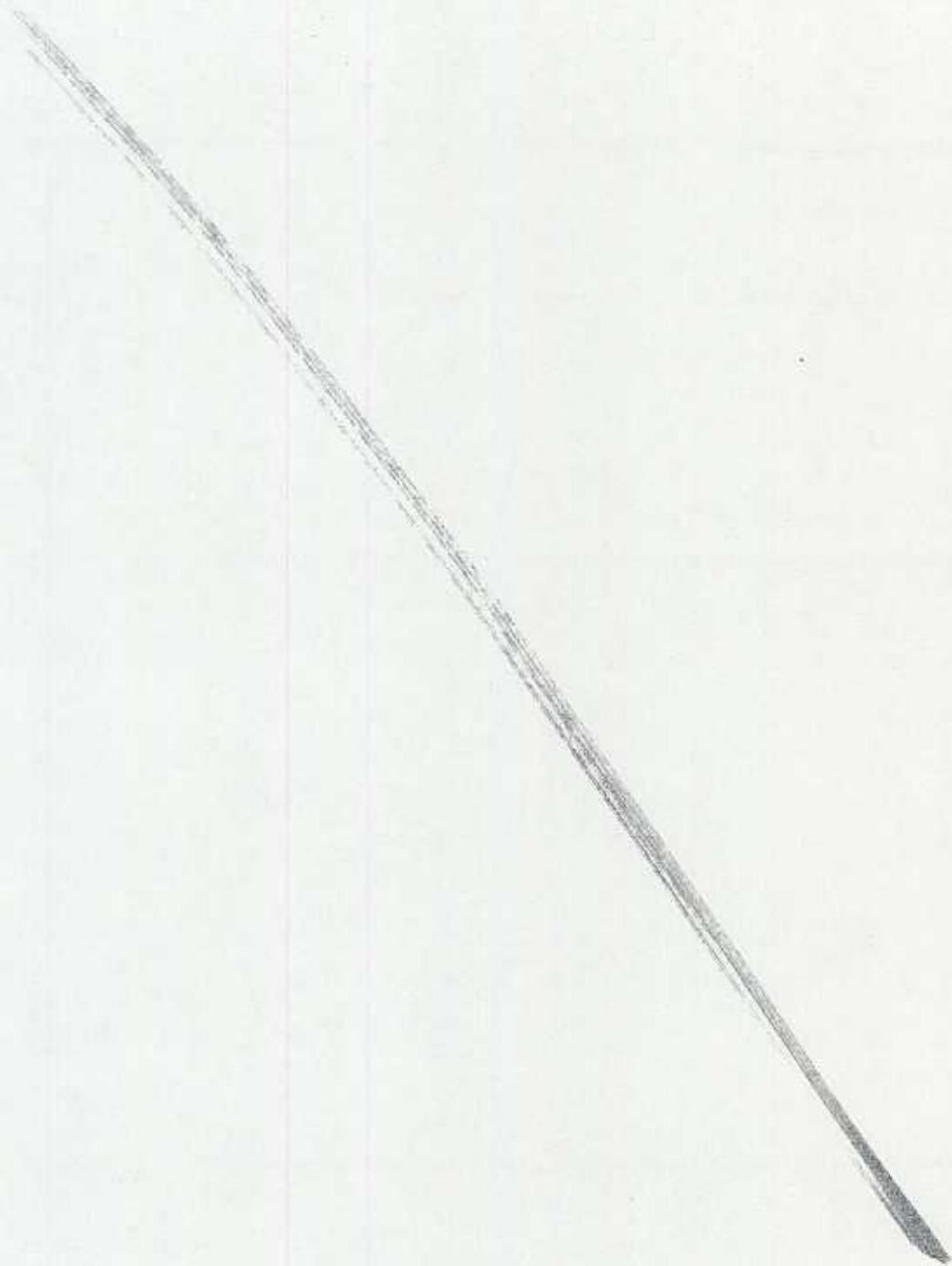
FOR OFFICIAL USE ONLY (FOUO)



This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

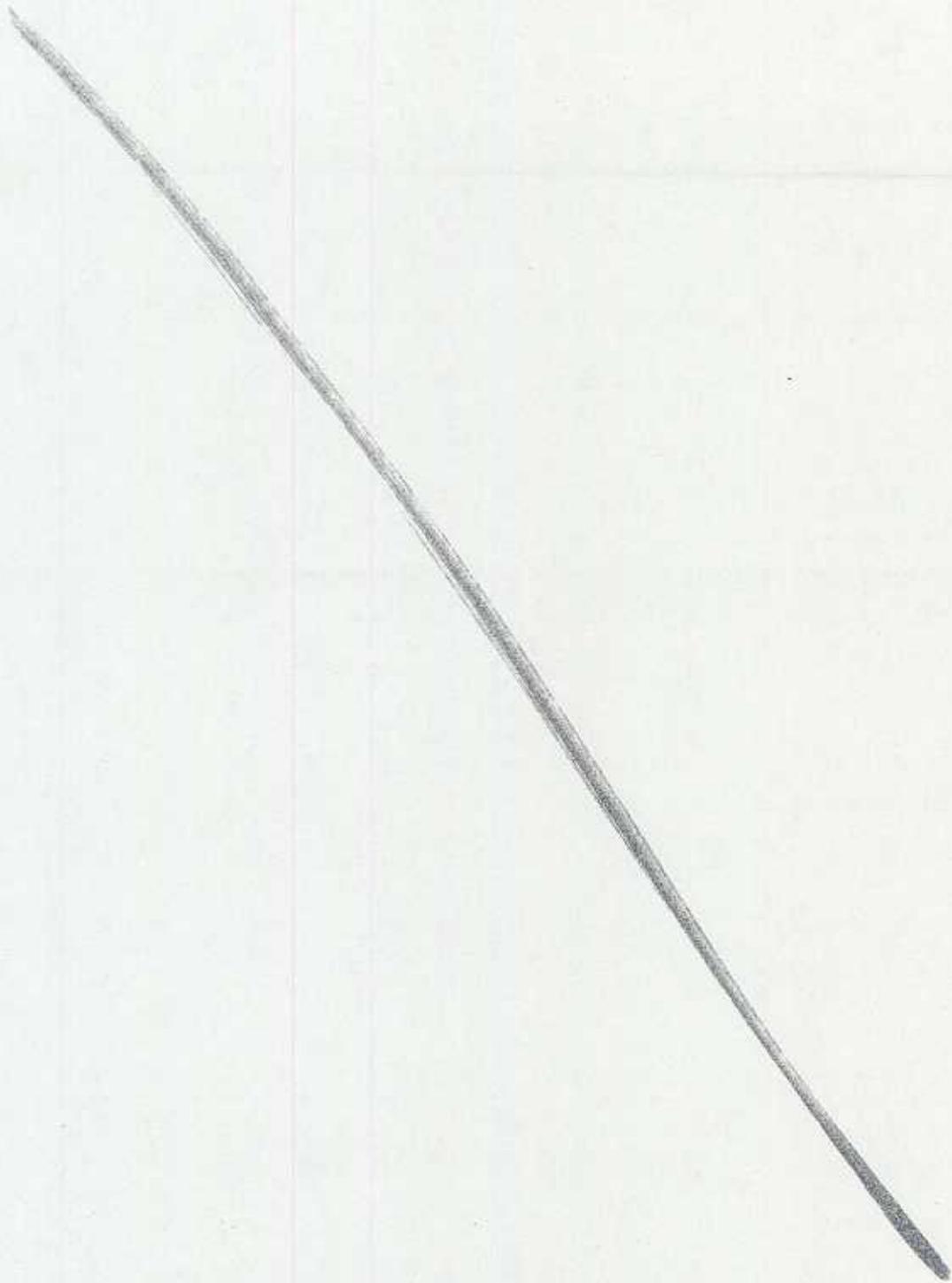
85

FOR OFFICIAL USE ONLY (FOUO)



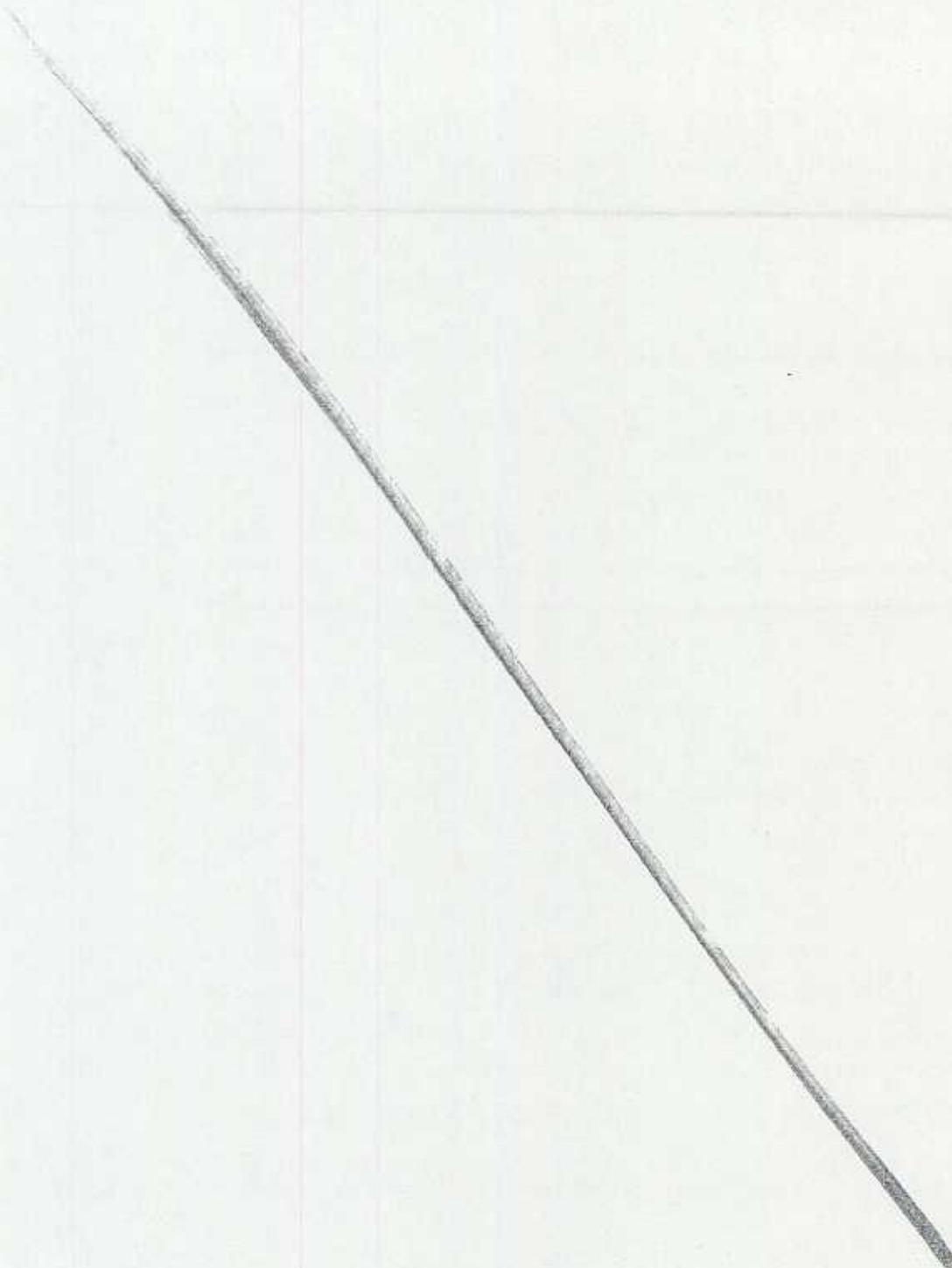
This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)



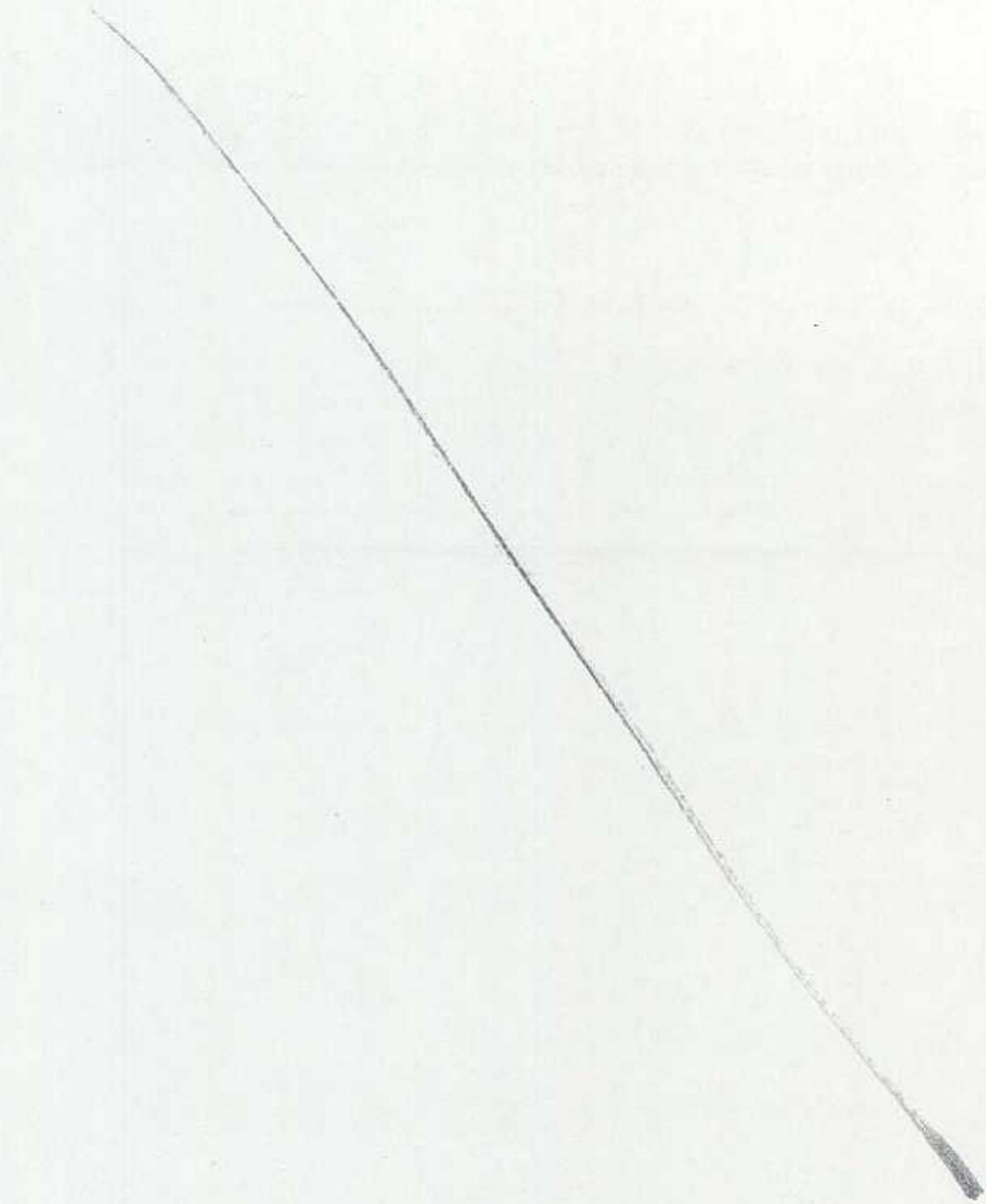
This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)



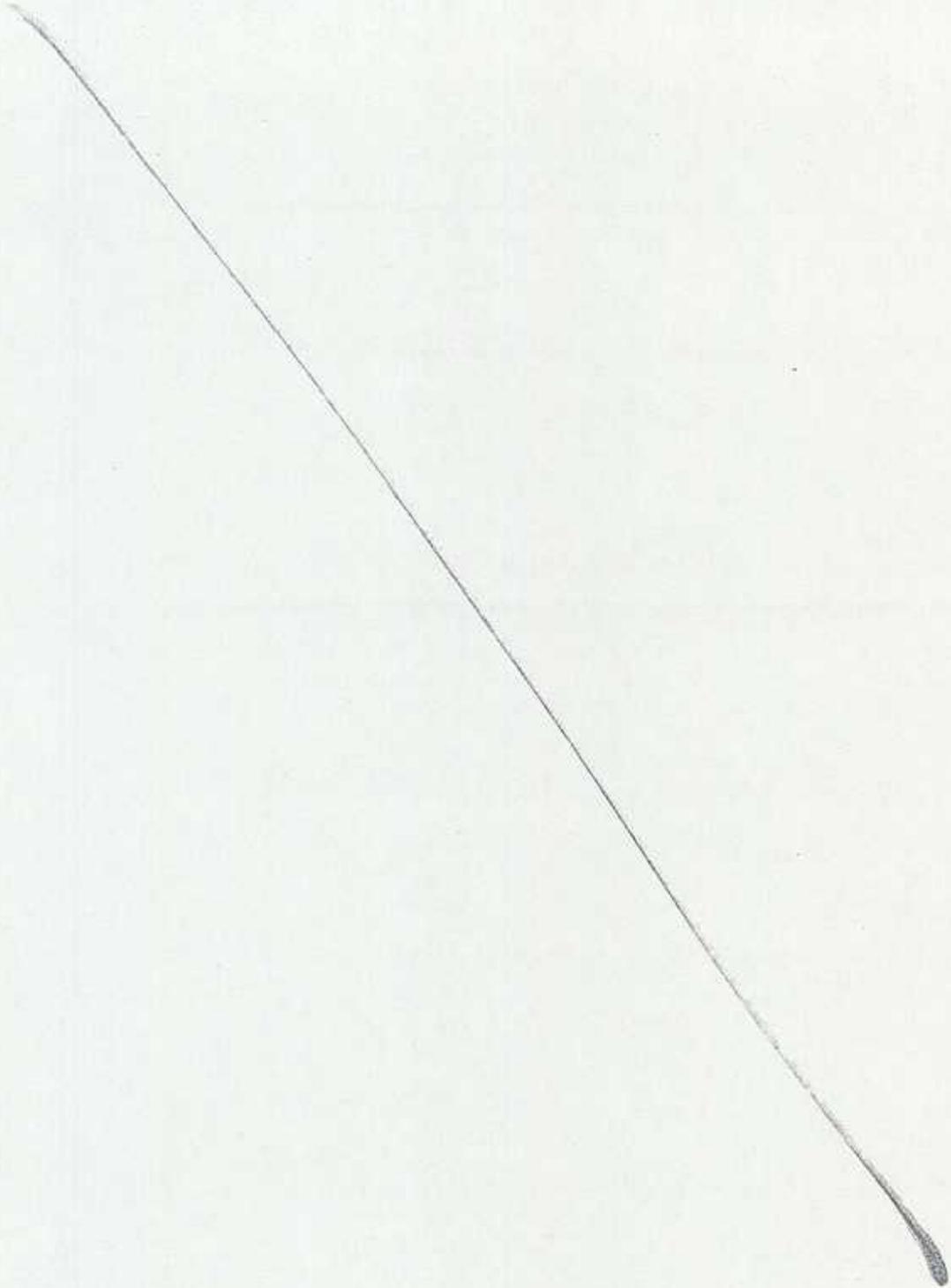
This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)



This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)



This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

VII. COLLATERAL ISSUES

During the course of the investigation, the IOs also questioned witnesses concerning Maj Gen Fiscus's official travel; whether or not any *quid pro quo* appeared to have been involved in assigning female judge advocates; whether Maj Gen Fiscus had, in violation of the Code of Federal Regulations and the Joint Ethics Regulation,⁹ accepted one or more gifts from subordinates; and whether Maj Gen Fiscus, in violation of the Joint Ethics Regulation, had misused government resources in furtherance of his unprofessional relationships. The IOs found that Maj Gen Fiscus had twice violated the prohibition against accepting gifts from subordinates and that Maj Gen Fiscus had misused government resources to further his unprofessional relationships.

Official Travel.

The issue of official travel came up because on at least one occasion Maj Gen Fiscus stopped over at [REDACTED] while Maj [REDACTED] was the staff judge advocate there, on his way to or from an official trip. (Ex 29:7, Ex 31:56, Ex 66:1) [REDACTED] confirmed that [REDACTED] and it is a common practice for flights, both commercial and military air, to layover at that airport. (Ex 76:1) In those cases, [REDACTED] said it would be standard practice for the base legal office to host The Judge Advocate General. (Ex 76:1) Other than the fact that Maj [REDACTED] and Maj Gen Fiscus were involved in a romantic relationship, nothing else supported a finding that Maj Gen Fiscus's trips through [REDACTED] or any other place, were anything other than legitimate.

Additionally, the IOs found no evidence to support the complainant's assertion that Maj Gen Fiscus had inappropriately taken Maj [REDACTED] along on any trip, to [REDACTED] or elsewhere. (Ex 2:2) [REDACTED] testified that, especially on Article 6 visits, it was commonplace for the

[REDACTED]

(Ex 72:2)

Assignments *Quid Pro Quo*.

Because Maj Gen Fiscus was the approval authority for all judge advocate assignments, it was imperative that the investigators determine if any of the active duty judge advocates received

⁹ DoD 5500.7-R

quid pro quo in terms of duty assignments based upon their relationships with him. The two women identified for whom the greatest potential existed were Maj [REDACTED] and Maj [REDACTED]. The investigators found no evidence to support a finding that assignments as made were based on a nefarious motive.

At first blush, Maj [REDACTED] assignment to [REDACTED] appeared to be suspect.

(Ex 36:8-9)

(Ex 63:2)

(Ex 76:1),

(Ex 76:1)

no other evidence tends to support a finding that her assignment was based on anything more than recognized ability.

Maj [REDACTED] assignments, too, appear to have been made without *quid pro quo* for the personal relationship she had with Maj Gen Fiscus. The evidence shows that the personal, unprofessional relationship between the two began sometime in the spring of 2002, with the latest possible date being 30 Apr 02 when they met at a pub near Maj [REDACTED] apartment. She testified (Ex 31:76) and [REDACTED] confirmed (Ex 76:7) that the normal course of events would have been that her assignment (along with all other SJA assignments) would have been worked the fall of '01, finalized that winter, and announced in the spring of '02. In fact, the letter sent to her notifying her of the assignment was dated 10 Jan 02. (Ex 76:8) The evidence supported a finding that Maj [REDACTED] assignment to be the staff judge advocate at [REDACTED] was not made, *quid pro quo*, for her unprofessional relationship with Maj Gen Fiscus.

Maj [REDACTED] follow-on assignment [REDACTED], however, initially appeared to be suspect. [REDACTED] testified:

I know that Maj [REDACTED] had made a comment to a few folks that she was gonna come to DC to [REDACTED] up in her current job

92

This is a privileged document. It will not be released (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)

and, and then that she was only gonna stay there for two years and then she was going to go and be the SJA at, [REDACTED] which are, are two fairly big, big jobs, and as you when, when JAGs come to DC it's usually for, traditionally, one three-year tour or two two-year tours. So for, for that kind of comment to be made it seemed like, you know, that perhaps, you know, only the, only The Judge Advocate General makes assignments so, you know, she was speaking very authoritatively and it made it seem like that, that was kind of, you know, something that was, that was in, in the queue to be done if, if that was the case.

Additionally, [REDACTED] testified:

When we were talking about assignments in the fall timeframe of 2003 and it may have been in the context of the conversation about [REDACTED] or separate. I'm not sure exactly where it occurs, but [REDACTED] warned me she had heard that [REDACTED] was leaving [REDACTED]. And she told me to be extremely careful of [REDACTED] and I, I told her I didn't know what she was talking about, and she said, 'I can't believe TJAG is bringing her back here...I've told him not to. He's making a mistake by bringing her back to D.C.' ... We never recommended that [REDACTED] come back to, we wanted [REDACTED] and that's what [REDACTED] recommended to me and it made sense, given what I knew. That's the way I remember it, and I don't remember talking with TJAG about it, but I remember [REDACTED] telling me, 'I can't believe he's gonna bring her back to town. (Ex 36:17)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Ex 37:19)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Ex 18:13)

On further examination, however, there was no evidence that Maj Gen Fiscus interfered with or wrongfully influenced the assignment process. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Ex 18:13-14)

Additionally, Mr. [REDACTED] testified:

IO: So she was perfectly qualified [REDACTED]

[REDACTED]: Oh absolutely.

IO: And there was nothing strange...

[REDACTED]: She, she's got a great record.

IO: or out of the ordinary...

[REDACTED] No, no.

IO: about that assignment?

[REDACTED] No, the only thing that kind of surprised me was that she was reassigned to Washington DC after having only been gone for two years, but I didn't know that, you know, I thought that that kind of broke some of the TJAG's policies about bringing people back to DC. But I didn't, you know, I didn't find it unusual or sometimes there's reasons that I don't know that they're brought back...

IO: (Affirmative)

[REDACTED]

(EX 37:19-20)

Furthermore [REDACTED] testified that it wasn't unusual for Maj Gen Fiscus to decide an assignment contrary to JAX's plans and recommendations:

IO2: And, and just to get it on the record, it's not unusual for TJAG to go against what you recommend in some situations?

[REDACTED] Oh, no. Absolutely not. As a matter of fact he, he does that when he thinks it's appropriate, and that's exactly what he should do. That's what a Judge Advocate General's decision-making authority is for.

IO2: Okay.

[REDACTED] So sure.

IO2: He can pick and choose whoever he wants.

[REDACTED] It's just like being a commander. Your JAG can tell you all day long what he or she recommends, but the

commander's the person who's paid to make the decision. TJAG is paid to make assignment decisions and he makes them based on what his judgment dictates. We try to provide him with enough facts to go with our recommendation, but we don't always convince him. (Ex 36:31)

Based upon a preponderance of the evidence, the IOs were unable to find that Maj Gen Fiscus made any assignments *quid pro quo* for women with whom he had personal relationships.

Acceptance of Gifts from a Subordinate.

This issue arose when the IOs read an email Maj Gen Fiscus wrote to SMSgt [REDACTED] on 1 Jun 00:

...The reception for [REDACTED] at my house went almost perfectly...It was especially heart warming to see [REDACTED]. Naturally, he left us a gift that was extravagant. He was SOOO pleased to see that we had the watercolor he had given me [REDACTED] hanging in the living room. (Ex 43:14)

According to [REDACTED] the watercolor was an office gift, and the other gift, a small, plain, brown, wooden jewelry box, was a "[g]ift of friendship from [REDACTED] who said he purchased the watercolor at a friend's framing shop, gave the value of the watercolor as approximately \$30 in US dollars and the box as approximately \$20 in US dollars. (Ex 76:1-2) Col (ret) [REDACTED] recalled that [REDACTED] often had a local color picture to give to visiting dignitaries. She said if he gave a painting to Gen Fiscus it would have been an official gift from the office and wouldn't have violated any Joint Ethics Regulation prohibitions. She said the [REDACTED] tradition is to give gifts, and this would have been in that tradition. (Ex 76:2) She later clarified this by saying once Gen Fiscus was given the gift, when he got back to his base he would have reported it and handled it as required by the Joint Ethics Regulation. (Ex 76:3)

The standard for giving and accepting gifts between employees is found in 5 C.F.R. 2635. (Ex 87) Section 2635.302(a) states that "an employee may not...[d]irectly or indirectly, give a gift to or make a donation toward a gift for an official superior." Section 2635.302(b) states that "an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless...[t]here is a personal relationship between the two employees that would justify the gift." Section 2635.304 lists the exceptions to these rules. Pertinent sections are quoted below:

(a) General exceptions. On an occasional basis, including any occasion on which gifts are traditionally exchanged...

(1) Items...with an aggregate market value of \$10 or less per occasion; ...

(3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;

(4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; ...

Example 3: the Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a \$15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of \$10.

Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for \$10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) Special, infrequent occasions...

(1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

(c) Voluntary contributions. An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

(1) On a special, infrequent occasion as described in paragraph (b) of this section; ... (Ex 87:X)

Watercolor Painting.

It is true that a MAJCOM staff judge advocate visits his or her base legal offices only infrequently, and for the base staff judge advocate and office personnel these visits might be called "special." But these infrequent, official visits do not meet the "special" occurrences

described in 2635.304(b) above. Neither does the gift-giving meet any other exception specified in the regulation. Maj Gen Fiscus could have accepted the watercolor as a gift from the base legal office to the PACAF legal office and displayed the picture there. However, he took it as a personal gift and displayed it in his home. His acceptance of the watercolor as a personal gift was technically a violation of 5 C.F.R. 2635 and paragraph 2-203 of the Joint Ethics Regulation.

Wooden Jewelry Box.

██████████ stated that he gave the box to Maj Gen Fiscus as a “[g]ift of friendship from ██████████. The problem is that the box’s value (\$20) exceeded the nominal value of \$10 allowed to be given on an occasional basis between an official superior and a subordinate. There is an argument that the box was given as a hostess gift for the reception, but the contrary argument is that a jewelry box isn’t a “customary hostess gift” as described in Example 3, and ██████████ didn’t describe it as a hostess gift. Maj Gen Fiscus was hosting an official reception at his home for ██████████ and ██████████ attended in his official capacity. Even though Maj Gen Fiscus was no longer ██████████ he was still ██████████ official superior because he was the Deputy Judge Advocate General of the Air Force. In this situation, Maj Gen Fiscus could not accept the box as a personal gift. His acceptance was technically a violation of 5 C.F.R. 2635 and paragraph 2-203 of the Joint Ethics Regulation.

Misuse of Government Resources.

From the beginning of this investigation, it was clear that Maj Gen Fiscus used his computer to carry on his relationships (whether unprofessional or simply long-term friendships) with women. Just the evidence used in this report of investigation to document the unprofessional relationships and long-term friendships amounts to 487 pages of email spanning the years from 3 Mar 99 (Ex 58:1) to 12 Aug 04 (Ex 55:65).

Paragraph 2-301 of the Joint Ethics Regulation (Ex 88) governs the use of federal government resources. Pertinent parts are quoted below:

2-301. Use of Federal Government Resources.

a. Communication Systems... Federal Government communication systems and equipment (including Government owned telephones, facsimile machines, electronic mail, internet systems, and commercial systems when use is paid for by the Federal Government) shall be for official use and authorized purposes only.

(1) Official use includes emergency communications and communications that the DoD Component determines are necessary in the interest of the Federal Government. Official use

may include, when approved by theater commanders in the interest of morale and welfare, communications by military members and other DoD employees who are deployed for extended periods away from home on official DoD business.

(2) Authorized purposes include brief communications made by DoD employees while they are traveling on Government business to notify family members of official transportation or schedule changes. They also include personal communications from the DoD employee's usual work place that are most reasonably made while at the work place (such as checking in with spouse or minor children; scheduling doctor and auto or home repair appointments; brief internet searches; e-mailing directions to visiting relatives) when the Agency Designee permits categories of communications, determining that such communications:

(a) Do not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;

(b) Are of reasonable duration and frequency, and whenever possible, made during the DoD employee's personal time such as after duty hours or lunch periods;

(c) Serve a legitimate public interest (such as keeping DoD employees at their desks rather than requiring the use of commercial systems; educating the DoD employee on the use of the communications system; improving the morale of DoD employees stationed for extended periods away from home; enhancing the professional skills of the DoD employee; job-searching in response to Federal Government downsizing);

(d) Do not put Federal Government communications systems to uses that would reflect adversely on DoD or the DoD Component (such as uses involving pornography; chain letters; unofficial advertising, soliciting or selling except on authorized bulletin boards established for such use; violations of statute or regulation; inappropriately handled classified information; and other uses that are incompatible with public service); and

(e) Do not overburden the communication system (such as may be the case with broadcasts and group mailings), create no significant additional cost to DoD or the DoD Component...(Ex 88)

When, as part of this investigation, AFPCA downloaded Maj Gen Fiscus's email files, the resultant data delivery consisted of seven CDs. (Ex 61:5) Clearly, not all of the emails found in Gen Fiscus's files were the result of a misuse of government resources, but a significant number, even if you use only the unprofessional emails documented in this investigation, were.

Many of the personal emails used as evidence in this investigation violated paragraph 2-301 in a number of different ways: they were, for the most part, not drafted, sent, or received for official purposes. While most were brief communications, they were not made while Gen Fiscus was "traveling on Government business to notify family members of official transportation or schedule changes." And they were not personal communications "that are most reasonably made whole at the work place (such as checking in with spouse or minor children; scheduling doctor and auto or home repair appointments; brief internet searches; e-mailing directions to visiting relatives)."

A preponderance of the evidence supports the finding that Gen Fiscus's use of email to maintain contact with a woman with whom he was having an adulterous affair (Ex 59), to maintain contact with a woman with whom it appears he had an adulterous affair (Ex 44), to maintain contact with civilian women with whom he had improper romantic relationships (Ex 47, Ex 50), and to further his unprofessional relationships with subordinate women in the JAG Corps (Ex 43, Ex 52, Ex 55, Ex 58, Ex 60) did "adversely affect the performance of official duties by the DoD employee or the DoD employee's organization," did not "[s]erve a legitimate public interest," and does "reflect adversely on DoD or the DoD Component," all in violation of paragraph 2-301 of the Joint Ethics Regulation.

VIII. SUMMARY

ALLEGATION 1, that Maj Gen Thomas J. Fiscus wrongfully engaged in unprofessional relationships with female subordinate members of the Air Force in violation of AFI 36-2909, *Professional and Unprofessional Relationships*, and Article 133, UCMJ, *Conduct Unbecoming an Officer and Gentleman*, was **SUBSTANTIATED**.

The preponderance of evidence supported the conclusion that Maj Gen Fiscus developed, encouraged, and pursued unprofessional relationships, that also qualified as fraternization, with two noncommissioned officers, SMSgt [REDACTED] and TSgt [REDACTED]. His romantic overtures to SMSgt [REDACTED] and his "dates" with her, were especially egregious and unbecoming, since both he and she were married to other people at the time. Likewise, he developed and encouraged undue familiarity with two female judge advocates, Lt Col [REDACTED] and Maj [REDACTED]. His relationship with Maj [REDACTED] however, was singularly disgraceful. Romancing another woman, not his wife, surpassed "unprofessional" and although in this case may have stopped short of adultery— [REDACTED]—the relationship was romantic and sexual, as described by Maj [REDACTED]. In all five examples Maj Gen Fiscus compromised his standing as an officer and the leader of the Air Force JAG Corps.

ALLEGATION 2, that Maj Gen Thomas J. Fiscus made inappropriate sexual advances toward female subordinates, in violation of the Secretary of the Air Force and Chief of Staff policy on *Commander Responsibility for Equal Opportunity*, AFI 36-2706, *Military Equal Opportunity Program*, and Article 133, UCMJ, *Conduct Unbecoming an Officer and a Gentleman*, was **SUBSTANTIATED**.

The sworn testimony of victims and witnesses makes clear that Maj Gen Fiscus repeatedly made unwanted advances and unprofessional public displays of affection toward female members of the JAG Corps. He inappropriately touched Lt Col [REDACTED] and Maj [REDACTED] and he inappropriately kissed TSgt [REDACTED] and Maj [REDACTED] on the mouth. His actions, for the women he victimized, created a hostile work environment, as defined by AFI 36-2706. Furthermore, it is also clear that one of the victims of his advances, Maj [REDACTED] made multiple efforts to correct his behavior, to no avail, while two more, TSgt [REDACTED] and Maj [REDACTED] suffered guilt because they did not. Additionally, in view of his AFI 36-2706 role as the Air Force provider of guidance for the prevention of sexual harassment, Maj Gen Fiscus exhibited stunning hypocrisy by his own sexual harassment of JAG Corps subordinates.

ALLEGATION 3, that Maj Gen Thomas J. Fiscus wrongfully engaged in improper relationships with female civilians in violation of Article 133, UCMJ, *Conduct Unbecoming an Officer and a Gentleman*, and Article 134, UCMJ, *General Article*, was **SUBSTANTIATED**.

Maj Gen Fiscus, a married man, wrongly pursued romantic relationships with several single women. Documentary evidence from Maj Gen Fiscus's official email files and the testimony of Ms. [REDACTED] support a finding that he had a two-year adulterous relationship with Ms. [REDACTED]. Documentary evidence strongly suggests that he also committed adultery with Ms. [REDACTED] and that his relationship with Ms. [REDACTED] was also romantic. Although his relationship with Ms. [REDACTED] may not have been sexual, his aggressive pursuit of a one-on-one, loving relationship with her was also a violation [REDACTED] below the standards expected of an Air Force officer and gentleman. Additionally, his position as the Air Force's Judge Advocate General ensured that any such sexual misconduct would bring tremendous disgrace to the armed forces.

[REDACTED] USAF
Investigating Officer

[REDACTED] USAF
Investigating Officer

STEVEN R. POLK
Lieutenant General, USAF
The Inspector General

This is a privileged document. It will not be (in whole or part), reproduced, or given additional dissemination (in whole or part) outside the Air Force without the approval of The Inspector General, SAF/IG.

FOR OFFICIAL USE ONLY (FOUO)