REPORT OF INVESTIGATION

COMMANDER DIRECTED INVESTIGATION
REPORT OF INVESTIGATION

PREPARED BY

INVESTIGATING OFFICER

CONCERNING

ALLEGATION OF ADULTERY

14 MAY 2013
EXECUTIVE SUMMARY

I was appointed to investigate an allegation that Lt Col James H. Wilkerson fathered a child with a woman not his wife approximately seven years ago. After completing three interviews, contacting nine subject matter experts, and gathering and reviewing 14 documents, I synthesized all evidence. I then submitted questions to Lt Col Wilkerson and he responded with a narrative statement addressing some of the questions.

Based on my investigation, Allegation 1 is Substantiated and Allegations 2 and 3 are Not Substantiated, as outlined below. I would also like to note that the investigation found no evidence that Lt Col Wilkerson intimidated or coerced the mother with whom he fathered a child out of wedlock. Furthermore, he provided the specific financial support she requested and relinquished his paternal rights in compliance with her wishes.

Allegation 1: Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married, thereby committing Adultery in violation of Article 134, UCMJ.
- Substantiated. The evidence indicates Lt Col Wilkerson had consensual sex with a woman who was not his wife on 19 Sep 04, resulting in a child born on 6 Oct 05. He signed over his parental rights on 6 Oct 05. In addition, his conduct was to the prejudice of good order and discipline, and was of a nature to bring discredit to the armed forces.

Allegation 2: Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married, and the sexual relationship with the child’s mother constituted a violation of AFI 36-2909, Professional and Unprofessional Relationships.
- Not Substantiated. The evidence indicates that on 19 Sep 04 the mother was unmarried, employed at a civilian hospital and had no affiliation with the military.

Allegation 3: Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married, and he has since that time made false official statements in violation of Article 107, UCMJ during the course of his security clearance investigations or reinvestigations or during the course of other official matters in an effort to prevent those facts from becoming known.
- Not Substantiated. I discovered no false official statements during my review of Lt Col Wilkerson’s most recent security clearance paperwork (23 Apr 08) and SCI Screening Interview Questionnaire (20 Jun 10). I also confirmed no questioning was required for special access programs at the assignments where he was on flight status.

As part of the investigation, I evaluated potential command options in response to the substantiated allegation of Adultery.
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MEMORANDUM FOR COLONEL [REDACTED]

FROM: 12 AF/CC

SUBJECT: Commander-Directed Investigation (CDI)

1. Appointment. You are appointed to conduct a CDI into the areas noted on the Attachment. This is your primary duty until completion.

2. Authority. You are authorized to interview personnel, take statements and examine/copy all relevant Air Force records, to include pay and personnel records that you believe are pertinent to this CDI.

3. CDI – Conduct and Report. In conducting the CDI, follow the guidelines in the Commander-Directed Investigation Guide, which 12 AF/JA will provide you. Prepare and submit a report of investigation (ROI) in the format it describes. You may include any recommendations you deem appropriate in your ROI. Your ROI is due by 24 May 13; if you need additional time, advise me of same.

4. Legal POC. [REDACTED] 2 AF/JA, will serve as your legal advisor. [REDACTED] can be reached by email at [REDACTED] or he can be reached by phone at DSN 228-4634. After hours you may call him at [REDACTED].

5. Release of Information. Do not release information regarding this CDI without my prior approval. This memo and its attachments are FOUO and contain information protected by the Privacy Act.

ROBIN RAND
Lieutenant General, USAF
Commander

Attachment:
Background / Instructions / Areas of Potential Inquiry
Attachment

Background. An anonymous source contacted SAF/PA and Stars and Stripes. The anonymous source alleged that approximately 7 years ago, Lt Col James H. Wilkerson fathered a child out of wedlock with a woman not his wife. (SAF/PA has since identified the anonymous source.) Lt Col Wilkerson reportedly relinquished his parental rights in court proceedings and has not financially supported the woman or the child.

Instructions. If possible, identify and speak to the (previously) anonymous source and, if known, the mother of the child. If you are able to speak to one or both, obtain any verifying documents before speaking with Lt Col Wilkerson. If you are unable to identify the source or the mother, you will attempt to question only Lt Col Wilkerson.

Areas of Potential Inquiry.

1. Examine whether Lt Col Wilkerson fathered a child with another woman while married. If true, examine whether this conduct constituted adultery in violation of Article 134, UCMJ and/or an unprofessional relationship in violation of AFI 36-2909, Professional and Unprofessional Relationships.

2. Examine whether Lt Col Wilkerson made any false official statements concerning this matter including as part of security clearance investigations/updates and/or other related matters.

3. In consultation with your legal advisor, you may examine any other areas reasonably raised by the above-noted scope of your investigation.


**AUTHORITY AND SCOPE**

**Authority and Scope.** Commanders have the inherent authority to conduct a Commander Directed Investigation (CDI) to investigate matters under their command, unless preempted by higher authority. Pursuant to this authority, Lt Gen Robin Rand, Commander Twelfth Air Force (Air Forces Southern), appointed Col [Redacted] on 29 Apr 13 to conduct the Investigation as follows:

_You are appointed to conduct a CDI into an allegation that approximately 7 years ago, Lt Col James H. Wilkerson fathered a child out of wedlock with a woman not his wife. Lt Col Wilkerson reportedly relinquished his parental rights in court proceedings and has not financially supported the woman or the child. If possible, identify and speak to the (previously) anonymous source and, if known, the mother of the child. If you are able to speak to one or both, obtain any verifying documents before speaking with Lt Col Wilkerson. If you are unable to identify the source or the mother, you will attempt to question only Lt Col Wilkerson._

The CDI was conducted from 29 Apr 13 to 14 May 13.

**Allegations.**

1. **Allegation 1:** Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married, thereby committing Adultery in violation of Article 134, Uniform Code of Military Justice (UCMJ).

2. **Allegation 2:** Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married, and the sexual relationship with the child’s mother constituted a violation of AFI 36-2909, Professional and Unprofessional Relationships.

3. **Allegation 3:** Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married, and he has since that time made false official statements in violation of Article 107, UCMJ during the course of his security clearance investigations or reinvestigations or during the course of other official matters in an effort to prevent those facts from becoming known.
BACKGROUND / FACTUAL NARRATIVE

Background. I was appointed to investigate an allegation that Lt Col James H. Wilkerson fathered a child with a woman not his wife approximately seven years ago. This case involved three primary witnesses: Lt Col Wilkerson and the mother of the child fathered out of wedlock. To protect the privacy of the mother and the child, the mother will be referred to only as “the mother” and the child will be referred to only as “the child” throughout this report. The mother is very concerned about the effect media attention will have on her child. According to the mother, the child does not know about the biological father and the mother's current husband is the only father this child has ever known. In addition, the location of the mother’s current residence will remain undisclosed.

and the mother met about 13 years ago, when they both resided in Oregon. The mother later moved to Utah, but she and have remained in contact. (Tab F-1.)

In 2003, joined the Air Force, and he became a flight surgeon assigned to Luke AFB, AZ (Tabs F-1, G-1). and Lt Col Wilkerson met and became very good friends (Tab F-1).

In late August or early September 2004, Lt Col Wilkerson was visiting and During this time, he visited often as his wife and son were away, staying with her parents (Tab F-1). The Wilkersons were experiencing marital problems and were physically separated at that time (Tab F-4). was talking to the mother on the phone and Lt Col Wilkerson walked up and asked who she was talking to. He took the phone from and introduced himself to the mother; they talked for a while and hit it off. (Tab F-1.) The mother believed Lt Col Wilkerson was estranged from his wife, and that his wife and son were staying with her parents (Tabs F-1; F-2). They spoke over the phone several times after this initial introduction (Tab F-2). Lt Col Wilkerson and the mother planned to meet in Utah during a temporary duty (TDY) assignment (Tabs F-1; F-2).

On 19 Sep 04, Lt Col Wilkerson, and three other officers stopped for an overnight at Hill AFB, UT while on a four-day cross-country TDY with three F-16C and one F-16D aircraft (Tabs F-2; F-3; G-2; G-3; G-4; G-5; G-6). The mother initially met Lt Col Wilkerson at billeting and they later met up with three of the other Air Force members for dinner at Chili’s (Tab F-2). The fourth officer, testified that, after landing, he met up with a friend from a previous unit and spent the evening at his home (Tab F-3). Lt Col Wilkerson and the mother had sexual relations during his visit; it was completely consensual (Tabs F-2; F-4). After that evening, Lt Col Wilkerson and the mother spoke on the phone several times but did not see each other again (Tab F-2).

Five or six weeks after the encounter, the mother discovered she was pregnant (Tab F-2). She knew the father was Lt Col Wilkerson, and she intended to keep the child (Tabs F-1; F-2). The mother initially called and told her about the pregnancy, but asked not to tell Lt Col Wilkerson (Tabs F-1; F-2). Eventually, told him (Tab F-1).
The mother contacted Lt Col Wilkerson about 25 weeks into the pregnancy. She requested he sign away his parental rights and asked for details on his family medical history. In addition, she mentioned she didn't have insurance to cover the pregnancy and delivery, and requested some monetary assistance. Lt Col Wilkerson told the mother he would think about it. (Tabs F-1; F-2.)

Shortly after the mother told Lt Col Wilkerson she was pregnant, an attorney called her. He was rude and aggressive, and told her Lt Col Wilkerson was going to sue for legal custody. The mother threatened and was afraid she might lose her child. She spoke to Lt Col Wilkerson about the attorney and threatened to call his commander if the attorney contacted her again. The attorney never called again and the mother does not know who hired him. (Tab F-2.)

Lt Col Wilkerson contacted the mother some time later and said his wife, Beth, would like to speak with her (Tabs F-2; F-4). He suggested there might be a way they could raise the child together (Tabs F-2; F-4). The mother and Mrs. Wilkerson spoke on multiple occasions, sometimes weekly (Tab F-2). Sometimes Mrs. Wilkerson was kind and offered to be helpful, but at other times she was degrading and jealous. Based on the call from the attorney and Mrs. Wilkerson's behavior, the mother became concerned the Wilkersons might try to undermine her or take the child away. (Tabs F-1; F-2.)

The child was born on ». Tabs F-2; G-7). Lt Col Wilkerson sent the mother a DNA test kit to determine the paternity of the child, and the mother provided DNA samples for the test. Lt Col Wilkerson later called to confirm the test was positive, but despite several requests from the mother, he didn't provide the mother a copy. (Tabs F-1; F-2.)

The mother concluded the Wilkersons' involvement in the child's life was not going to work (Tabs F-2; F-4). The mother again requested Lt Col Wilkerson help pay for the delivery, and that he give up his parental rights (Tab F-2). Lt Col Wilkerson provided the specific financial support as requested by the mother (Tab F-4). Mrs. Wilkerson sent the mother two checks worth about $8000, which paid the hospital bill (Tab F-2). Lt Col Wilkerson also surrendered his parental rights (Tab F-4). On 6 Oct 05, he signed and had notarized a document entitled "Consent to Adoption and Relinquishment of Parental Rights" ("Consent and Relinquishment") (Tabs F-2; G-8; G-9; K-5). In this document, he gave up all rights and responsibilities for the child (Tabs F-2; G-8). Lt Col Wilkerson and the mother did not speak again (Tabs F-1; F-4). In the fall of 2007, the child was legally adopted (Tab F-2).

The mother and were both upset by Lt Gen Franklin's decision to disapprove the findings and sentence, and dismiss the charges in the court-martial United States vs. Lt Col James H. Wilkerson III (U.S. vs. Wilkerson) (Tabs F-1; F-2). They sympathized with the victim and wanted her to know she wasn't alone (Tabs F-1; F-2). In addition, the mother believed Lt Col Wilkerson was not "the doting father and husband" referenced in Lt Gen Franklin's letter to Senator Donley explaining why he disapproved the findings (Tab F-2). As a result, and the mother elected to go public regarding Lt Col Wilkerson's behavior (Tabs F-1; F-2).

The mother initially sent Senator Claire McCaskill an email through her web-site, but the Senator did not respond. She then contacted the Stars and Stripes newspaper on 11 Apr 13 and
informed Nancy Montgomery, a reporter, that Lt Col Wilkerson fathered a child with her when he was married. She did not provide her full name, or the child’s name. They spoke and emailed on several occasions, and the mother sent Ms. Montgomery a redacted copy of the first two pages of the “Consent and Relinquishment.” Ms. Montgomery requested an unredacted copy, which the mother didn’t provide. Ms. Montgomery provided the mother a draft article for review, which the mother didn’t approve. That article was not published, but another article was published on 25 Apr 13. (Tab F-2.)

[TAB] contacted the Public Affairs Office for the Secretary of the Air Force on 12 or 13 Apr 13 and spoke to [REDACTED], the [REDACTED] for Air Force Press Operations. [REDACTED] and [REDACTED] spoke on three occasions. (Tabs F-1; K-1.)

Lt Gen Robin Rand, Commander Twelfth Air Force (Air Forces Southern), appointed Col [REDACTED] on 29 Apr 13 to conduct a Commander Directed Investigation.
Chronology.

Late Aug/Early Sep 04: Lt Col Wilkerson and the mother met over the phone.

19 Sep 04: Lt Col Wilkerson went TDY to Hill AFB, UT. He met the mother, and they had consensual sexual relations.

The child fathered by Lt Col Wilkerson was born.

6 Oct 05: Lt Col Wilkerson gave up all rights and responsibilities to the child by signing a “Consent to Adoption and Relinquishment of Parental Rights” and having it notarized.

2 Nov 12: Lt Col Wilkerson was convicted on charges of abusive sexual contact, aggravated sexual assault and three instances of conduct unbecoming an officer and a gentleman.

26 Feb 13: Lt Gen Franklin disapproved the findings and sentence, and dismissed the charges in U.S. vs. Wilkerson.

Mar – Apr 13: The mother and discussed Lt Gen Franklin’s decision.

11 Apr 13: The mother contacted Stars and Stripes and informed Nancy Montgomery that Lt Col Wilkerson fathered a child with her when he was married.

12-13 Apr 13: contacted SAF/PAO and spoke to .

25 Apr 13: Stars and Stripes published an article entitled “Air Force plans to investigate new allegations against Wilkerson.” The piece included the allegation Lt Col Wilkerson had an extramarital affair in 2004 with a woman who says she gave birth to his baby.

29 Apr 13: Lt Gen Rand appointed Col as the Investigating Officer (IO).

29 Apr 13: IO accomplished the following:

Contacted at SAF/PAO to obtain contact information on the Source.

30 Apr 13: Contacted and scheduled a personal interview for Thurs, 2 May 13.

Contacted the mother and scheduled a personal interview for Fri, 3 May 13.

1 May 13: Placed initial request for all Security Clearance Investigation paperwork.
2 May 13: Personally interviewed [redacted].


4 May 13: Reviewed Summarized Testimony with the mother; document signed.

5 May 13: Reviewed statements; planned next investigative steps; began writing investigative report.

6 May 13: Obtained a copy of Lt Col Wilkerson’s applicable Flight Records.

   Obtained a copy of Lt Col Wilkerson’s Sensitive Compartmented Information Screening interview.

   Determined applicable copies of Travel Orders, Flight Orders, Travel Vouchers and Lodging Records are not available due to the length of time elapsed since 19 Sep 04.

   Contacted Robin D. King, who notarized the “Consent to Adoption and Relinquishment of Parental Rights” document; determined Notary Publics in Ohio are not required to keep a record book.

   Attempted to contact the mother’s attorney, [redacted].

   Followed up regarding status of Lt Col Wilkerson’s Electronic Questionnaires for Investigations Processing (e-QIP) paperwork.

7 May 13: Obtained copies of applicable AFTO Forms 781.

   Obtained a copy of Lt Col Wilkerson’s DD Form 1172-2, Application for ID Card/DEERS enrollment.

   Spoke with the mother reference follow-up questions from her interview.

   Attempted to contact the mother’s attorney; the mother stated that the attorney will not speak to us.

   Contacted Program Security Managers at Shaw AFB, SC; 7 AF and Kunsan AB, ROK; and Aviano AB, Italy reference Special Access Program/Special Access Required screening requirements and Special Technical Ops screening requirements.

   Attempted to contact [redacted] 80 FS/CC.
Contacted the office of Frank Spinner, Lt Col Wilkerson's Attorney.

Attempted to obtain a copy of a Utah birth certificate.

8 May 13: Obtained a copy of Lt Col Wilkerson's e-QIP, dated 23 Apr 08.

Contacted and interviewed [redacted] over the phone.

Spoke with [redacted] in the State of Utah Office of Vital Records in an attempt to obtain a voided birth certificate.

Followed-up with the office of Frank Spinner, Lt Col Wilkerson's attorney.

Incorporated records analysis into draft report.

9 May 13: Through his attorney, Frank Spinner, provided Lt Col Wilkerson testimony questions.

Began incorporating some factual findings into the draft report.

10-12 May 13: Continued work on draft report and organized documents; prepared draft executive summary brief.

13 May 13: Lt Col Wilkerson provided written testimony under oath; finalized report.

14 May 13: Outbrief to 12 AF/CC.
FINDINGS, ANALYSIS AND CONCLUSION

ALLEGATION I: Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married thereby committing Adultery in violation of Article 134, UCMJ.

SUBSTANTIATED

Facts:

Lt Col James Wilkerson is married to Beth Wilkerson. Lt Col Wilkerson married Beth Wilkerson on [redacted] and enrolled her into DEERS as his dependent on or shortly after this date. (Tabs G-10; G-14, p. 23.) Beth Wilkerson is still Lt Col Wilkerson’s dependent spouse and has been so continuously since her initial enrollment (Tabs F-4; G-10; G-11, p. 23).

On 13 May 03, Lt Col Wilkerson was assigned to Luke AFB, AZ (Tab G-12). The mother was introduced to Lt Col Wilkerson by phone in August or early September 2004 (Tabs F-1; F-2). She lived in Utah at that time (Tabs F-1; F-2). During this time, the Wilkersons were having marital problems and were physically separated (Tab F-4). Lt Col Wilkerson did not assert in his statement that the two were legally separated at this or any time (Tab F-4).

On 19 Sep 04, Lt Col Wilkerson stayed overnight at Hill AFB, UT while on a four day cross-country TDY (Tabs F-2; G-3). Lt Col Wilkerson’s Individual Flight Record Report shows he logged 1.5 hours in an F-16C on Sun, 19 Sep 04 and 2.3 hours on Mon, 20 Sep 04 (Tab G-2). In addition, his AFTO Form 781, Aircrew/Mission Flight Data Document, dated 19 Sep 04, indicates he flew 1.5 hours from Tucson to Hill AFB in an F-16C, landing at 1730. He departed Hill AFB at 1515 on 20 Sep 04 and flew 2.3 hours to Cannon AFB (Tab G-3). Three similar AFTO Forms 781 for this TDY exist, to include two for F-16C and one for F-16D (Tabs G-4; G-5; G-6). [redacted] flew in the F-16D, and [redacted] flew one of the other F-16Cs (Tabs F-3; G-4; G-5). No Flight Orders exist for this trip, as Flight Orders are destroyed after 25 months (Tab K-6). Travel Orders and Travel Vouchers do not exist for this trip, as it occurred over eight years ago and records are destroyed after six years, three months (Tab K-7). In addition, the Hill Lodging Office does not have lodging records for this time frame (Tab K-8).

Prior to this TDY, Lt Col Wilkerson and the mother made arrangements to meet in Utah (Tab F-1; F-2). On 19 Sep 04, the mother met up with and had consensual sexual relations with Lt Col Wilkerson (Tab F-2; F-4).

After the mother discovered she was pregnant, she requested Lt Col Wilkerson assist her with hospital bills associated with the delivery, and asked him to relinquish his paternal rights (Tab F-2).

The mother gave birth to the child on [redacted] (Tabs G-7; G-8). A photocopy of this birth certificate, which does not include a father’s name, is located at Tab G-7. Lt Col Wilkerson provided financial support as requested by the mother (Tab F-4). Mrs. Beth Wilkerson gave the mother two checks worth $8,000 which were used to pay for the child’s birth. The Barnes
Banking Company, where the mother deposited the checks, failed on 15 Jan 10; no records of these checks are readily available. (Tabs F-2; K-9.)

Per the mother’s request, Lt Col Wilkerson agreed to surrender his parental rights (F-4). The mother hired an attorney to prepare the “Consent and Relinquishment” (Tabs F-2; G-8). A copy was provided to Lt Col Wilkerson, who, at that time, was assigned to Wright-Patterson AFB, Ohio (Tab F-2; G-12).

A “James H. Wilkerson, III” signed the “Consent and Relinquishment” and had it notarized by a notary properly commissioned in the State of Ohio on 6 Oct 05 (Tab G-8, G-9). By signing the “Consent and Relinquishment,” Lt Col Wilkerson gave consent for the adoption of the child born on [redacted] and relinquished all parental rights for that child (Tab G-8).

Applicable Rules

The Manual for Courts-Martial (MCM) defines the elements of Adultery, Article 134, UCMJ as follows: first, that the accused wrongfully had sexual intercourse with a certain person; second, that at the time the accused or the other person was married to someone else; and third, 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. (See MCM, p. IV-103.). Note: all MCM references cite the 2012 edition, but I did confirm that the offenses have not changed since 2004, when the conduct at issue took place.

The MCM councils commanders to consider all relevant circumstances when determining whether the Adultery 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. Considerations include the accused’s marital status, military rank, grade, or position; the impact of the adulterous relationship on the ability of the accused to perform their duties; the misuse, if any, of government time and resources to facilitate the commission of the conduct; and the flagrancy or notoriety of the adulterous act, impact on the unit and whether the accused or co-actor was legally separated. (See MCM, p. IV-104.)

Although not specifically alleged, I also reviewed the elements of Conduct Unbecoming an Officer and a Gentleman, Article 133, UCMJ to determine if any substantiated misconduct violates this article as well. The MCM details the elements as follows: first, that the accused did or omitted to do certain acts; and second, that under the circumstances these acts or omissions constituted Conduct Unbecoming an Officer and Gentleman. Further, the action or behavior must, in dishonoring or disgracing the officer, seriously compromise the officer’s character as a gentleman when acting in an official capacity, or, when acting in an unofficial or private capacity, seriously compromise his standing as an officer. (See MCM, p IV-99.)
Analysis

In order to conclude Lt Col Wilkerson committed adultery, I must substantiate each of the elements listed above.

The first element of Adultery is that the accused wrongfully had sexual intercourse with a certain person.

The mother testified she had sex with Lt Col Wilkerson on 19 Sep 04 near Hill AFB while Lt Col Wilkerson was TDY there, and that this encounter resulted in her becoming pregnant. She testified Lt Col Wilkerson traveled to Hill AFB with three other Air Force members to include a flight surgeon named [redacted].

I found the mother’s testimony to be credible. She was open and forthright during our discussions, and she had no discernible motive to lie. She stated her motive for coming forward was to ensure the Air Force is fully aware of Lt Col Wilkerson’s character, and in so doing, provide support to the victim in U.S. vs. Wilkerson. Although this is not in her statement, she emphasized during the interview she is not after any money from Lt Col Wilkerson, and that she is not legally entitled to any. Further, she stated she did not need to know what sort of punishment, if any, Lt Col Wilkerson receives as a result of her testimony. If anything, speaking out regarding this affair risks her anonymity and the anonymity of her son, which appears to be very important to her. In addition, beyond reporting that Lt Col Wilkerson committed adultery with her, she did not report anything else. She was very clear that their sexual relationship was brief and completely consensual. While the mother did feel threatened by a call from an attorney purporting to represent Lt Col Wilkerson, she was quick to point out she didn’t know who actually hired the attorney. Finally, the mother brought DNA samples to the interview, in the event I needed them. I explained I could not use them, but by bringing the samples, and offering to provide samples at any time to conduct another paternity test, she illustrated her willingness to assist the investigation and her belief that Lt Col Wilkerson is, in fact, the father.

The mother’s testimony is corroborated by additional evidence.

Lt Col Wilkerson’s statement corroborates the mother’s testimony, as he testified he was TDY at Hill AFB on 19 Sep 04, and that he and the mother had consensual sexual relations on that date.

[redacted] verified the mother and Lt Col Wilkerson met by phone and appeared to be very interested in one another. Although not as detailed, [redacted] testimony did validate the mother’s testimony in a number of areas. I found [redacted] testimony to be very believable. [redacted] was also very concerned with protecting the identity of the mother and child. In my opinion, [redacted] contacted SAF/PA because she wanted to let the victim in U.S. vs. Wilkerson know she wasn’t alone. [redacted] met her goal by sharing the story, and, per our discussion, she doesn’t want or need to know the outcome of the investigation.
Lt Col Wilkerson’s Individual Flight Record Report and AFTO Forms 781 also verify the mother’s story. His Flight Record Report shows he logged 1.5 hours in an F-16C on Sunday, 19 Sep 04 and 2.3 hours on Monday, 20 Sep 04. The associated AFTO Forms 781 further indicate Lt Col Wilkerson flew from Tucson to Hill AFB on 19 Sep 04, logging 1.5 hours, and that he departed Hill the next day, 20 Sep, at 1515 hours, logging 2.3 hours enroute to Cannon AFB. Additional AFTO Forms 781 confirm a service member with the last name of Wilkerson arrived and departed on the same dates and at the same approximate times; this corroborates the mother’s testimony. Finally, per his testimony, recalled being on this TDY with both Lt Col Wilkerson and , and that the TDY included an overnight at Hill AFB.

The mother’s claim that she became pregnant by Lt Col Wilkerson is also supported by other evidence, to include the date of birth, the birth certificate and the child’s features. The timing of the birth is consistent with Lt Col Wilkerson being the father. The child was born on [redacted] months and [redacted] weeks from the date of the sexual encounter on 19 Sep 04. I reviewed a photocopy of the birth certificate, and compared it with a Utah birth certificate from 2002. Although the birth certificates were not exactly the same, the photocopy appears to be an accurate photocopied image of a legitimate birth certificate. The original document is unavailable as the child has been adopted and that document has been sealed. In addition, to protect the identity of the child, a redacted copy of the birth certificate is included in the report. I verified both the mother’s and child’s names on an unredacted copy. The mother also provided us photographs of her now seven year old child, and I compared them with photos of Lt Col Wilkerson; there is a striking similarity in their facial features.

The mother testified she asked Lt Col Wilkerson to relinquish his paternal rights, and he complied. In his testimony, Lt Col Wilkerson stated he respected the mother’s wishes and surrendered his parental rights. According to both [redacted] and the mother’s testimony, Lt Col Wilkerson completed a paternity test, and he confirmed the test was positive. The mother also provided a photocopy of the “Consent and Relinquishment.” Like the birth certificate, a redacted copy is included in the report, but I reviewed an unredacted copy, which included the names of both the mother and child. This document identified a James H. Wilkerson III as the father of a child born on [redacted] and identifies the mother by name. The document is signed by a James H. Wilkerson III and was notarized on 6 Oct 05. I reviewed other official signatures of Lt Col Wilkerson, and the signatures are consistent, to include how he signs the “III.” The most current signature I reviewed, which was an original, wet signature, is on his 2013 Officer Performance Report. In addition, I reviewed signatures on copies of his 2008 and 2010 security clearance paperwork. These signatures have been consolidated and can be reviewed at Tab G-13. The photocopy also indicates the signature was notarized by a notary public named Robin D. King. I was able to verify that Ms. King is now and was at the time of signing a valid notary public in Montgomery County in Ohio. According to Lt Col Wilkerson’s SURF, he was stationed at Wright-Patterson AFB, attending the Air Force Institute of Technology, at the time of signing. Wright-Patterson AFB is also in Montgomery County, Ohio. Although I don’t know the notary’s exact place of
employment on 6 Oct 05, the fact both were residing in Montgomery County in Ohio in September 2005 made her a reasonable choice to notarize the Relinquishment.

The mother informed us she hired an attorney to prepare the "Consent and Relinquishment" for her. According to the mother, the attorney has the original in her files, but would be unable to access the document unless the mother retained her services again, which the mother states she cannot afford.

I have concluded Lt Col Wilkerson signed the "Consent and Relinquishment" and that by doing so, he asserted his paternity of the child. Based on this and all the facts available and outlined above, I have concluded that Lt Col Wilkerson did in fact have sex with the mother on 19 Sep 04.

The second element of Adultery is that at the time the accused was married to someone else.

Lt Col Wilkerson's SURF, dated 30 Apr 13, shows he is married. A DD Form 1172-2, Application for Identification Card/DEERS Enrollment, indicates Lt Col James H. Wilkerson is married to a Beth R. Wilkerson. The form 1172 further indicates that Beth Wilkerson was eligible for enrollment in DEERS as of 30 Mar 96. Lt Col Wilkerson's e-QIP, dated 23 Apr 08, further validates this date by showing his date of marriage as **and 2**. As such, Lt Col Wilkerson was married to Beth Wilkerson as of **and 2**. In his testimony, Lt Col Wilkerson also confirmed he was married to Beth Wilkerson on 19 Sep 04. Because Lt Col Wilkerson had sex with the mother on 19 Sep 04, he did in fact have sex with the mother while married to someone else.

The third element of Adultery is 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.

As noted above, this determination must be made considering the totality of the circumstances. At the time of the adulterous relationship, Lt Col Wilkerson was married, and he was a major. While he was physically separated from his wife, there is no indication that he was legally separated. He was an Assistant Director of Operations and a Flight Examiner, and, as such, he was in a significant position of authority within the squadron. While it was the end of the fiscal year and the squadron likely had excess flying hours to burn, the TDY to Hill AFB was likely planned in advance to enable him to meet with the mother. The appearance is that he used his position as a pilot to facilitate a meeting with a woman with whom he was not married. Whether he would have traveled to Hill AFB regardless of the mother’s presence is unknown.

Both the mother and **testified that Lt Col Wilkerson made plans to meet with the mother prior to his TDY. In Lt Col Wilkerson’s statement, he implied that he did not plan his meeting with the mother prior to his arrival at Hill AFB but did not explicitly deny that he did so. He states that he “met” her while TDY at Hill, AFB. He further
stated that he “never met her before this occasion.” He did not specifically state whether he had been introduced by phone prior to the TDY, or whether he made plans to meet with her prior to the TDY. Lt Col Wilkerson did not respond to my question that specifically asked “prior to departing on your TDY to Hill AFB did you make plans to meet with a woman who lived near Hill AFB?” Based on the testimony from the mother and [redacted], however, I have concluded that he did plan the meeting with the mother in advance.

Lt Col Wilkerson was traveling with four other active duty members. Per the mother’s testimony, three of those individuals went to dinner at Chili’s with the mother and Lt Col Wilkerson and saw the two together. Based on the testimony of [redacted], we know the flight surgeon, [redacted], knew Lt Col Wilkerson was married at the time and it is logical to assume the other two officers knew as well. It is also logical to assume the three officers saw Lt Col Wilkerson and the mother leave together after dinner, and that they were aware the two had sex. Lt Col Wilkerson’s behavior lacked integrity and showed disregard for the Air Force Core Values, and violated the UCMJ. In addition, as a senior leader in his squadron, his actions provided a poor example for the other officers and potentially encouraged similar behavior. As such, I have concluded that his behavior was disruptive to good order and discipline. Additionally, given his position, and the appearance of the use of government resources (an F-16) to facilitate the adulterous encounter while on a TDY, I have concluded this conduct is of a nature to bring discredit on the armed forces. If his conduct were to become widely known, it would in fact reflect poorly on the officer corps of the USAF. The fact that the allegation has been discussed in the national media is further evidence Lt Col Wilkerson’s conduct is of a nature to bring discredit on the armed forces.

In his letter, dated 13 May 13, Mr. Frank Spinner states that Lt Col Wilkerson’s conduct did not constitute Adultery because the conduct “had no impact on good order and discipline and did not bring the Air Force into disrepute.” For the reasons discussed above, I disagree. Additionally, based on the same facts and analysis above, I have also concluded this conduct constitutes a violation of Article 133, UCMJ.

Conclusions. In order to conclude Lt Col Wilkerson committed adultery, three elements must be substantiated:

1. He wrongfully had sexual intercourse with a certain person.
2. He was married to someone else at the time.
3. His conduct, under the circumstances, 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.

Reference the above facts and analysis, I have concluded Lt Col Wilkerson had sexual relations on 19 Sep 04 with a woman who was not his wife, and that this encounter resulted in a child who was born on [redacted]. Lt Col Wilkerson’s conduct was prejudicial to good order and discipline and was of a nature to bring discredit on the armed forces. Consequently, I find, based on a preponderance of the evidence, that Allegation 1 is SUBSTANTIATED.
ALLEGATION 2: Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married, and the sexual relationship with the child’s mother constituted a violation of AFI 36-2909, Professional and Unprofessional Relationships.

NOT SUBSTANTIATED

Facts.

Lt Col James H. Wilkerson had sexual relations with the mother on 19 Sep 04 (Tab F-2.) The mother stated under oath that on 19 Sep 04 she was employed at a civilian hospital near Ogden, Utah and did not have access to Hill AFB, UT. (Tab K-2.) Although it was not part of her summarized statement, the mother did also clearly state under oath that she was not married on 19 Sep 04. In his testimony, Lt Col Wilkerson stated that to his knowledge the mother was single, and that she was a nurse who worked in the civilian community and who had no relationship or connection with the Air Force (Tab F-4).

Applicable Rules.

AFI 36-2909, Professional and Unprofessional Relationships, (1 May 1999), defines unprofessional relationships in paragraph 2.2 as follows: Relationships are unprofessional, whether pursued on or off-duty, when they detract from the authority of superiors or result in, or reasonably create the appearance of, favoritism, misuse of office or position, or the abandonment of organizational goals for personal interests. Unprofessional relationships can exist between officers, between enlisted members, between officers and enlisted members, and between military personnel and civilian employees or contractor personnel. Fraternization is one form of unprofessional relationship and is a recognized offense under Article 134 of the UCMJ.

Analysis.

Unprofessional relationships can exist between officers, between enlisted members, between officers and enlisted members, and between military personnel and civilian employees or contractor personnel. At that time of the sexual encounter, the mother was unmarried and unaffiliated with the United States Air Force (USAF) or Department of Defense (DOD) by employment or any other capacity. Given the mother’s lack of affiliation with the military, the sexual relationship with the mother does not constitute an unprofessional relationship as defined in AFI 36-2909.

Conclusions. Due to the fact the mother had no affiliation with the military on 19 Sep 04, this allegation is NOT SUBSTANTIATED.
ALLEGATION 3: Approximately seven years ago, Lt Col James H. Wilkerson fathered a child with another woman while married, and he has since that time made false official statements in violation of Article 107, UCMJ during the course of his security clearance investigations or reinvestigations or during the course of other official matters in an effort to prevent those facts from becoming known.

NOT SUBSTANTIATED

Facts.

Lt Col Wilkerson’s most current Electronic Questionnaires for Investigations Processing (e-QIP) is dated 23 Mar 08 (Tab G-11). Lt Col Wilkerson’s most current security clearance date is 15 Aug 98; this date is noted on his SURF (Tab G-12). Lt Col Wilkerson accomplished his most recent SCI Screening Interview on 20 Jul 10 (Tab G-14). Lt Col Wilkerson was not required to complete any additional questionnaires in conjunction with Special Access Program/Special Access Required (SAP/SAR) screening and/or Special Technical Ops (STO) Screening (Tab K-10).

Applicable Rules.

The MCM defines the elements that constitute a false official statement, under Article 107, UCMJ as follows: first, that the accused signed a certain official document or made a certain official statement; second, that the document or statement was false in certain particulars; third, that the accused knew it to be false at the time of signing it or making it; and fourth, that the false document or statement was made with the intent to deceive. (See MCM, p. IV-46.)

The MCM further defines official documents and statements as all documents and statements made in the line of duty. (Id.)

Analysis.

In order to conclude Lt Col Wilkerson made false official statements during the course of his security clearance investigations or reinvestigations or during the course of other official matters in an effort to prevent those facts from becoming known I must substantiate each of the elements listed above.

The first element of a false official statement is that the accused signed a certain official document or made a certain official statement.

Lt Col Wilkerson completed an e-QIP in preparation for renewing his security clearance on 23 Mar 08. In addition, he completed his most recent SCI screening questionnaire on 20 Jul 10. Both of these questionnaires are official documents signed by Lt Col Wilkerson.
The second element of a false official statement is that the document or statement was false in certain particulars.

I reviewed Lt Col Wilkerson’s e-QIP, which was used to process his most recent security clearance investigations. My review did not indicate that any of his answers constituted a false official statement in light of the substantiated misconduct. When reviewing the electronic investigative notes, I likewise did not find any entries that would indicate to me that Lt Col Wilkerson made any false statements. In one entry it appears Lt Col Wilkerson told the investigator that “He did not engage in any illegal activity, knowingly or unknowingly.” The context, however, of that specific line of questioning appears to refer only to the time that Lt Col Wilkerson was stationed in Turkey from 2006-2007 and Japan from 2000 to 2003. Apparently, the investigator was attempting to ascertain whether Lt Col Wilkerson had engaged in “behavior that could place him in a position to be compromised” by foreign nationals while living abroad and potentially be persuaded to act against the United States.

I also reviewed Lt Col Wilkerson’s most recent SCI Screening Interview Questionnaire, which was completed on 20 Jul 10. He answered “no” to each of the 13 questions. I reviewed each of the questions and found that none of the answers would constitute false official statements in reference to the alleged misconduct.

Finally, I also contacted the Special Program Manager (SPM) or equivalent at each location where Lt Col Wilkerson has been assigned since departing Luke AFB in 2005 to determine if he had to complete an additional questionnaire associated with SAP/SAR screening and/or STO screening. Specifically, I spoke with the SPM at the locations where he was on flight status. Based on my conversations with each of these individuals, no additional questioning was required. As a result, Lt Col Wilkerson made no false official statements in conjunction with his SAP/SAR and STO Screening.

The third element of a false official statement is that the accused knew it to be false at the time of signing it or making it.

Based on my review of Lt Col Wilkerson’s e-QIP, this element is likewise not founded since my review did not indicate that any of his answers constituted a false statement in light of the substantiated misconduct.

The fourth element of a false official statement is that the false document or statement was made with the intent to deceive.

This element is also not founded for reasons stated above.

Conclusions. Reference the above facts and analysis, I have concluded Lt Col Wilkerson did not make any false official statements during the course of his security clearance investigations or reinvestigations or during the course of other official matters. Consequently, I find that Allegation 3 is NOT SUBSTANTIATED.
TABLE
OPTIONS AND RECOMMENDATIONS

Below are potential command responses to the substantiated misconduct along with some considerations for your situational awareness.

Punitive action under the UCMJ. The UCMJ authorizes Courts-Martial and non-judicial punishment (NJP) for violations of the UCMJ by military members. However, both actions are barred in this case by the relevant statute of limitations. Article 43, UCMJ states that with the exception of cases involving certain enumerated crimes or those punishable by death, a person is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command (See MCM p.A2-12). According to the MCM, NJP may not be imposed for offenses which were committed more than 2 years before the date of imposition (See MCM p. V-1). In this case, the misconduct took place on 19 Sep 04, over eight years ago. As such, punitive action under the UCMJ for this misconduct is not a lawful option.

Administrative Discharge IAW AFI 36-3206. The substantiated misconduct could be used as a basis for initiating an Administrative Discharge against Lt Col Wilkerson. You, as the show-cause authority, could initiate administrative discharge proceedings based upon AFI 36-3206, para 3.6.4, “serious or recurring misconduct punishable by military or civilian authorities.” Serious misconduct is defined by 36-3206 as misconduct that, if punished under the UCMJ, could result in confinement for six months or more. In this case, Lt Col Wilkerson committed Adultery in violation of Article 134, UCMJ. If tried by court-martial, those found guilty of Adultery may be punished by confinement for one year. As such, Adultery may be considered “serious misconduct punishable by military authorities” under AFI 36-3206, para 3.6.4. If you initiate Administrative Discharge proceedings against Lt Col Wilkerson, he would have the right to a hearing before a Board of Officers because he has served over five years. The Board would determine if the basis for discharge has been established, whether he should be discharged and the characterization of that discharge. In the absence of other misconduct to support this basis, a board of officers may be unlikely to recommend discharge. Additionally, and more importantly, holding an Administrative Discharge Board would increase the risk of exposing the identity of the mother and child. Further, if there were any facts in dispute regarding the charge of Adultery, it would be helpful to have the mother testify, something she has explicitly stated that she is unwilling to do because of the risk to her family’s privacy. As noted above, she is particularly concerned about her child, as her current husband is the only father her child has ever known (See Tab P-2). Because an Administrative Discharge proceeding does not afford the government subpoena power, you would have no ability to compel the mother’s presence.

Control Roster (CR) IAW AFI 36-2907. A CR under AFI 36-36-2907, para 2.1, is a tool for commanders to set up a six-month observation period for individuals whose duty performance is substandard or who fail to meet or maintain Air Force standards of conduct, bearing, and integrity, on or off-duty. You have the authority to open a CR on Lt Col Wilkerson. I note, however, that a CR is not designed as a response to a brief incident of substandard performance or an isolated breach of standards, not likely to be repeated (see AFI 36-2907, para 2.2). Entry on a CR eliminates formal training for the member and significantly limits permanent change of
station (PCS) actions during the six-month observation period (see AFI 36-2907, para 2.2). Based on the nature of the substantiated misconduct and Lt Col Wilkerson's seniority, I do not believe a six-month observation period would be a helpful rehabilitation tool in response to misconduct that happened over eight years ago. Additionally, as noted above, a CR is not the appropriate tool for an isolated incident. If there are other instances of deviation from Air Force standards apart from the subject of this investigation, I would consider a CR, but not the

Letter of Counseling (LOC), Admonition (LOA) or Reprimand (LOR) IAW AFI 36-2907. AFI 36-2907, Para. 3.1, states that “These actions are intended to improve, correct, and instruct subordinates who depart from standards of performance, conduct, bearing, and integrity, on or off duty, and whose actions degrade the individual and unit’s mission.” While the adulterous affair took place on 19 Sep 04, there is no “statute of limitations” for issuing LOCs, LOAs, or LORs. As noted in the analysis in Allegation I, Lt Col Wilkerson’s rank and position at the time, as well as his use of a TDY to facilitate the affair, makes this conduct “prejudicial to good order and discipline” and “of a nature to bring discredit on the armed forces” IAW Article 134, UCMJ, and is behavior that could “degrade the individual and the unit’s mission” as noted in AFI 36-2907, para 3.1. Additionally, the MCM states that “Adultery is clearly unaccept able conduct, and it reflects adversely on the service record of the military member” (MCM, p. IV-103).

Unfavorable Information File (UIF) IAW AFI 36-2907. A UIF under AFI 36-2907, para 1.1, would create an official record of unfavorable information about Lt Col Wilkerson. You have the authority to create a UIF on Lt Col Wilkerson. If an LOR is issued to Lt Col Wilkerson, IAW AFI 36-2907, paragraph 1.3.2, a UIF must be established. If an LOR is the basis for the UIF, then the UIF must remain in place for two years unless removed early by you or an equivalent or higher authority (See AFI 36-2907, Table 2.1, Rule 5, and AFI 36-2907, para 1.9.2.3).

Promotion Propriety Actions IAW AFI 36-2501. As Lt Col Wilkerson’s immediate commander, you may also initiate promotion propriety actions to include: a Not Qualified for Promotion (NQP) Action, a Removal from the Promotion List, or a Delay of Promotion. AFI 36-2501, para. 5.1 states that Promotion Propriety Actions are appropriate if one can fairly conclude (that it is more probable than not that) an officer is not mentally, physically, morally, or professionally qualified to perform the duties of the next higher grade. A promotion propriety action must clearly state the reasons for the action and be accompanied by documentation substantiating those reasons with specificity (AFI 36-2501, para 5.2). If you believe that Lt Col Wilkerson is not mentally, physically, morally, or professionally qualified to perform the duties of Colonel based on this misconduct, taken together with any other misconduct, or instances of poor judgment, then a promotion propriety action is appropriate. I note that a recommendation for removal from a promotion list and an NQP must be approved by SECAF. If an NQP is approved, it must be received by the board prior to its convening and the NQP recommendation is only valid for one promotion cycle, after which he will go before the next board for promotion consideration.
Officer Selection Record (OSR) Filing IAW AFI 36-2608. Filing adverse actions into an officer's OSR ensures the information will be taken into account on future promotion boards. If you issue an LOR to Lt Col Wilkerson, as Lt Col Wilkerson’s immediate commander (and senior rater), you are obligated to determine whether this LOR will be filed in Lt Col Wilkerson’s OSR after reviewing any comments he may have (AFI 36-2608, para 9.3). If you elect to file it within his OSR, it must remain until he is afforded one In-the-Primary-Zone (IPZ) or Above-Primary-Zone (APZ) promotion consideration unless it is removed early as an exception to policy (AFI 36-2608, para 9.3.8). After one IPZ or APZ consideration, Lt Col Wilkerson could appeal to his senior rater to have the LOR removed. If his senior rater does not grant an appeal initiated by Lt Col Wilkerson, then the LOR will remain in his OSR until he retires, separates or dies (AFI 36-2608, para 9.3.14).

Officer Grade Determination (OGD) IAW AFI 36-3203. The first general officer in an officer's chain of command may initiate an OGD at the time of a retirement. An OGD is appropriate if that general officer determines that the officer did not serve satisfactorily in the higher grade (AFI 36-3203, para 7.5). Factors to consider when initiating an OGD include misconduct resulting in a letter of reprimand, or substandard duty performance resulting in a referral OPR (AFI 36-3203, para 7.5.2.5). As such, if Lt Col Wilkerson applies for retirement at 12 AF while under your command, you may initiate an OGD. While the misconduct which is the subject of this CDI was significant and took place when Lt Col Wilkerson was a major, this misconduct alone may be insufficient to justify an OGD. If at the time of retirement, however, Lt Col Wilkerson has a referral OPR or any additional misconduct, you should consider initiating an OGD. If you are no longer in his chain of command at the time of his retirement, you may pass on your recommendation to your successor in command informally for his or her consideration.