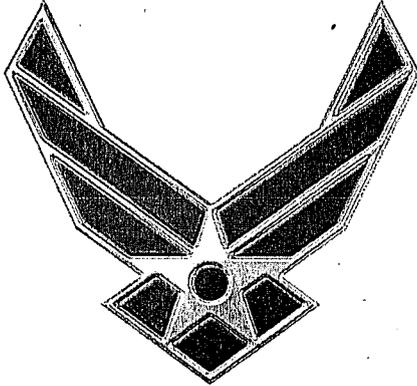


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**The Inspector General  
of the Air Force**

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**Report of Investigation (S8154P)**

**Maj Gen James N. Post III**

March 2015

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# REPORT OF INVESTIGATION (Case S8154P)

CONCERNING

MAJOR GENERAL JAMES N. POST III

PREPARED BY

MR [REDACTED]

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## I. INTRODUCTION

SAF/IGS received this case of alleged restriction from two different sources: the Department of Defense Inspector General's office (DoD-IG) and Senator John McCain (R-AZ), Chairman of the Senate Armed Services Committee. (Exhibit (Ex) 1) On 16 Jan 15, the DoD-IG Hotline received an anonymous complaint alleging that Maj Gen Post made improper remarks that discouraged communications with members of Congress on Thursday, 15 Jan 15, at a press conference at Nellis AFB, NV. (Ex 1:4)

The complaint referenced the website dodbuzz.com which had posted a 16 Jan 15 story on the alleged restriction. (Ex 6) The complaint's assertion was that Maj Gen Post was preventing members from communicating with members of Congress by stating, "If anyone accuses me of saying this, I will deny it... anyone who is passing information to Congress about A-10 capabilities is committing treason." (Ex 6) On 22 Jan 15, DoD-IG referred the matter to the Air Force for investigation. (Ex 1:2-3)

On 21 Jan 15, the Secretary of the Air Force (SecAF) received a letter from Senator John McCain, dated the same day, requesting an investigation into the matter. SecAF replied that the Air Force would investigate the case. Meanwhile, other news media agencies, to include the *Arizona Daily Republic* and the *Air Force Times*, picked up the story. (Exs 4; 5)

The Investigation Officers (IOs) began their investigation on 26 Jan 15. The IOs interviewed a total of seven witnesses and Maj Gen Post. The witnesses, majors and captains, were members of the Air Force active duty component, Reserves, or Air National Guard representing a variety of weapons systems. A list of individuals interviewed for this case, along with their weapon systems, is found in the List of Exhibits at the end of this report. All witnesses attended some portion of the 12-day event, and most were graduates of the Air Force Weapons School. Although the testimony of the individuals varied somewhat, the investigative team deemed each to be credible.

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On 20 Feb 15, the Investigating Officers (IOs) traveled to Joint Base Langley-Eustis (Langley AFB), VA, to interview Maj Gen Post. Due to the nature of the allegation and the evidence gathered before Maj Gen Post's interview, he was treated as a suspect and read his Article 31 rights under the Uniform Code of Military Justice.

## II. SCOPE AND AUTHORITY

The Secretary of the Air Force has sole responsibility for the function of The Inspector General of the Air Force.<sup>1</sup> When directed by the Secretary of the Air Force or the Chief of Staff of the Air Force, The Inspector General has the authority to inquire into and report on the discipline, efficiency, and economy of the Air Force and perform any other duties prescribed by the Secretary or the Chief of Staff.<sup>2</sup> The Inspector General must cooperate fully with The Inspector General of the Department of Defense.<sup>3</sup> Pursuant to Air Force Instruction (AFI) 90-301, *Inspector General Complaints Resolution*, 23 Aug 11 (Incorporating Change 1, 6 Jun 12), paragraph 1.13.4, The Inspector General has oversight authority over all IG investigations conducted at the level of the Secretary of the Air Force. (Ex 7:2)

Pursuant to AFI 90-301, paragraph 1.13.3.1, the Director, Senior Official Inquiries Directorate (SAF/IGS), is responsible for performing special investigations directed by the Secretary, the Chief of Staff, or The Inspector General and all investigations of senior officials. AFI 90-301 defines senior official as any active or retired Regular Air Force, Air Force Reserve, or Air National Guard military officer in grades O-7 (brigadier general) select and above, and Air National Guard Colonels with a Certificate of Eligibility (COE). Current or former members of the Senior Executive Service (SES) or equivalent and current and former Air Force civilian Presidential appointees are also considered senior officials. (Ex 7:2)

One of several missions of The Inspector General of the Air Force is to maintain a credible inspector general system by ensuring the existence of responsive complaint investigations characterized by objectivity, integrity, and impartiality. The Inspector General ensures the concerns of all complainants and subjects, along with the best interests of the Air Force, are addressed through objective fact-finding.

On 26 Jan 15, The Inspector General approved a recommendation that SAF/IGS conduct an investigation into an allegation of restriction or attempted restriction by Maj Gen James N. Post III. The case was assigned to Mr. [REDACTED] and Ms. [REDACTED], who both hold SAF/IG appointment letters dated 20 Aug 14. (Ex 3) The investigation started 26 Jan 15.

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<sup>1</sup> Title 10, United States Code, Section 8014

<sup>2</sup> These authorities are outlined in Title 10, United States Code, Section 8020

<sup>3</sup> Title 10, United States Code, Section 8020(d)

### III. BACKGROUND

Maj Gen James N. Post III is currently the Vice Commander of Air Combat Command, stationed at Langley AFB, VA. He has over 31 years of service in the active duty Air Force, having graduated from the Air Force Academy in 1983. He is a command pilot with over 4800 hours, primarily in F-4 and F-16 aircraft, and has flown 280 combat sorties. He has commanded at the squadron and wing levels, served in multiple staff positions, and assumed his present duty position in Sep 14. (Ex 2)

Each January, Air Combat Command sponsors a Tactics Review Board (TRB) and a Weapons and Tactics Conference (WEPTAC) for the Combat Air Forces (CAF) at Nellis AFB, NV as directed by AFI 11-260, *Tactics Development Program*, 15 Sep 11. (Ex 14:1) One witness aptly described the TRB as:

... a meeting where you get some of the younger tactical minds throughout the Air Force and some of the lead instructor pilots from the units. We get them together. We look at current threats or problems that are facing our military, take the tools that are given to us and we're going to find the best problem solving skills we can together and come up with solutions in our way forward to attack future and some of the current threats we're facing. (Ex 23:2)

Another witness further explained the purpose of the TRB as

Basically, how can we do things more efficiently and better within your own MDS and not spend extra money for, you know, the Air Force overall. And at the end of that, the TRB, Tactics Review Board, second week, at the end of that we have to produce a prioritized list of tactic improvement proposals. We have to filter out which ones are good and which ones are bad you know, and basically get down to which ones are going to be nominated for tests and once nominated for tests ends up coming back here to ACC and then that's what I'm in the middle of doing right now. .... And those things end up going into the test prioritization list that eventually gets refined. You know, there's a whole bunch of different, different procedures that go together to finally put out a 1 through 300 and something list of where we're going to allocate our test resource money. (Ex 20:4)

The overall theme for this year's sessions was listed as "Tactical Cross Domain Integration – Maximizing Operational Effects." (Ex 12:4) The objectives for the two weeks of sessions included:

- Week 1 Objectives (MAWGs)
  - Address current & future problem sets submitted by C-NAF/MAJCOM CC
  - Fully integrate air/space/cyber domains and joint capes (where applicable) IOT provide tailored & actionable solutions/recommendations

- Week 2 Objectives (CFWG/TRB/Mass Outbriefs)
  - Validate TD&Es on current year's TPL
  - Adjudicate proposed TIPs from 28 CAF MDS and 6 CAF Core Functions for TD&Es
  - Validate & prioritize TD&Es for next year's TPL
  - Exchange information and disseminate expert briefings to the field (Ex 12:4)

Attendees at the sessions included primarily military and civilian Air Force members with in-depth backgrounds in their weapons systems. Air Force captains and majors comprised the majority of attendees, many of whom are graduates of the Air Force's Fighter Weapons School. (Exs 20 through 26) The Air Force Weapons School, headquartered at Nellis AFB, NV, provides advanced training in weapons and tactics employment to officers of the combat air forces (CAF). (Ex 16) Graduates of the Weapons School are authorized to wear the USAF Weapons School patch and hence are known as "patch wearers."

The question Maj Gen Post was responding to was about the status of the A-10 aircraft. The A-10 "Thunderbolt II" aircraft (known as the "Warthog" or "Hog") was developed by Fairchild-Republic in the early 1970s designed solely for close air support with a secondary role of providing forward air control and personnel recovery support. The A-10 went into active service in Mar 76, has been stationed both CONUS and overseas, and has seen action in most every conflict since. (Ex 11)

In 2007, the A-10 was expected to be in Air Force into the 2020's while being replaced by the F-35 "Lightning II." In 2012, the Air Force proposed disbanding five A-10 squadrons in its budget request. In the Air Force's 2015 budget, the Service considered retiring the A-10 and other single-mission aircraft. The National Defense Authorization Act for 2014 prohibited the Air Force from spending money during 2014 to retire the aircraft. By 2014, the Air Force defended its plan to retire the A-10 as logical given the fiscal environment. Congress has passed legislation currently blocking the Air Force from retiring the aircraft and stating that budget cuts need to come from other sources. Hence, the A-10 remains in Air Force service and is being used in present conflicts. (Ex 11:12)

## V. CHRONOLOGY

DATE	EVENT
5-16 Jan 15	Air Combat Command (ACC) hosted the annual Combat Air Forces (CAF) Tactics Review Board (TRB) and Weapons and Tactics Conference (WEPTAC) at Nellis AFB, NV. (Ex 13:3)
5-9 Jan 15	Mission Area Working Group (MAWG) meetings were held. (Ex 13:3)
5 Jan 15	Maj Gen Post provided a few opening remarks to those participating (about 120) in the MAWGs. (Exs 20:5; 25:5; 27:3)
10-14 Jan 15	Tactics Review Board (TRB) meetings were held. (Ex 13:3)

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10 Jan 15	Maj Gen Post presented opening remarks to the TRB in the Red Flag main briefing room. (Exs 13:1; 27:3)
10 Jan 15	Maj Gen Post stayed with the TRB for the day, acting as the senior mentor for the sessions. (Ex 20:5)
10 Jan 15	During the morning's presentations, a member of the audience asked a question concerning the status of the A-10. (Exs 23:3; 24:5)
10 Jan 15	Maj Gen Post answered the question, during which he allegedly made statements that form the basis of this case. (Exs 20; 21; 22; 23; 24; 26; 27) NOTE: This date of 10 Jan 15 is different from the 15 Jan 15 date mentioned by the anonymous complainant who was mistaken about the date of the remarks.
13 Jan 15	The internet began to pick up stories about Maj Gen Post's 10 Jan 15 remarks at the TRB, reporting that he said that anyone who passes information to Congress about A-10 capabilities is committing treason. (Ex 6)
13 Jan 15	Maj Gen Post sent an email to Gen Welsh reviewing his remarks from 10 Jan 15. Gen Welsh had been asked to see Senator McCain about the matter. (Exs 19; 27:20)

## V. ALLEGATION, FINDINGS, STANDARDS, ANALYSIS AND CONCLUSIONS

**ALLEGATION.** That on or about 10 Jan 15, Maj Gen James N. Post III restricted and/or attempted to restrict members of the Armed Forces from lawfully communicating with members of Congress in violation of 10 U.S.C. 1034, *Protected communications; prohibition of retaliatory personnel actions* and DoD Directive (DoDD) 7050.06, *Military Whistleblower Protection*.<sup>4</sup>

### FINDINGS OF FACT.

- See Chronology, above.

### STANDARDS.

Title 10, United States Code, Section 1034 (10 U.S.C 1034), *Protected communications; prohibition of retaliatory personnel actions* is the governing law that is used in military reprisal and restriction cases. The portion that discusses "restriction" states:

§ 1034. Protected communications; prohibition of retaliatory personnel actions

(a) Restricting Communications With Members of Congress and Inspector General Prohibited.—

<sup>4</sup> During the investigation, the allegation was modified to reflect the actual date the comment was made and include DoDD 7050.06 as a reference. Maj Gen Post was notified via email of this administrative change. (Ex 28)

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(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful. (Ex 9:1)

DoDD 7050.06, *Military Whistleblower Protection*, 23 Jul 07, provides the following:

4.2. No person shall restrict a member of the Armed Forces from making lawful communications to a Member of Congress or an Inspector General (IG).

E2.11. Restriction. Preventing or attempting to prevent members of the Armed Forces from making or preparing lawful communications to Members of Congress and/or an IG. (Ex 8)

AFI 90-301, *Inspector General Complaints Resolution*, 23 Aug 11, Incorporating Change 1, 6 Jun 12 addresses restriction and provides the following:

7.3. Right of Access Protection Under Title 10, United States Code, Section 1034 (10 USC 1034).

7.3.1. Pursuant to 10 USC 1034, DoDD 7050.06, and as further defined in this instruction, no person may restrict a member of the armed forces from:

7.3.1.1. Making or preparing to make a lawful communication to any of the following:

...

7.3.1.1.1. A Member of Congress or a member of their staff.

...

7.3.1.2. Military members who violate this prohibition are subject to prosecution and/or disciplinary and administrative action under Article 92 of the UCMJ.

...

7.3.2. Air Force members may file complaints of restriction with IGs at any level.

(Ex 7:109)

**Table 7.2. Questions for use in Evaluating Restriction.**

1. How did the Responsible Management Official (RMO) limit or attempt to limit the member's access to an IG or a Member of Congress?

2. What was the intent of the RMO? (goes to what the message was)

(1) *Reasons for restricting or taking actions that created barriers to making protected communications;*

(2) *Reasonableness of the RMO's actions;*

(3) *Motive for the RMO's action.*

3. Would a reasonable person, under similar circumstances, believe he or she was actually restricted from making a lawful communication with the IG or a Member of Congress based on the RMO's actions?

*NOTE:* Restriction may be communicated by a variety of means (e.g., verbal, written policy, regulation, order, procedure, counseling, or public statement) and creates a chilling effect. (Ex 7:111)

Definitions:

Restriction - Preventing or attempting to prevent members of the Armed Forces from making or preparing to make lawful communications to Members of Congress and/or an IG. (Ex 7:160)

Lawful Communication - Any communication, whether verbal or written or otherwise transmitted, including complaints, witness statements, and testimony, which is not otherwise unlawful (see definition of unlawful communication below). (Ex 7:157)

Unlawful Communication - Any communication, whether verbal or written or otherwise transmitted, that constitutes misconduct, a violation of the UCMJ, or a violation of other applicable criminal statutes. Some examples of unlawful communications include, but are not limited to, knowingly false statements; unauthorized disclosures of classified, privileged, or private information; obscene statements; threatening statements; and statements made under circumstances disrespectful to higher authorities. (Ex 7:162)

Chilling effect - Those actions, through words or behavior, that would tend to prevent an individual(s) from taking a proposed course of action. (Ex 7:152)

Finally, Maj Gen Post allegedly used the term "treason" in conjunction with communicating to members of Congress about the capabilities of the A-10 aircraft. Webster's Dictionary defines treason as "1. violation of allegiance toward one's country or sovereign, esp. the betrayal of one's own country by waging war against it or by consciously and purposely acting to aid its enemies.; 2. Betrayal of confidence or trust.

The Manual for Courts Martial (MCM) states for following for aiding the enemy:

28. Article 104—Aiding the enemy

a. *Text of statute.*

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-martial or military commission may direct. (Ex 17:2)

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## ANALYSIS.

This analysis will begin by examining the events of the TRB conference pertinent to this case in chronological order. As he explained in his testimony, Maj Gen Post was serving as the two-week senior mentor in the capacity normally handled by ACC's Director of Operations (ACC/A3). Maj Gen Post had been the ACC/A3 until Sep 2014 when he became the ACC/CV. Since the new ACC/A3 had not reported in yet, Maj Gen Post hosted the TRB conference. (Ex 27:2)

On Monday morning, 5 Jan 15, the Mission Area Working Groups (MAWGs) began their work. According to a witness, Maj Gen Post gave some opening remarks to this group, which totaled about 120 individuals. The witness testified that he distinctly remembered Maj Gen Post using words to the effect that, "if anybody says anything about this, I'll deny it in the future." (Ex 25:5) The witness also remembered Maj Gen Post stating, "I will need you guys to focus on and stay out of the political level and focus on the tactical level and focus on the tools that you're given at hand to solve the problem and leave the politics up to us." (Ex 25:5) However, the witness did not remember Maj Gen Post mentioning Congress or the word treason on 5 Jan 15. (25:6) Maj Gen Post's testimony concerning these opening MAWG remarks on 5 Jan 15 was consistent with that witness' testimony; Maj Gen Post testified that he asked the group to focus on the tactics and the problems before them in each of their mission areas. (Ex 27:6, 7)

The MAWGs met during the first week of the two-week conference. The TRB began on Saturday morning, 10 Jan 15. The Saturday morning session consisted of a series of briefings covering Combatant Command Areas of Responsibility and other specific topics. (Ex 13:1) The session was held in the main briefing room/auditorium of RED FLAG which holds over 300 people. (Ex 13:1; 20:6) Most of the witnesses as well as Maj Gen Post remember the room being full, and a couple of the witnesses remember individuals standing along the back wall. The TRB Chairman estimated that around 330-350 individuals were present. (Ex 20:7) A majority of the attendees in the room were captains and majors and a large percentage were graduates of the Air Force Weapons School. (27:8)

Maj Gen Post gave the opening remarks to the TRB shortly after 0800 that morning. Most witnesses and Maj Gen Post described his opening remarks as being generic welcoming remarks that would be given to such a group – thanks for coming to the conference; there's a lot of hard work to be done; important work to do, as well as some comments concerning the Air Force operating in a fiscally-constrained environment. (Exs 20:5; 22:4, 5; 27:3) None of the witnesses remembered anything out of the ordinary at this point.

Sometime after Maj Gen Post's opening remarks, a member of the audience asked a question about the current status of the A-10 aircraft. Maj Gen Post remembered this question coming right after his opening remarks. (Ex: 27:4)

The testimonies of Maj Gen Post and the witnesses who were in the room differed as to exactly what Maj Gen Post said in his answer to this question concerning A-10 status. In his testimony, a Memo for Record (MFR) dated 25 Jan 15, and in an email to the Chief of Staff of the Air Force, Maj Gen Post stated that he did not say or imply that a member of the armed forces could not go to Congress or that one who did would commit treason. Maj Gen Post offered the following MFR, which he also read in its entirety near the beginning of his interview:

WEPTAC Welcome Remarks// MFR dated 1/25/2015:

On 10 January 2015 at approximately 0805L, I welcomed Airmen from throughout the Combat Air Forces (CAF) to Nellis AFB and the 2015 Tactics Review Board (TRB). I was filling in as the ACC Director of Operations (A3), responsible for the conduct of WEPTAC, the CAF's annual Weapons and Tactics conference. This was my second year serving in that capacity. My remarks to those present in the RED FLAG auditorium were brief - I remember asking if there was anyone at Nellis for the very first time, welcomed everyone and thanked them in advance for their efforts and work ahead. I then mentioned that like last year, sequestration and fiscal constraints would require resourced constrained, innovative solutions-we needed to find the most efficient methods for achieving maximum effectiveness. I explained what I meant and then, following approximately 3-4 minutes of extemporaneous comments, I asked if there were any questions. The first and only question came from an Airman (wearing a flight suit) asking the future of the A-10. I interpreted the question as a request for what assumptions the A-10 working group could make as they vetted TIPs and TTPs (Tactics Improvement Proposals and Tactics, Techniques and Procedures). I replied that it was a very good and fair question, and then used my experience over the past year and a half assigned to ACC, as both the A3 and CV, to answer the question. I would estimate that I spoke another 2-3 minutes. My best recollection follows:

I began by saying that as the former COMACC (General Hostage) has publically stated, and as the current COMACC (General Carlisle) and the CSAF have also said-we don't want to get rid of the A-10 ... but we have to. We, the Air Force, cannot afford the resources-people and money-to continue flying the A-10 while introducing a new weapon system designed to replace it, the F-35. I have had this conversation many times previous to answering the question and felt comfortable being candid with the assembly of CAF tactical experts, all leaders within their respective organizations. As best I can remember I paused, then casually asked if this was non-attribution, followed shortly thereafter that I suppose I could deny it, or words to that effect. I immediately smiled and the majority of the audience laughed and easily understood that I was being facetious. I wanted them to know that I was going to be very honest with my answer. It was only an attempt to bring levity into the discussion because I believed it was essential for the members in the audience to listen and understand the importance of the Air Force's decision with respect to the future of the A-10. I said that their expertise and commitment was critical to our finding the most effective way to transition to the F-35-how we do Close Air Support, how we do Combat Search and Rescue, and how we

might find offsets to accommodate the divestiture of the A-10. I then mentioned that some of the argument over the A-10 seemed to be misinformed, subjective, and in many cases emotional. I said that it was okay to be proud of a weapons system that's done tremendous work in support of troops and friendly forces around the world. I said I could relate with those passionate about their assigned weapon system, but unfortunately fiscal reality wouldn't allow us to do both-continue flying the A-10 while bringing the F-35 to operational capability. I said that the internal (AF) discussion and debate was over, the CSAF and SECAF have been briefed; they've made their decision and passed their recommendation to Congress accordingly. That said, I mentioned that it didn't appear the divestiture of the A-10 was going to happen as early, nor as quickly as the AF recommends. I said It was time to focus and work hard towards doing the best we can with what we know, and not towards undermining senior leaders' decisions, nor towards fulfilling personal preferences and agendas. The majority of the audience appeared to nod in agreement. And finally, I said that for those in uniform to do anything contrary to what the Chief and Secretary have directed would be disloyal, or some might say institutional treason (or words to that effect). I was trying to emphasize the importance of their focusing on finding solutions, rather than ways to undermine difficult decisions already made by our Chief and Secretary. I mentioned that it was disheartening, disappointing in fact, to read the slanderous comments made against senior leaders and the decisions they've made-decisions that were very carefully and deliberately decided and briefed to Congress. I never said, nor meant to imply to anyone that it was treason, disloyal or disobedient to speak or testify when summoned by Congress. In fact, I've been directly involved on a number of occasions with collecting the answers to Congressional requests for information, passed through SAF/LL, and sincerely appreciate the importance of informing Congress on why and how we (ACC) intend to accommodate the divestiture of the A-10 in order to most effectively introduce the F-35 to our Air Force inventory.

This summary is written to the best of my recollection on 25 Jan 2015. (Ex 18)

Each witness was asked, to the best of their recollection, what Maj Gen Post said in his answer to the question from the audience. All witnesses in the room stated they heard him say that if "anyone accuses him of saying this, he would deny it." This remark drew some laughter and in the eyes of some, kind of broke the ice. (Ex 20:10; 21:4; 24:5) Additionally, in his own testimony, Maj Gen Post stated that he had made that remark; it was "only an attempt to bring levity into the discussion." (Exs 18; 27:4, 9)

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Testimony on exactly what was said next differed. The [REDACTED], who was in the process of orchestrating the morning proceedings and was not totally focused on each presentation, recalled that Maj Gen Post said the word "treason," but stated he did not "know the exact context in which Maj Gen Post said Congress." (Ex 20:6, 10-11)

Another attendee testified he heard the following:

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It seemed to be centered on the whole A-10 versus F-35 contention about sacrificing one for the other. I know he referenced some kind of social media campaign and I think he referenced the idea of going to, of people going to their congressmen. He then made some kind of statement to the effect of like some kind of sort of an attempt at humor/disclaimer, now you can't hold me against this, or you can't hold this against me or I won't claim I said it or something in a somewhat joking manner or I'll deny I said it or something but it was a joking manner but it was setting the stage and then basically in regard to the, you know, ideas of people taking, taking the social media or contacting and I believe contacting their congressmen, you know, in, in effort to save the A-10. He was saying that as, you know, your senior leaders have made a decision and in my opinion that's an act of treason if you're taking any of these actions, any of these actions such as the social media or, you know, anything ... (Ex 21:4-5)

A third witness testified:

... what I do remember is General Post gets up, turns around and he says I want to jump into this discussion right here. He said in this time of fiscal constraint we are certainly trying to work through and figure out the ways to best address the future fight and the threats and yes, we are fiscally constrained. I don't know if this statement particularly what I'm about to read and I wrote this down to the best of my memory, was said right at the beginning when he stood up or after this preface of fiscal constraint and future fight and threats but I do remember him saying if you say I said this I will deny it and then he continues to say anyone who has taken an oath here in this room, none of you have done this with a gun to your head. I don't recall him going through and discussing the actual pieces of the oath, such as to support and defend the constitution and obeying the lawful orders. I don't recall that being said but he did, he does continue on to say those of you, those of you who are in contact with Congress and supplying them with information about the A-10 capabilities are in my opinion or mind, I don't recall if he said opinion or mind, are committing treason.... (Ex 23:4)

The testimony of three other attendees closely paralleled that of witnesses' testimony above. (Ex 22:5; Ex 24:5; Ex 26:5). They all indicated they heard Maj Gen Post link communicating to Congress concerning the A-10 to be treason or treasonous. Their testimony indicated that Maj Gen Post's remark about "denying making the comment" brought laughter to the room, while his comment about Congress and treason silenced the room. (Ex 20:8; 22:6)

Each of the witnesses was asked their initial reaction to Maj Gen Post's comments. Their initial reactions were mixed. While witnesses thought using the word treason was "inappropriate" (Ex 20:10; 24:5) or "over-the top," (Ex 21:6) some took it almost literally; others did not. One witness felt the statements he heard were somewhat of a stretch and felt that the ACC leadership and Air Force leadership were clearly very frustrated by the A-10 politics, and Maj Gen Post's comment was a result of that frustration. (Ex 26:6) However, another witness testified that he was shocked at the words because they carry a lot of weight, given the nature of the crime of treason. (Ex 23:6)

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Each witness was next asked if they had any discussions about the comments later that day and evening. The witnesses painted a picture of mixed reactions of those at the conference, some taking it too literally and seriously, some believing that once Maj Gen Post made the statement about "denying it," he should not have said the second statement, and some believing the statement to be out of line.

With regard to Maj Gen Post's belief of the audience's reaction to his 10 Jan 15 remarks, he testified:

Post: I think that the preponderance of the audience was nodding their head in understanding what I was trying to, to convey.

IO: So in your mind you don't believe, at least from the visual feedback you got at that time, you don't think that most of them at least had a problem with what you were saying and would construe anything as a restriction on going to Congress?

Post: I don't. I frankly thought that maybe it was the auditorium, maybe it was what I was looking out at. I was wearing a flight suit and many of them were, that, that I was trying to give senior leaders talking to them, you know, on that level if you will, leaders in their own right some mentoring. You know. Just to pass a message and again you know, as them to recommit their allegiance if you will or their loyalty to the decision that's been made and not work harder at trying to find a way to undermine it.... And that some of that, much of that, might be motivated by again I don't think I said political objectives or agendas. I think I said more along the lines of emotional attachments. I've used before my allegiance to the F-16 for example and how much I've enjoyed flying the F-16 and how much I love that aircraft and I said, I mentioned it I think in my, my statement here is I, I get that. I understand that. I appreciate that. We want people to be loyal to their, to their squadrons and to their weapons systems and things but not to a fault, not at the expense of our Air Force's modernization and moving on to the next generation of flight. (Ex 27:16-17)

On Tuesday, 13 Jan 15, the alleged statement by Maj Gen Post began appearing on internet blog sites and on Facebook. (Exs 20:14-15; 23:6; 26:8-9) Each of the witnesses confirmed that they began to read about the comments on web sites to include *John Q. Public* that day. (Exs 20:14-15; 21:10; 23:8; 24:7; 26:8-9) Maj Gen Post testified that he got a tap on the shoulder during the conference and asked to clarify his 10 Jan 15 remarks to the Chief of Staff, Gen Welsh, who was being summoned to Senator McCain's office on the matter. (Ex 27:20)

Maj Gen Post replied to the CSAF with the following email:

Chief,

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**FOR OFFICIAL USE ONLY (FOUO)**

Gen Carlisle asked that I quickly send you a summary of what I remember saying to the Tactics Review Board participants here at Nellis this past Saturday morning. What follows is my best recollection.

I welcomed everyone to Nellis and thanked them in advance for their time and effort. I spoke briefly about today's fiscal challenges and encouraged everyone to keep that in mind as they worked to find innovative solutions to the modern threat. After about 5 minutes of comments I asked if there were any questions before they got started. The first (only) question was on the future of the A-10.

Sir, I answered the question as I best knew how. I briefly discussed sequestration and its impact on the choices being made and that while the CAF might like to retain the A-10, we can't afford to at the same time we introduce a new weapon system (F-35). I mentioned that the time for internal debate was over and that the CSAF and SECAF carried the recommendation to Congress for approval. I said that the divestiture of the A-10 will not likely happen as quickly as we'd like it to and that the NOAA has placed restrictions on what can be done and when. I concluded my answer by saying the internal (AF) discussion is over, the decision was made, and that it was time to salute and assist with the best way to get the job done-- whether it be CAS, CSAR, etc. And then I suggested that for those in uniform it would be disloyal to our Senior leaders, some might say treason, to undermine the decisions that have already been made and briefed to Congress.

Sir, I never said, nor implied that it was treason to speak openly with Congress. My only intent was to instill loyalty in the audience. In the spirit of non-attribution, I spoke candidly about airmen that have openly undermined senior leadership.

I apologize for any embarrassment or negative attention this has caused you and our leadership. (Ex 19)

When asked if he had considered addressing the conference audience in the closing days of the conference to explain his 10 Jan comments, Maj Gen Post related that "his charter was to now go low profile." (Ex 27:21)

Most witnesses had heard of Military Whistleblower Protection but were not familiar with any details. The investigating team read each witness the definition of restriction and followed up asking the witnesses how they felt about what they had heard Maj Gen Post say, now understanding what the term restriction means.

One witness believed Maj Gen Post's comments were restriction, and commented that the "veracity" of Maj Gen Post's comment stood out in his mind. (Ex 23:9). The witness further stated, "I do feel that his intention and direction was do not talk to Congress because you are undermining your Chief of Staff of the Air Force and in his personal opinion that would be

committing treason.” (Ex 23:8) However, another witness did not believe that Maj Gen Post was restricting members by any comments he made. Rather, that witness, a major, believed, Maj Gen Post “was conveying a strong backing of the Chief of Staff of the Air Force’s position on the A-10 and the retirement of the A-10.” (Ex 20:16) Yet another witness stated he personally did not view the comments as restriction although he had talked to others in the audience who did. (Ex 26:10) He believed that most people in the room did not take Maj Gen Post’s comments as a direct order not to go to Congress.

When asked if he felt the comments were restrictive, a fourth witness testified:

I guess, I knew that I would never get in trouble for it. Let me phrase it this way, I guess if, if I, I walked away with the idea that if I, I never would, but if I ever went to Congress about the F-35 or the A-10 that I sure as heck would not tell anybody that I’d done it like then if you could summarize that if anybody did it and then they, they went and just advertised that to everybody that, you know, hey, I went and talked to so and you know, that it, it would probably not be viewed very highly and if I walked away that it would probably not be, it would not be from a career wise politically smart to, to bring up the fact that you opposed it and definitely that you went to Congress. That’s what I know but beyond that I, yeah, I don’t, you know I wouldn’t really feel restricted from going or anything. (Ex 21:11)

A fifth witness stated Maj Gen Post’s comments would not have prevented him from going to Congress. He added:

... the feeling that I got was he was just more upset and, and frustrated than a warning to people. I mean, I think that, I think he just wanted you to think twice, I don’t know if that’s a good term, but, uh, he wanted you to just think about what you were doing to the Air Force as a whole if you were to say a comment like that to Congress. ... (Ex 24:10-11)

However, a sixth witness took the comments more literally and was intimidated by them:

I would take it absolutely that I should never even consider talking to Congress about the A-10, because I would feel fairly certain that that communication would be used against me. I would even take it a little bit farther to say that it would be bad for my career and my image as an officer if I spoke in public. Not in public, but I mean, let’s say I stood up in front of the four hundred officers in the room and said, hey the A-10 is doing this and we have these capabilities and we’re effective in these mission areas and we can provide these services for the DOD; I would feel like even that would be bad for me because it’s kind of a, it’s not an environment where that type of discussion is being fostered. It’s an environment where you have to get in line and if you are saying anything that goes against the Chief of Staff or goes against the General, that you’re on their hit list. (Ex 22:11)

This analysis will now take the information discussed above and examine it in light of the “acid test” from AFI 90-301, Chapter 7, see above, in the standards section.

### **1. How did the RMO limit or attempt to limit the member’s access to an IG or a Member of Congress?**

The preponderance of evidence concerning Maj Gen Post’s 10 Jan 15 answer to a question concerning the A-10’s status indicates he made two key remarks that “caught the attention” of the audience. These two remarks from his overall answer made the internet blogs and later the newspapers and were corroborated by five witnesses who were in the room at the time:

1. He stated words to the effect that if anyone accuses him of saying this, he would deny it, and
2. He stated words to the effect that anyone who is passing information to Congress about A-10 capabilities is committing treason.

Regarding the first of the two remarks -- one of the witnesses had heard him make this statement before; all witnesses testified they heard Maj Gen Post make the comment during the conference; and Maj Gen Post related that he does use this remark on occasion. The focus of the restriction allegation is on the second comment. Although, Maj Gen Post testified that he did not remember linking “going to Congress” to “treason” as alleged, the preponderance of the evidence indicates that whatever were his exact words, they came across to the listener as providing Congress information about the A-10’s capabilities was committing treason.

A statement from a Major General and Vice Commander of a Major Command carries a lot of weight, especially when said in front of a large audience primarily composed of captains and majors. Maj Gen Post’s words had the effect of making members “think twice” (Ex 24:11) at a minimum, and “absolutely not go” (Ex 22:11) as a maximum, before approaching Congress on the A-10 issue. Based on a preponderance of the evidence, the IO found that Maj Gen Post’s choice of words would reasonably have a “chilling effect” on anyone thinking of approaching a member of Congress concerning the A-10 aircraft. Hence, his words can be viewed as limiting the member’s willingness to go to/access Congress on this matter. To many, the message clearly came across that he did not want Air Force members addressing the A-10 issue with Congress.

### **2. What was the intent of the RMO? (goes to what the message was)**

**(1) Reasons for restricting or taking actions that created barriers to making protected [lawful] communications.**

Maj Gen Post related several times in his testimony, his memorandum for the record, and his email to AF/CC that his intended message for the audience on 10 Jan 15 was that the Air Force was very happy with the A-10 as a weapons platform, but budgetary considerations were such that the Air Force could not afford to continue its operation and also bring on the next generation F-35. Air Force leadership made their decision on this issue, and Maj Gen Post believes in the need to support the Secretary and the Chief on this issue. Maj Gen Post spoke to the frustration at the senior leader level of what is felt by some to be efforts to undermine the Air Force on this issue. The evidence indicates that this frustration led to Maj Gen Post's remarks.

**(2) Reasonableness of the RMO's actions.**

Some witnesses believed that Maj Gen Post using the word "treason" was "a stretch" (Ex 26:6) or "over the top." (Ex 21:6) Some thought his remarks were inappropriate. The witnesses indicated that Maj Gen Post appeared serious when he made the comments and some of the witnesses interpreted the comments as members should not talk to Congress about the A-10. To talk to the audience about the A-10 and F-35 aircraft, the ongoing issues, and explain that Air Force leadership was working the issue in the budgetary and political arenas is not unreasonable. However, the IO found to link going to Congress concerning the A-10's capabilities to the term treason, or even being disloyal to the Service, is not reasonable.

**(3) Motive for the RMO's action.**

Based on the testimony of witnesses, the preponderance of the evidence indicates that Maj Gen Post's motive(s) for his remarks comes from a desire to convince the rank and file Air Force members to support the Air Force leadership's decisions on this issue and not attempt to undermine the decisions as some have been perceived as doing in the past.

**3. Would a reasonable person, under similar circumstances, believe he or she was actually restricted from making a lawful communication with the IG or a Member of Congress based on the RMO's actions? Yes.**

As discussed above, some members of the audience did feel restricted by Maj Gen Post's remarks. At the same time, other members did not feel restricted, but felt going to Congress on this issue could potentially hurt or endanger their career.

The IO found no evidence that Maj Gen Post was trying to prevent members from making unlawful communications to Congress such as releasing classified information, or other Privacy

Act protected or nonreleasable information. Also, Maj Gen Post testified that he believed communicating with Congress about the A-10 would be a lawful communication. (Ex 27:18)

The individuals who felt restricted by Maj Gen Post's remarks were captains and majors with approximately 10-12 years of experience in the Air Force. They did not have experience at the Major Command level or at Headquarters Air Force and more than likely did not know what information the Air Force had reviewed and provided to Congress in making its decision regarding the A-10. Maj Gen Post testified that even wing commanders did not know all the information that went into the Air Force's decision regarding the A-10 and F-35. (Ex 27:19) Based on the words used and the experience and background of the witnesses who felt restricted, the IO found that Maj Gen Post's words had a chilling effect on some of the attendees and caused them to feel restrained from communicating with the members of Congress.

Based on a preponderance of the evidence, a reasonable person, under similar circumstances and hearing words linking going to Congress about the A-10 to committing treason, would conclude that Maj Gen Post did not want them going to Congress, and they would feel restricted from doing so.

#### CONCLUSION.

The IO found no evidence that Maj Gen Post's comment actually limited any of the witnesses' access to a member of Congress. None of the witnesses indicated that they were making or preparing to make a communication to a member of Congress. Therefore, the IO concluded, by a preponderance of the evidence, that Maj Gen Post did not actually prevent military members from contacting a member of Congress.

However, the preponderance of evidence indicates that, although Maj Gen Post may not have intended to violate the federal law that addresses restriction, his position combined with his choice of words on 10 Jan 15 while addressing an audience of well over 300 people had the effect of attempting to prevent some members from lawfully communicating with members of Congress. His actions meet the definition of restriction and violate 10 USC 1034 and DoDD 7050.06.

Hence, by a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that on or about 10 Jan 15, Maj Gen James N. Post III restricted and/or attempted to restrict members of the Armed Forces from lawfully communicating with members of Congress in violation of 10 U.S.C. 1034, *Protected communications; prohibition of retaliatory personnel actions* and DoD Directive (DoDD) 7050.06, *Military Whistleblower Protection*, was **SUBSTANTIATED**.

## VI. SUMMARY

**ALLEGATION**, That on, or about, 10 Jan 15, Maj Gen James N. Post III restricted and/or attempted to restrict members of the Armed Forces from lawfully communicating with members of Congress in violation of 10 U.S.C. 1034, *Protected communications; prohibition of retaliatory personnel actions* and DoD Directive (DoDD) 7050.06, *Military Whistleblower Protection*, was **SUBSTANTIATED**.

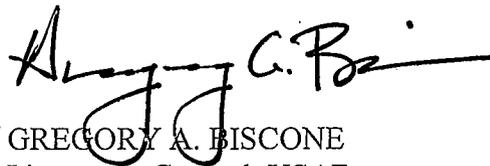
- The preponderance of evidence supported the conclusion that Maj Gen Post's choice of words in his remarks to an audience of over 300 Air Force members where he linked going to Congress about the A-10 and treasonous or disloyal behavior had the effect of attempting to prevent members from lawfully communicating with Congress.

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[REDACTED]

[REDACTED], GS-15, USAF  
Investigating Officer  
Directorate of Senior Official Inquiries

I have reviewed this Report of Investigation and the accompanying legal review and I concur with their conclusions.



GREGORY A. BISCONE  
Lieutenant General, USAF  
The Inspector General