

PUBLIC LAW 103-160-NOV.30, 1993 SEC. 1185

Home

DOD Instr.

FOIA

LODI

Sect. 1185

**107 STAT.1774 PUBLIC LAW 103-160—NOV. 30, 1993 SEC. 1185.
INVESTIGATIONS OF DEATHS OF MEMBERS OF THE ARMED FORCES
FROM SELF-INFLICTED CAUSES.**

**SECRETARY OF DEFENSE TO REVIEW DEATH INVESTIGATION
PROCEDURES—**

(1) The Secretary of Defense shall review the procedures of the military departments for investigating deaths of members of the Armed Forces that may have resulted from self-inflicted causes. The Secretary shall complete the review not later than June 30, 1994.

(2) Not later than July 15, 1994, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of such review. **The report may include any recommendations for legislation that the Secretary considers appropriate.**

(3) Not later than October 1, 1994, the Secretary shall **prescribe regulations governing the investigation of deaths of members of the Armed Forces that may have resulted from self-inflicted causes.** The regulations shall include a date by which the Secretaries of military departments are required to implement the regulations.

(b) INSPECTOR GENERAL TO REVIEW CERTAIN DEATH

INVESTIGATIONS.—Upon a request that meets the requirements of paragraph (3), the Inspector General of the Department of Defense shall review each investigation conducted by a Department of Defense investigative organization of the death of a member of the Armed Forces who, while serving on active duty during the period described in paragraph (2), died from a cause determined to be self-inflicted.

(2) The period referred to in paragraph (1) is the period that— (A) begins on January 1, 1982; and

(B) ends on the date specified in the regulations prescribed under subsection (a)

(3) as the deadline for the implementation of such regulations by the Secretaries of the military departments.

(3) Any of the family members of a member of the Armed Forces referred to in paragraph (1) may request a review under paragraph (1). The request must be received by the Secretary of the military department concerned not later than

one year after the date referred to in paragraph (2)(B) and shall contain or describe specific evidence of a material deficiency in the previous investigation.

(4) If the Inspector General determines that a previous investigation of a death was deficient in a material respect, the Inspector General shall conduct any additional investigation that the Inspector General considers necessary to determine the cause of that death.

(5) The Inspector General shall submit to the Secretary of the military department concerned a report on the results of each review conducted under paragraph (1) and each additional investigation conducted under paragraph (4) as a result of that review.

(6) The Secretary of the military department concerned, consistent with other applicable law, shall take such corrective actions with regard to matters contained in the report as the Secretary considers appropriate.

(7) To the same extent that fatality reports may be furnished to family members under section 1072 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat.2508; 10 U.S.C. 113 note), the Inspector General, after consultation with the Secretary of the military department concerned, shall provide a copy of the Inspector General's report on the review of a death investigation to each of the family members who requested the review.

(c) DEFINITIONS.—In this section:

The term "active duty" has the meaning given such term in section 101 (d)(1) of title 10, United States Code.

The term "family Members" has the meaning given such term in section 1072(c)(2) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2510; 10 U.S.C. 133 note).

(d) APPLICABILITY TO COAST GUARD.—The Secretary of Transportation shall implement with respect to the Coast Guard the requirements that are imposed by this section on the Secretary of Defense and the Inspector General of the Department of Defense.

[Back to History](#)

[Home](#)[DOD Instr.](#)[FOIA](#)[LODI](#)[Sect. 1185](#)

Department of Defense

INSTRUCTION

NUMBER 5505.10
January 31, 1996

IG, DoD

SUBJECT: Investigation of **Noncombat Deaths** of Active Duty Members of the Armed Forces

- (a) Section 113 of title 10, United States Code, note "Investigations of Deaths of Members of the Armed Forces From Self Inflicted Causes"
- (b) DoD Directive 6010. 16, "Armed Forces Medical Examiner System," March 8, 1988
- (c) DoD Directive 5400.7, "DoD Freedom of Information Act Program," May 13, 1988
- (d) Section 113 of title 10, United States Code, note "Survivor Notification and Access to Reports Relating to Service Members Who Die."

1. PURPOSE

This Instruction is issued under subsection (a) (3) of reference (a) to implement policy for the *investigation of noncombat deaths of members of the Armed Forces not medically determined to be from natural causes.*

2. APPLICABILITY AND SCOPE

This Instruction applies:

- 2.1. To the Office of the Secretary of Defense, the Military Departments, the

Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

- 2.2. To noncombat deaths of active duty members of the Armed Forces not medically determined to be from natural causes.
- 2.3. With the exception of procedures at subsection 6.3., below, only to those situations in which a military criminal investigative organization (MCIO) has jurisdiction and conducts an investigation into the cause and manner of death of an active duty member of the Armed Forces.

3. DEFINITIONS

- 3.1. **Accidental Death**. Refers to a death from inadvertent action, or action where no harm was intended.
- 3.2. **Active Duty**. Refers to full-time duty in the active military service of the United States. The term includes full-time training duty, annual training duty, and attendance, while in the active military Secretary of the Military Department concerned. The term does not include full-time National service, at a school designated as a service school by law or by the Guard duty.
- 3.3. **Military Criminal Investigative Organizations (MCIOs)**. Refers to the U.S. Army Criminal Investigation Command, the U.S. Naval Criminal Investigative Service, and the U.S. Air Force Office of Special Investigations.
- 3.4. **Self-Inflicted Death**. Refers to a death resulting from the actions of the deceased, and includes both suicide and accidental death.
- 3.5. **Suicide**. Refers to a death resulting from purposeful action intended to result in one's own death.

4. POLICY

It is DoD policy that:

- 4.1. All noncombat deaths of members of the Armed Forces on active duty, not medically determined to be from natural causes, **shall be investigated as potential homicides until evidence establishes otherwise.**
- 4.2. All MCIO agents assigned to conduct investigations of the deaths of members of the Armed Forces on active duty **shall be properly trained in conducting such investigations.** DODI 5505.10, January 31, 1996
- 4.3. In any case of an investigation of a noncombat death conducted by an MCIO in which a determination of the manner of death is made by an authority other than the Office of the Armed Forces Medical Examiner (AFME), Armed Forces Institute of Pathology (AFIP) under DoD Directive 6010.16 (reference (b)), the completed investigation shall be reviewed by the headquarters of the MCIO and submitted by such headquarters to the AFME, AFIP, **for a consultation opinion on the thoroughness and completeness of the investigation as it relates to the external determination of cause and manner of death.**
- 4.4. A Family Liaison Program shall be establish by each MCIO.
- 4.5. Any public release of information about the noncombat death of a member of the Armed Forces on active duty not medically determined to be from natural causes will state that the cause and manner of death are undetermined, unless an official determination has been made. After the official determination has

been made, releases to the public will state the official determination of the cause of death and **avoid speculation** about the means not substantiated in connection with the determination. All releases will be coordinated in advance among the cognizant MCIO, the casualty assistance officer, and the servicing judge advocate. The family of the deceased member will be notified prior to any public release of information.

- 4.6. Each MCIO shall, to the maximum extent possible consistent with available resources and the facts and circumstances of each case, provide military authorities with all information necessary to make command determinations and support command programs relating to deaths that are the subject of this Instruction.

5. RESPONSIBILITIES

- 5.1. The Inspector General of the Department of Defense shall monitor, evaluate program performance, and provide guidance with respect to all DoD activities that implement this Instruction.
- 5.2. The Assistant to the Secretary of Defense for Public Affairs shall ensure that all public affairs personnel comply with the requirements of this Instruction on public release of information regarding the noncombat death of a member of the Armed Forces on active duty not medically determined to be from natural causes.
- 5.3. The Secretaries of the Military Departments shall ensure that all MCIO agents comply with the procedures described in section 6, below. DODI 5505.10, January 31, 1996. 3

6. PROCEDURES

- 6.1. Appropriate training for MCIO agents assigned to investigate deaths shall, at a minimum, include the following subject matter areas:
 - 6.1.1. Jurisdiction for conducting criminal investigations.
 - 6.1.2. The elements of criminal offenses connected with deaths.
 - 6.1.3. Preliminary investigative procedures, including receiving and responding to notification of a death, assigning an investigative team and initially locating and interviewing witnesses.
 - 6.1.4. Preserving and processing the crime scene.
 - 6.1.5. Searching for, locating, identifying, preserving and transporting evidence.
 - 6.1.6. Submitting evidence for medical and forensic analysis.
 - 6.1.7. Identifying possible criminal offenders.
 - 6.1.8. Preparing reports and maintaining case files to assist or support appropriate authorities in determining the cause and manner of death and prosecuting any person(s) culpable for the death.
- 6.2. The Family Liaison Program established by each MCIO shall:
 - 6.2.1. Provide for designation of at least one agent to provide information and appropriate assistance to the family of the deceased active duty

member of the Armed Forces.

- 6.2.2. Provide for agents assigned to family liaison duties to be trained to perform such responsibilities in areas including victim and/or witness assistance issues, survivor assistance procedures and requirements of DoD Directive 5400.7 (reference (c)). The agent's family liaison duties shall be in conjunction with, or in support of, those other officials with direct responsibility for family notification and assistance, determining and arranging survivor benefits, and performing information redactions in accordance with reference (c). DODI 5505.10, January 31, 1996
 - 6.2.3. Provide the deceased's family, if they so desire, and to the extent that such reports may be furnished consistent with reference (c), **a copy of any completed investigative report and any completed fatality report** in accordance with the requirements of 10 U.S.C. 113 note (reference (d)).
 - 6.2.4. Ensure all reasonable questions and issues raised by the family are addressed on a timely basis.
- 6.3. In any case where an MCIO does not have jurisdiction to conduct an investigation into the cause and manner of the noncombat death of a member of the Armed Forces on active duty:
- 6.3.1. **The MCIO for the cognizant Military Department shall attempt to maintain maximum liaison with the law enforcement organization that is conducting the investigation.**
 - 6.3.2. **The MCIO family liaison agent shall provide all possible assistance to the family of the deceased in obtaining cooperation and assistance from the responsible law enforcement organization.**
 - 6.3.3. **The MCIO shall attempt to obtain and provide to the appropriate military authorities a copy of the report of investigation, including any forensic or autopsy results.**

7. EFFECTIVE DATE

This Instruction is effective immediately.
DODI 5505.10, January 31, 1996

[Back to History](#)



Statement of Congressman Frank Pallone, Jr.

12 September 1996

Subcommittee on Personnel, Senate Armed Services committee

More than three years ago, Congressman Dave Levy and I began a joint effort to have Congress and the Department of Defense recognize deficiencies and correct the findings of investigations that have been conducted into the deaths of certain servicemen--our constituents--who are alleged to have died by their own hand.

We are joined in this effort by many other members of Congress and their own constituents, family members who have been devastated by similar losses. These families joined together in an informal organization that is represented here today. They provided the motivation that resulted in enactment of our Section 1185 amendment to the Fiscal '94 DOD Authorization bill, which directed preparation of the report this committee addresses today.

While I am submitting for the record a brief summary of my findings from the study of approximately eighty cases of unattended, non-combat military deaths, there are several specific things I need to say.

First, I am repeatedly asked if I believe that the problems I have identified in the study of unattended deaths are systemic throughout the military.

My answer is yes. With few exceptions, the deficits in investigations that I have reviewed have occurred everywhere and exist in each branch of the military.

I have been asked to explain why there are not more families questioning or challenging determinations of self-inflicted death, if the problems are systemic?

That question assumes that each family was somehow notified that they could request a review by the DOD Inspector General's office, which was not and is not the case.

My understanding from families interviewed is that they usually spend considerable time in the first two years after the death in pursuing answers and documentation.

In too many cases, over a year will pass before the final report is issued.

Many families have never received specific information that has been requested.

After the emotional exhaustion of months or years of being patronized or ignored, countless citations of regulations barring information, delays in receiving reports and the finality of those reports - none of which provide recourse - many families have resigned themselves to their grief and come away with a sense of helplessness and a loss of faith in their government.

Others, such as those here today, have begun to meet with each other at a crossroads

of grief and anger as they understand the commonality of not only their loss, but their experiences with the Department of Defense.

These families have chosen to seek accountability and answers. They have endured exhumations, second autopsies, brutal discussions of crime scene photos and they have often sought out independent expert opinions.

They now want the records of these deaths amended because the military has not proven, through competent investigation, the manner of death - only the cause. They look now to you for recourse and for your collective commitment to families who may be similarly affected in the future.

Frequently I am asked whether or not I believe these families are "in denial," which has become a catch-all phrase utilized by many military investigators and officials to describe those families who refuse to accept the official findings.

This question appears to be based on failure to understand that a self-inflicted death - a suicide - is the only manner of death wherein the victim is also charged with the crime. But the victim cannot speak, nor defend himself. And in a system where no provision exists to act in that capacity, the victim's families must.

The motivating force behind these families is one of defense, not denial.

Overall, the military investigators have not proven their cases against these servicemen. In fact, there is no mechanism within the military, no defense attorney, no investigative review board, that requires the military investigators to substantiate their allegations against these deceased servicemen and women. Even if, gentlemen, respected, professional opinion contradicts their findings. If an attempt were made to support a homicide charge with the types of investigations currently used to determine that an unattended death was accidental or self-inflicted, no court in the land would entertain such a prosecution. There would be no conviction.

But here we have death after death--over (230) in 1995 and over four thousand(4000) since 1979--subjected to flawed and incomplete investigations that have led to findings of suicide or accidental self-inflicted death: findings that are set in stone despite evidence to the contrary.

My 21- year-old constituent, Marine Lance Corporal ----- , died of a contact bullet wound to the head. Another young Marine was court-martialed for involuntary manslaughter, based upon an admission to a friend. In the end, the other Marine was acquitted because he had never been read his rights, because critical paperwork disappeared and because evidence had been mishandled. This case remains as a self-inflicted death on the records.

In most of the more recent cases, the armed forces' employment of psychological autopsies has compounded the injury done to these families. It's use, without checks and challenges, by under-specialized and possibly under-educated investigators has become a tool to conform or provide evidence where concrete evidence exists.

In many of these cases, relationships between the victim and everyone that ever played a part in that victim's life is dissected in a vacuum.

The importance of ordinary incidents and activities in a young person's life is magnified.

Suddenly, the psychological autopsy becomes riddled with clichés describing why the victim took his life.:

Actual examples are the following: If he bounced a check, he had financial problems. If he liked to hike, he was a loner. If his grandfather drank too much, he was probably an alcoholic. If he was found to have been a homosexual, he was unhappy. If he worked out, he was overly concerned with being strong. If he had broken up with a girlfriend any time in his life, he never got over the rejection. If he argued with his parents, he was a disciplinary problem or the parents were overly harsh.

I must say that I have the greatest respect of the criminal profiling efforts of the FBI experts at Quantico. I appreciate that developments in this field have lent valuable assistance to police throughout the country. I acknowledge that valuable psychological autopsies spring from such profiling.

However, psychological profiling as is currently being utilized in military psychological autopsies is only as good as the information provided to the profiler by criminal investigators who have performed a thorough criminal investigation.

If, in fact, a DOD investigator is misusing information, misquoting witnesses and is deliberately or unknowingly misdirecting the profiler, the psychological autopsy is irretrievably corrupted.

If the physical evidence from the body and the crime scene is withheld or mishandled, the profiler preparing the psychological autopsy is missing key elements in making his report. And here again, once these reports are prepared and part of the record, there exists no remedy to correct erroneous information alleged to be factual. In one case, for example, the mother of a young Air Force woman, must live with a report stating that she had little communication or contact with her daughter, despite having enjoyed a two-week touring vacation with her daughter shortly before her death. Without exception among these families, the flawed investigations, the reports, the unsupported findings and the absence of recourse are of continuing insult and immense personal pain to each family.

We all recognize that suicides and self-inflicted deaths do happen. Often to our best and brightest without warning indicators. They are an unexpected, tragic and frequently unpreventable end to many young lives. However, the number of such military deaths is three times higher than their homicide rate and the suicide, self-inflicted determinations are usually made within a few hours after death.

I submit that it is grossly improper and an unacceptable affront to these families to precipitously arrive at the determination that any death was self-inflicted prior to completing a thorough investigation whose findings will withstand the same scrutiny as would those for a homicide.

It is obvious there must be recourse to resolve differences of professional opinion; recourse in correcting military records concerning the manner of death; procedural changes in the procedures and practices of military criminal investigators; a means

by which there is federal investigatory involvement in those deaths which occur in civilian jurisdictions; the entitlement to a full physical autopsy documenting each physical finding no matter in what jurisdiction the death occurred; and a substantial change in the process of preparing psychological autopsies.

Thank you.

ISSUES SUMMARY

MILITARY NON-COMBAT, UNATTENDED DEATHS

Prepared by Congressman Frank Pallone, Jr.

Area one: Crime scene protection, evidence collection and retention,

photographs and investigative procedures:

A. Often the crime scene is not secured, particularly if the victim is still alive when found and the primary focus is directed toward life saving efforts. In these situations, often hours go by before the attention of investigators goes to the scene and individuals present at the time of the incident.

B. Collection and handling of evidence is incomplete and often sloppy. There is no clear mandatory period for retention of physical evidence after the investigation is concluded. The decision to close an investigation rests with the Command and physical evidence can then be destroyed.

C. Photographs taken by civilian jurisdictions when the victim is found off base are often of very poor quality (i.e. snapshots) or are incomplete.

D. Photographs taken by civilian jurisdiction officials may or may not be made available to the family and even if they are provided to the Department of Defense, the civilian jurisdiction controls the release (even to family or Congressional offices) of the photographs.

E. Fingerprints are not mandatory nor often requested of witnesses or those in area with the victim at the time of the incident or those having had problems with the victim. Neither is there immediate nitrate/powder testing on those individuals. Frequently hours pass before such testing. Fingerprinting of crime scene is incomplete and at times non-existent.

F. There is a failure to use common investigative techniques and procedures currently utilized throughout the country's police departments, even when training has been comparable to that of civilian equivalent authorities.

G. Investigators appear to make a suicide/self-inflicted or accidental determination prior to initiating an investigation and that predisposition controls the conduct of the investigation. This attitude was clearly stated by a Commander from Camp Pendleton who was quoted in the Bergen Record 9/26/93 as saying "Normally, it's very obvious what happened. Most of these are witnessed and the circumstances are such that it's

pretty clear what took place". This attitude is common throughout the military and pervades each case from Command level down.

Area Two: Notification process, assignment and participation of casualty officer:

A. There are extreme variations in relating to family members the facts of what happened as well as errors in relating when and where the death occurred.

Some families receive as many as four variations in the circumstances.

Casualty officers assigned to families lack detailed information, lack procedural information and are frequently changed throughout the course of the investigation.

Area Three: Autopsy authorization, autopsy photographs, treatment of remains and notification of procedural information:

A. There is an evident lack of explanation concerning military autopsy and treatment of remains, and in many cases the absence of any description of other markings, injuries and lacerations in the report.

B. Deaths occurring in civilian jurisdiction may or may not have a full autopsy, which may or may not be photographed and those photographs may or may not be made available to families. As a result of the lack of mandatory conformity in the deaths of active duty military personnel, autopsies may solely state the cause of death and never note defensive or other injuries, bruising, lacerations, etc. The injuries are often not known until the family receives the photographs, has a second autopsy or receives the crime scene photographs.

C. There is a complete failure to inform families concerning the remains of the victim and serious violations of existing military regulations governing the treatment of remains frequently occurs.

Area Four: Theft of personal belongings of deceased servicemen and women:

A. There is widespread random looting of the personal belongings of victims, before and after it has been inventoried. Almost without exception, families find that numerous articles are missing, ranging in size and value, even after they have been inventoried.

B. Often the military makes a determination as to whether certain personal belongings are suitable to be returned and will remove those items they deem unsuitable. Journals are read and pages removed or entirely confiscated.

Area Five: Psychological autopsy as determining factor in manner of death:

A. There is widespread use of rumor and unverified information contained in current psychological autopsies, and they frequently appear to be an attempt to explain why a criminal investigation was not thoroughly conducted.

B. The use of unverified and erroneous information, aside from being profoundly hurtful to the families, provides investigators with an opportunity to conform evidence,

with which intent is established. In order for there to be a suicide, there must be intent. Without proof of intent, and in the face of flawed investigations, the manner of these deaths should be recategorized as 'undetermined'.

Area Six: Deaths within civilian jurisdictions:

A. Servicemen who die off base are usually not well-served by either local or military investigators.

B. There are widespread problems presented by the fact that localities do not want to expend their resources on "military personnel" and the military does not have jurisdiction to become the lead investigative agency. In effect, the death has occurred in "no-man's-land", further compounded by command desires to stay on non-critical and friendly terms with hosting community officials.

Area Seven: Release of information, photos and response to questions during the investigations and after:

A. Despite regulations to the contrary, over and over again families must write, often appeal and wait an inordinate amount of time for records, reports and photos.

B. Responses to questions are incomplete or nor ever forthcoming and never is there a 'session' wherein the entire case is reviewed with the family.

C. Without exception, an arrogance of attitude by the military is reported by the families in most of their contacts with base officials. Families feel that they are viewed with contempt and that their children are dishonored.

OVERVIEW:

1. Aside from numerous inadequacies existing in these investigations that conclude with a finding of self-inflicted, there is substantial reason to believe that many investigations concluding with a finding of accidental death are similarly flawed and initially should have been fully investigated. This is particularly true when the deaths or disappearances are unnatural and are not crash related or attributed to training.

2. There is substantial need to resolve the jurisdiction problems of investigation when a serviceman or woman dies off base, to assure that there is a full autopsy, that there is a complete and professional investigation and that no reports, photos and information can be withheld from the families. There may be some need to discuss the possibility of investigative lead being taken by a federal investigating agency, such as the FBI, thereby taking it out of the hands of both the civilian and military jurisdictions.

3. There is a compelling need for a suicide prevention action program that utilizes the expertise of professionals and that encompasses an "immediate safety net" approach to troubled and fearful servicemen and women - one which allows them to remove themselves from a threatening situation. Many of the cases reviewed contained information that the deceased serviceman or woman had been physically threatened or intimidated for a variety of reasons.

4. The establishment of a board of investigative review should be seriously considered

within the Department of Defense, to assure that conflicting medical, technical and investigative opinions are heard and weighed in those cases where conflicts exist and the families make the request. Such a board should be able to recommend and implement a change in the official records concerning the manner of death, when the evidence or lack thereof supports it.

END

[Back to History](#)

Statement Presented to the Senate Armed Services Subcommittee on Personnel

by Dr John David Sabow. September 12, 1996

Good Afternoon Gentlemen,

My name is Doctor John David Sabow.

I appear before you this afternoon in three distinct capacities.

First: I am the brother of United States Marine Corps Colonel James E. Sabow, the 51 year-old commander of all western air operations for the United States Marine Corps who was found shot to death at his home on his United States Marine Corps base in California. In this capacity, I share with the other men and women whom you see before you today, the profound anguish of having been informed by my government that one of our loved ones committed suicide under very suspicious circumstances while in the military service of our country. In my second capacity, I appear before this respected body as a board certified neurologist and a board qualified medical expert in internal medicine with 25 years of professional experience. In this second capacity, I am professionally capable of testifying, to my own personal professional certainty, that the initial United States Military Investigative service investigations which are presently conducted into the causes of non-combat in-service deaths of our U.S. servicemen and women are conducted, at the present time, in a medically incompetent manner and that the entire pattern of conduct which characterizes such military investigative services in-service death investigations (as was officially declared in a recent, August 28, 1996, decision rendered by the highly-respected United States Circuit Court of Appeals for the ninth circuit in California constitute: an "alarming pattern of instances of poor judgment" which display "a general disregard for sound investigative procedures" and which are, therefore, both "unprofessional and ineffective".

In my third, and final, capacity, I appear before you today as a battle-weary veteran of six long years of constant administrative struggle in which I have attempted - as have the other men and women whom you see before you today - to make use of every avenue of Defense Department Administrative Review which the United States Congress has made available to the families of servicemen and women to review the initial medically incompetent military death investigation of their loved one.

In this final capacity, I am here today to inform you that the present system of internal military administrative review procedures of such in-service death

investigations presently made available by Congress is absolutely insufficient, as a matter of practice and of law, to deserve any confidence whatsoever on the part of the American family whom Congress asks to loan their sons and daughters, their husbands and wives and their fathers and mothers to the United States services to serve our nation.

In the brief comments which I shall make here today, I will confine my statements to facts which will assist you, as United States Senators, in performing your specific constitutional function of drafting and enacting specific concrete legislative reforms which will restore the initial military in-service death investigation process - and the government review process over such initial death investigations - to the proper position of trust and confidence to which such procedures must be restored, if congress is to ask us to place our loved ones in the hands of the United States Military Services for training and for service to our nation.

By way of specific example, I will inform this body of four specific issue-areas in which I know, to my own professional certainty, that our present initial original military in-service death investigations are, as a matter of regular practice, completely incompetent and are, therefore, entirely incapable of generating objectively reliable physical medical evidence which is adequate to support a trustworthy medical conclusion as to the manner in which a serviceman or woman was actually killed.

Secondly, I will set forth facts which demonstrate that the present internal military "review" process presently in place is functionally nothing more than a pro forma "rubber stamp" of whatever determination was arrived at by the initial military in-service death investigation conducted in that case, no matter how professionally incompetent that initial military investigation was. and I will testify that this "rubber stamp" attitude within the military rises all the way into the office of the Inspector General of the Department of Defense.

Finally, I will propose to this body two specific, concrete legislative proposals which I and my legal counsel believe will substantially restore to the entire field of in-service military death investigations the degree of public and private confidence to which such investigations must be entitled, if we are to be asked by our congress and our president to place the lives of our loved ones in the custody and care of our military services in the future.

I am here today because of the violent deaths of over 3000 young men and women over the past decade while they were serving their country on active duty. All of these deaths were ruled by the United States military services to have been "self-inflicted". The particular deaths which bring us before the United States Senate today, occurred under very suspicious circumstances -

but all of them were ruled by the military to have been self-inflicted. I am only one of those who appear before you today who questioned the military about their conclusions and who conducted our own private investigation which determined that the official conclusion reached by the military authorities was, in fact, wrong. I have not contacted every one of those dissatisfied parents, brothers, sister or spouses but those with whom I have spoken have all expressed profound disappointment in their government. There is disappointment in the military service that was supposed to take care of these servicemen and women; disappointment in military investigative agencies that were required by law to perform an objective and competent investigation of the circumstances of the manner of these deaths; and disappointment in the performance of the military "reviewing" agencies which were required to conduct an objective :review: of the initial death investigation - but which were, uniformly, more interested in simply protecting the reputation of the military and in affirming the original incompetent investigation.

There was also considerable disappointment with many of our elected representatives who rather than personally get involved, passed it on to an aide who seemed more interested in protecting their congressman or senator from controversy than to stir up issues that could theoretically offend large numbers of constituents and risk losing their votes.

but the greatest disappointment of the American families gathered before you today has been in their country-whose leaders appear to have an agenda that values the establishment over the individual, the end over the means; appearance over fact and expedience over truth. All of us mourn the loss of our loved ones but we also mourn the loss of respect we had for our country. In our search for the facts, we have been overwhelmed by the lack of sensitivity shown by the military, the arrogance of the DOD Investigators; but most of all by the perception that our government is attempting to hide the truth and obstruct justice. Many of these American families have been forced to the conclusion that agents of our own government have played an active role in the deaths of our loved ones and not simply a passive role after the fact. These notions are not the delusions of despondent relatives. They are not the ravings of conspiracy theorists. They have developed only very gradually, after these families have reviewed available evidence, shared it with experienced experts and then arrived at conclusions totally different than the authorities. But this has not been simply a difference of opinion. In many instances the evidence has so conclusively proved murder that any other conclusion is beyond reasonable debate. Everything I will tell you today is documented and verifiable. It deals with the way the DOD gathers evidence, interviews families and witnesses, makes attempts to intimidate experts hoping that they will alter their conclusions, takes statements out of context, erases specific portions of a recording of a meeting and then transcribes it

has being complete. When two investigators have conducted an interview, they have stated totally contradictory conclusions as fact, forgetting that the other had just stated the opposite. Family members of men and women who are killed while in service receive no cooperation whatsoever when trying to get the autopsy reports/ Being a board certified neurologist, I was totally qualified to review and understand the details of the autopsy in my brother's death. Even five weeks after my brother's death, The pathologist who conducted the autopsy, told me that she couldn't remember the case and there was such a backlog of cases that the report was not available. yet, the conclusion of suicide was already established and was published in the first Jagman report. Military investigative services refuses to give family members the results of the fingerprint evidence even after months of delay. I finally received both, in my brothers case, only six full months after his death-and I realized why they were so reluctant to provide the information. you see, in my brother's case, the autopsy described the lungs and breathing passages as filled with aspirated blood. Yet the brainstem had been totally blown away by a shotgun blast. Any medically competent person knows that this would result in instantaneous death precluding even the slightest gasp. The presence of aspirated blood in the lungs would have required a period of coordinated breathing with blood entering the lungs from a prior serious injury--an impossibility without a brainstem! For years,, American families of servicemen and women who have been declared to have committed suicide have tried to have the DOD, FBI, the individual military services and the department of justice reconcile such gross contradictions, but they can not. They have each offered totally ludicrous explanations. For instance, In my brothers case, they stated that"...after the shot, the victim remained sitting upright, so the blood went into the lungs by gravity." "He remained living for a short time after the shot, and continued breathing for some time." "Since there was no exit wound, the blood shot down into the lungs from this extremely vascular area." After that shotgun blast, the entire energy of the shot was dissipated in my brother's head, for there was no exit wound. This force would have launched his body backwards immediately and forcefully. There was no physical possibility of the victim remaining sitting upright. Furthermore, after the sudden destruction of the brainstem, there is an instantaneous total loss of all muscle function, with ensuing flaccidity, a loss of all vegetative and autonomic activity, resulting in an immediate cessation of all breathing and total loss of blood pressure. These military service investigations cannot explain the lack of the victim's fingerprints on the weapons except by lying, for example, in one case, military investigators quote a fingerprint expert as stating that it is common to have the finger prints burned from the barrel of a shotgun by the heat generated by a single shot. The expert quoted by the military investigators in that case, a state deputy sheriff, vehemently denies ever making any such statement. And there is the blood-stain evidence. In one

case the blood covered the palms of both hands of the victim, yet there was not one drop of blood on the death weapon. The DOD investigator, in that case, stated that this fact "bothered" him. But he was bothered only when the family pointed this fact out to him. It apparently did not bother him or any of the military investigators at the DOD, for they refused to give any explanation to the family. In one case, an x-ray was taken of the victim's skull by a state coroner in the case of an alleged self-inflicted gunshot wound of a military service man. That x-ray showed a massive depressed skull fracture at the back of the head of the victim. There was also an orange-sized swelling at the back of the head clearly shown on all autopsy photos taken at the crime scene. Furthermore, the swelling was seen and felt by the serviceman's wife when she discovered the body. It was noted at the crime scene, by the NIS case officer, under the huge swelling was found a fresh blood clot, which was totally void of any bone shards or shotgun pellets. The x-rays clearly show the absence of these. If that fracture was caused by the gun blast in the victim's mouth, the skull fragments would have been blown outward and the swelling would have been filled with pellets, shards of bone and brain. But there were absolutely none, making it clear that this deadly blow had been inflicted before the service man had been shot. One military investigating agent stated repeatedly that there was no swelling. A second military investigator stated that the swelling was filled with bone, brain and pellets. Yet a third military investigator in the same case stated that the swelling occurred only after the body was positioned on the autopsy table with the head resting on "chocks" ignoring the depressed skull fracture altogether. The skull x-ray and photos of the back of the head in that case were sent to various universities for their evaluations. The university of Minnesota reviewed this evidence at a combined neurosurgical and neuroradiological conference. The unanimous opinion was that the fracture was a typical external blunt-force trauma and could not have been caused by the gun blast. It was the unanimous opinion of these undisputed medical experts in that case that the external skull trauma had to have been inflicted several minutes before the shotgun blast., For it would have taken at least that amount of time for the swelling to have developed. Evidence such as this regularly ignored by in-service military investigators until some explanation is demanded by family members. Then such information is often explained away with the most implausible and medically impossible theories. Medical experts who have contradicted the initial military investigators conclusions are often contacted by the military investigators and DOD "reviewers" and are asked to change their opinions. For example, a neuroradiologist from the university of Minnesota in one of the cases discussed above was contacted by a DCIS investigator and was openly pressured to change his opinion. In conclusion, I respectfully recommend that this body consider enacting two specific pieces of legislation: First, I request that this body enact legislation expressly mandating the investigative services

in each branch of our United States Armed forces to take steps to amend the official investigative manuals governing in service death investigation. They should make mandatory a specific set of professionally-required procedures and steps to be taken when conducting a death investigation. At the present time, the ninth circuit of appeals has ruled that any and all potential investigative steps are effectively "totally discretionary' on the part of the individual investigating officer, making any truly meaningful "review" of such an investigation entirely devoid of any objectively enforceable standards. Secondly, I request that this body enact legislation establishing a federal office of ombudsman which office would be authorized to accept requests from family members who have exhausted all other forms of administrative relief and to have this ombudsman conduct a De Novo professional investigation into the death of the serviceman of that family. An office of permanent independent counsel should also be established which should have the authority to initiate federal litigation at the request of ombudsman. I have spent the larger portion of six full years attempting to get my government to conduct a good faith, professionally responsible investigation into the manner of the 1991 shooting death of my brother, Colonel James E. Sabow. All of these efforts have proved to have been in vain. next month, I will be forced to commence a distasteful federal litigation against my own government to obtain the justice to which my brother, Colonel James Sabow, was entitled after almost 30 years of distinguished and honorable service in the military service of his country. Many of the other men and women whom you see assembled before you today do not have the means to commence such distasteful federal litigation as I have done. Nor should they be forced to resort to this extreme form of conduct in order to obtain an objective and competent investigation of the violent death of a family member whom they have entrusted into the hands of our Nation's Armed Services. I ask you, today, to provide to these men and women a less adversarial manner of obtaining a professionally competent and trustworthy fact-finding procedure to determine the facts of the deaths of their loved one while in the service of our nation.

IT IS THEIR RIGHT....AND IT IS YOUR DUTY.

[Back to History](#)