

WITNESS INTERVIEWS

The following information is taken from the draft AFP 91-211 and AFI 91-204. Bolded sections are recommendations/techniques determined by SIB member experience.

1. Introduction:

1.1. Definitions:

1.1.1. **Witness.** For the purposes of USAF safety investigations, the term “witness” is a general term referring to those persons who may be connected, even remotely, with the mishap. A witness may be a participant in the mishap, such as surviving crewmembers or personnel who maintained, serviced, scheduled, or controlled the system on the ground or in flight. A witness may also be someone not directly connected with the operation of the system, but who actually saw or heard some portion of, or a series of, events leading up to and including the actual mishap. Finally, recognized experts in a given field, when providing technical data or theory of system operations or when giving opinion or speculative postulations, that the SIB may wish to explore, are also considered to be witnesses.

1.1.2. **Interview.** For the purposes of USAF safety investigations, the term “interview” is used to characterize the setting and tone considered most useful for eliciting information. Interviews are cooperative, informal meetings where the interviewer approaches the witness as an equal and encourages their cooperation, allowing him or her to relate observations without interruption or intimidation. By contrast, “interrogation” implies questioning on a formal or authoritative level, such as a lawyer-to-witness situation, a police officer-to-suspect session, or a parent-to-child encounter. Witness interviews conducted as a part of USAF safety investigations must never have the appearance of being interrogations. When safety investigators explain the safety and mishap prevention value of their testimony, most witnesses willingly give their observations.

1.2. **The Challenge of Interviewing.** Interviewing a witness is one of the most difficult and least understood tasks of a SIB. Witnesses can provide valuable information, but, if the interview is improperly handled, the information may be lost or even incorrectly presented. The importance of witness testimony varies with the type of mishap and location, but all testimony must be received and examined uncritically. Witness statements and physical evidence go hand-in-hand in determining the cause of a mishap; each may complement or clarify the other, and investigators may not realize the importance of seemingly innocuous testimony for days or even weeks after it is taken. Therefore, the evidence obtained from witnesses should be as complete and detailed as possible. At the same time, bear in mind that interviews are not dialogues; interviewers who share information gained from other witnesses or other aspects of their investigation are violating the privileged nature of that information, and may be tainting their witness’ recollection as well. “Prompting” and leading questions are easy traps to fall into, and must be avoided.

Bear in mind that there is no reason to interview each witness individually. It is more efficient to have witnesses provide a written statement. Read the statements and assess whether or not a follow-up interview is required.

Know what you want to ask – write out your questions and then ask them. “Winging it” leads to repetition, close-ended questions and prompting. Take notes and use them to brief the entire board at the end of day meeting.

Have a maximum of three people as interviewers – any more than that intimidates the witness and causes confusion for the transcriber. Only use the relevant people. The Investigating Officer should do most of interviews. The Pilot Member should be present when interviewing flight crew witnesses, air traffic control witnesses, etc. The Maintenance Member should lead maintenance personnel interviews. The Board President should do any required interviews of high-ranking witnesses. The Medical Member should do his own interviews, as should the Life Support Member, if required. With the possible exception of an aviation psychologist, don’t allow observers – they can listen to the tape afterwards. *The above said and done, if you want to intimidate a witness, have all of the SIB members sit in on the interview.*

1.3. The Purpose of Interviewing. Safety investigators initially interview mishap witnesses with three objectives in mind:

- Find out what the witness knows.
- Establish a preliminary direction for the investigation.
- Complement other phases of the investigation.

A point may come in the investigation where the board would like look at standards, policy or overall perceptions of a specific group of people, i.e. How is stall recognition/recovery taught and practiced? Instead of interviewing individuals, distribute a survey in the form of a questionnaire. The aviation psychologist at HQ AFSC can help prepare surveys to ensure that they are not leading. It is much easier to interpret/correlate the data from a multiple-choice questionnaire than from one that requires written answers.

1.4. Obligation of the Safety Investigator to Subsequent Investigations. Once the SIB has completed all of its interviews, safety investigators are required by AFI 91-204 to provide a complete list to the AFI 51-503 Accident Investigation Board (AIB) of all witnesses contacted. This means the SIB must keep scrupulously accurate records of all witnesses, regardless of whether or not their testimony was considered relevant or worthy of inclusion in the formal report. It also means that safety investigators must treat all witnesses courteously and correctly, to ensure a similar degree of cooperation is accorded the Air Force legal investigators who may follow.

2. Privilege, Confidentiality, and Truthfulness Considerations:

2.1. Explaining the Purpose and Handling of Testimony. When offering privilege, use the exact language in AFI 91-204 to advise each person giving testimony or providing a statement that:

- the SIB is conducting the investigation solely for mishap prevention purposes within the USAF.
- the USAF will not release his or her statement outside the USAF safety community, nor may it be used as evidence in disciplinary actions or adverse administrative actions such as flying evaluation boards, determining line of duty status, pecuniary liability, or elimination from the USAF.
- the USAF will use his or her statement solely to determine factors relating to the mishap and to prevent recurrence.

Witnesses acknowledge that they understand the concepts above by verbally stating so and signing a “Privileged Witness Statement” (attached) containing the prescribed language. If you do not have access to the most current version of AFI 91-204, read the following statement directly onto any taped interviews:

“You are hereby advised that, as a witness to this investigation, your testimony will be used solely for mishap prevention purposes. Your statement will not be made available to anyone other than Air Force officials responsible for the assembly and approval of this investigation’s report. The only exceptions to this would be to act on an allegation of false testimony or investigative misconduct, or to comply with a valid court order on behalf of a defendant in a criminal trial. Your statement may not be used as evidence by the Government in punitive actions or adverse administrative actions, such as a Flying Evaluation Board, a determination of line of duty status or pecuniary liability, or elimination from military service. Do you understand how your testimony will be used, and are you willing to proceed with this interview?”

2.2. Accuracy of Unsworn Testimony. Safety investigators never advise witnesses of “their rights.” Testimony to safety investigators is accorded privileged, limited-use status, and witnesses are guaranteed confidentiality IAW AFI 91-204. It is otherwise unsworn, since investigators are specifically prohibited from taking safety-related testimony under oath. However, the Air Force requires all such testimony from its personnel to be truthful to the best of the member’s knowledge. An officer who fails to present a true accounting of facts involved in a mishap is committing an act of professional dereliction. While an officer’s testimony may not be used against them if it is self-incriminating, the Manual for Courts Martial contains penalties for the making of false official statements themselves. Further, AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, and AFI 36-3207, *Separating Commissioned Officers*, and AFI 36-3209, *Separation Procedures for Air National Guard and Air Force Reserve Members* all state that the Secretary of the Air Force may direct a discharge under other than honorable circumstances, or a discharge under honorable conditions (general), if an officer intentionally misrepresents or omits facts in official statements. Investigators who interview Air Force members should presume that they are receiving truthful testimony unless clear inconsistencies lead them to conclude otherwise. In cases where testimonial accuracy is suspect, investigators should contact HQ AFSC/JA for advice on how to proceed. Do not contact local staff judge advocates or area defense counsels, and do not threaten witnesses with the penalties described; often a simple appeal to the individual’s sense of duty will elicit the truth.

2.3. Special Considerations for General-Use Investigations. Users of this pamphlet who conduct witness interviews as a part of general-use investigations must not offer any of the protections described in para 2.1 above. It is appropriate to restate the sole purpose of USAF safety investigations, namely, to prevent the recurrence of mishaps, but witness testimony to general-use investigations is not accorded special handling or protection. Investigators in such cases must advise witnesses of their rights under the Fifth Amendment to the Constitution (civilian) or Article 31, UCMJ (military). (Providing AF Form 1168, Statement of Witness, for signature of the subject witness fulfills this purpose.) In questionable cases, ask the staff judge advocate for advice.

3. Identifying Potential Witnesses Following a Mishap. The governing principles associated with the gathering of useful testimony are *timeliness*, *proximity* of the witness to the mishap, and *unrecognized relevance*. Investigators must consider all three factors in their information-gathering process.

3.1. Timeliness. Witness information depends on recall and perception, both of which are affected by the passage of time. The human mind has a tendency to fill gaps in recollection through logic or filling-in based on their own experiences; the longer witnesses have to reconsider events, the more they subconsciously tend to do this. To maximize the likelihood of obtaining useful testimony, it is normally advisable to interview all available witnesses, and to do so as quickly as possible. Visit witnesses again later if the SIB needs additional information or clarification of their statements, but bear in mind the possibility that their description of what they saw may change once they have time to reflect, and their second impressions probably will not be as useful as their first.

3.2. Proximity:

3.2.1. Participants:

- Take the statements of the mishap crew as soon as possible, considering their physical condition. Consult the flight surgeon or other medical personnel to determine when and for how long the SIB may question them. Be sure to note if they are under any medication at the time that they are interviewed or provide a written statement.
- Under no circumstances are investigators to interfere with the medical treatment of an injured party in an effort to obtain testimony.
- Identify the last persons to have performed maintenance or servicing on the mishap aircraft, and ensure they are interviewed as soon as possible. Contact USAF safety personnel at other bases as necessary to conduct such interviews. If personnel from other DOD services were involved in servicing, cargo or armament loading, or other operations associated with the mishap aircraft, contact the Air Force Safety Center for assistance as soon as possible.

Identify air traffic facilities along the mishap aircraft's route of flight, and ensure that they impound their tapes for analysis. Also, have FAA/host nation supervisory personnel inquire as to the willingness of their on-duty controllers to provide additional statements or testimony.

3.2.2. Observers:

- Spectators and sightseers who are at the scene when the investigator arrives frequently heard or saw something that attracted their attention to the mishap and brought them to the scene. Talking to these people immediately on arrival may give the investigator information regarding the flight path, actions, and sounds of the mishap. Statements should be taken from all such witnesses immediately after the mishap, before they have time to compare stories with other witnesses.
- Other flight crews in the vicinity at the time of the mishap may be particularly helpful in establishing local weather conditions, or in relating relevant radio transmissions from the mishap aircraft that may not have been recorded (calls on local unit frequencies, self-announcing on UNICOM, etc.)
- Persons many miles from the point of impact may have useful information as well; this is especially applicable in cases of suspected engine or structural failure, weather mishaps, and fire in flight. It is possible to obtain evidence of smoke, fire, low flying, unusual maneuvers, erratic engine operation, structural failure, and loss of control from observers along the route flown who were not necessarily witnesses to the actual crash. Therefore, investigators must be prepared to retrace the mishap aircraft's route of flight to identify potential witnesses as necessary.
- Local police and news media personnel can often be helpful in locating witnesses, and it is quite possible that they will find some witnesses with valuable information before a USAF investigator can. In some cases it may be worthwhile to advertise for witnesses or have the news media advertise for them, but investigators should pursue these avenues only with the assistance of a qualified Air Force public affairs officer.

3.3. **Unrecognized Relevance.** Sometimes witnesses emerge in the course of an investigation who were not immediately identified as having useful information to offer. This is why it is critical to keep careful records of all potential witnesses, even if investigative resources are not available to pursue them all immediately. This is also why the mass gathering of written statements from a large group of observers of a mishap is a good idea; everyone has a slightly different vantage point and experience base, and a meaningless detail to one person may be a glaring discrepancy to another.

4. Immediate Post-Mishap Management of Witnesses:

4.1. **Preparing for Initial Interviews.** Assemble an interview kit before interviewing witnesses:

- Tape recorder with counter, tapes, and extra batteries.
- An ample supply of witness statement forms.
- Model aircraft (one of a small, toy store variety will suffice for general purposes, but an actual model of the involved aircraft is better).
- Compass.
- Angle measuring equipment.
- Watch with sweep second hand or digital seconds counter.
- Appropriate charts and maps on which to plot witness locations (if available).

4.2. Making Initial Contact with On-Scene Witnesses. When mishaps occur, there can be situations ranging from no witnesses to mishaps observed by literally hundreds of people. When faced with an abundance of witnesses and a limited time to conduct the investigation, it is imperative to develop a plan to sort out the key witnesses needed for in-depth interviews. Evaluate each mishap based on the known facts surrounding it, then use the following general strategy to set interview priorities:

- Sketch out (or use maps or photos of) the mishap area, then try to select witnesses from strategic points along the ground track (aircraft or missile mishaps) or around the mishap area.
- At the earliest opportunity, establish each potential witness' physical position relative to the mishap, and make a quick assessment of their quality, credibility, and reliability (see para 7.7 below) before committing significant time to an individual interview.
- Interim investigators must characterize the contribution each potential witness could make to the investigation; some may have seen the aircraft prior to impact, others may have seen in-flight ejection or bailout attempts, and still others may have seen or assisted in post-crash recovery of the dead and injured. Each may have made useful observations, and all must be followed up based on their relevance to the mishap sequence and its aftermath.
- If the number of witnesses available exceeds the number of designated primary-duty safety personnel or appointed interim board members available, do not use security police or civilian law enforcement personnel to expand your information collection effort. Instead, get all bystanders' names, telephone numbers, and addresses so that the permanent SIB can follow up for more detailed information. Ask observers to briefly write down what they saw and have them ready for a follow-up call within a few days.
- If you anticipate large numbers of written statements may be collected on the spot, photocopy figure 7.3 (at the end of this chapter) and ask all observers to sign and attach their statements to it.

The interim investigator's first impressions and initial assessment of the potential usefulness of witnesses are important. If a witness appears credible and reliable, or if they have a unique vantage point not shared by others, their value to the permanent board will be significant. If it initially appears that a witness at the scene is unlikely to contribute significant information or corroborate another's observations, they should still be asked to provide a written statement. All potential witnesses must be identified, logged, and given an opportunity to provide at least a written statement as quickly as possible after the mishap.

4.3. Handling Self-Identified Witnesses Away from the Scene. Post-mishap publicity frequently attracts calls from previously unidentified witnesses. While some of these may be from "cranks," the vast majority are from people who are genuinely concerned and wish to help the investigation. In some cases, such a caller may provide the key to a mystery, having found a critical part or observed something unusual in flight. Every unsolicited call-in must be followed up; however, depending on the direction your investigation has taken, the follow-up may require nothing more than a simple return call and brief telephone interview. All such callers should be:

- Thanked for making the effort to call.

- Advised of how their testimony will be treated (see para 7.2.1).
- Asked to summarize what they have seen or found. Depending on the thoroughness and possible usefulness of their testimony, it may be helpful to review the “memory jogging” questions provided at Attachment 4.

Upon completion of a return call telephone interview, the interviewer:

- Adds the witness’ identifying information to the list of witnesses maintained for subsequent investigations.
- Lists the date and time of the interview and summarizes any information elicited from it.
- Certifies that the witness was advised of the intended use of their testimony IAW AFI 91-204.
- Advises the board president if a follow-up interview may be warranted.

4.4. **Organizing Initial Witness Information.** Interim boards need to assemble the massive amount of data regarding witnesses, their statements, and their potential usefulness to the permanent board in a readily accessible form. This ensures witnesses and the information they possess is not lost. See the attached “Witness Log.”

5. Organizing the Interview Process:

5.1. Interviewing is one of the most time and labor-intensive aspects of an investigation. It must be managed efficiently to minimize its impact on other parts of the investigative effort, but must also be as broad an effort as necessary to ensure all relevant information is gathered. Keeping these two priorities properly balanced requires a systematic process, matching the best interviewers with the best witnesses, and then scheduling interviews as soon as possible in a setting conducive to the witness’ comfort.

5.2. In most cases, interim boards should concentrate on general information-gathering, especially in locating potentially useful witnesses, and pave the way for permanent board members to conduct in-depth interviews.

Set goals prior to the interview. Interim Boards should not be trying to find any answers – they should simply get witnesses or mishap participants to tell them what happened. The SIB interviewers should determine what information is required and write out the questions that will lead them there. Interviewers should be flexible enough to recognize other lines of inquiry when they appear and to capitalize upon them, but should ensure that they get answers to the coordinated questions.

6. Formal Interviews:

6.1. **The presence of multiple interviewers** arrayed in front of a single witness can be both intimidating and chilling. Nevertheless, it is sometimes warranted, particularly when human error has been identified as a significant factor in the mishap. A formal interview session with the appropriate members of the SIB facilitates in-depth questions of the major participants.

Appropriate members must be emphasized. It is not generally a good idea to have more than three people present and asking questions. There is no reason to have the Recorder in the interviews unless he or she happens to be a stenographer and is recording the interview.

Videotaping is a valid method for conducting interviews. There used to be a fear that a camera would make the witness nervous, but most of the people that you are interviewing will be used to video cameras. Video makes it much easier to capture a witness's intent, particularly through gestures and body language. Keep in mind that transcribers are not normally trained or prepared to work from videotape; simultaneously record videotaped interviews on normal audiotape.

Videotaped interviews also make it easier to reduce the number of people present in the interview room. Run a television located in another room off of the video camera. SIB members can watch the interview, take notes and formulate questions. Prior to the end of the interview, deliver the questions to the interviewer(s). This method of conducting interviews also reduces the number of times that a witness needs to be recalled.

6.2. **The ideal time for formal sessions** seems to occur after the SIB has been on the job for about a week and most of the dust has settled over what did and did not happen. By this time the board members should have a good grounding in the basic circumstances surrounding the mishap, and are probably prepared to ask useful questions.

6.3. **If necessary, interview key witnesses** during formal SIB proceedings to clarify or amplify their stated observations in light of evidence gathered after they made their statements. Give them a copy of their original statements to examine. Do not attempt to change their opinions, but point out inconsistencies, and invite explanation or clarification. It generally serves no purpose to confront witnesses with evidence unknown to them. The SIB should endeavor to establish the certainty of observations in the witnesses' minds and evaluate their merit later in closed meeting deliberations.

6.4. **Formal sessions should not normally be used** if the objective is simply to gather some additional factual information from a particular witness. There's nothing wrong with asking such witnesses to make an additional statement on specific issues, nor is there anything wrong with one SIB member interviewing him or her informally and making a statement on the substance of the conversation.

At the end of the interview, remind witnesses who have accepted privilege that if they talk about their testimony or portions thereof to anyone except a SIB member, they forfeit their privilege.

7. Post-Interview Analysis. The gathering of testimony evidence comprises about 50 percent of the witness investigation. The remaining 50 percent rely on the ability of the investigators to apply technical knowledge to the observations of lay witnesses and to emerge with possible contributing and causal factors. Analysis of witness statements, as opposed to accepting them at face value, is required to:

- Assess witness *quality*.
- Assess witness *reliability*.
- Evaluate witness *credibility*.
- Reconcile conflicting or multiple versions of the sequence of events.

7.1. **Quality.** The human mind does not work like a camera. Recall is never 100 percent (less than 100 percent of the information is stored in memory in the first place) and, because of selective attention, different people see different things. There is thus a twofold problem. What affects the information going into eyewitnesses' minds, and what affects the process of trying to find out what they remembered?

A number of factors affect witnesses' abilities to get a clear picture of what happened:

- Environmental factors (ambient light, time of day, rain or shine, etc.).
- Recognition/understanding of what they're seeing.
- Stress or trauma experienced (more stress equates to less clear memory).
- Personal significance (more personal involvement equates to better memory).
- Length of observation.
- Time elapsed since observation.
- Physical condition of the witness (age, health, fatigue state, use of alcohol, etc.).
- Attitude toward the Air Force; negative attitudes taint recall, while positive attitudes may result in "filling-in" in an effort to be helpful.
- Pride (if quality of observation is believed to be suspect, recall may be selective).

7.2. **Reliability.** Various other factors also tend to influence witness observations. It is advisable for the interviewer to have some knowledge of these factors to better understand why witnesses report as they do, as well as to ascertain the reliability and validity of the information:

- Intelligence -- intelligence is not as much a factor in observing as it is in the area of ability to recall and in the organization of thoughts. The less intelligent witness tends to have difficulty in recalling specific detail simply because it wasn't of interest. This witness may also have difficulty in organizing thoughts and presenting observations in a coherent manner.
- Emotion -- emotion tends to produce distortion and exaggeration, especially in the verbal description of an occurrence. The degree of accuracy depends partly on the observer's mental state at the time and partly on the complexity of the situation.
- Repetition -- witnesses who have spoken to many people about their observation or experience frequently begin to exaggerate or "fill in gaps" with each retelling.
- Transposition -- some witnesses may report all facts accurately, but place them out of sequence with the actual occurrence. Be aware of this possibility, and attempt to verify the sequence of events independently.
- Omission -- this are common in witness statements, frequently because the witness does not consider certain information important. Omissions concerning details of an observation are most common when a witness is asked to prepare a statement of observation without the benefit of reminders in specific areas, such as speed, engine sound, vehicles involved, weather, etc.

- Repression -- in the factors affecting witness quality mentioned above, it was noted that memory is enhanced by personal involvement, but degraded by stress or trauma. Participants in a mishap sequence who sustain a frightening or traumatic experience often have difficulty recalling even the most vivid events, despite their personal presence. This may be a result of the natural tendency of the mind to dispel or push unpleasant thoughts back into the subconscious as a protection from uncomfortable and upsetting memories

Preconceptions can also influence what a witness remembers, i.e. if they hear an explosion, they expect to see fire and will remember seeing it. Children have more open minds and are often more reliable than adults.

Note that gender is not a factor in assessing reliability. No significant variation seems to exist in comparing the accuracy of adult female and male observers.

7.3. Credibility. Certain aspects of human nature come into play when a person witnesses, or is part of, a dramatic event:

- Witnesses rarely observe all of an occurrence, and even if they do the tendency is to report those events which were most vivid.
- Witnesses, when questioned in detail, become aware of gaps in their observations and, in hope of saving face, apply logic, answer in generalities, and add to their statements to make their observations seem more plausible.
- Witnesses who offer very specific information about altitude, airspeeds, or maneuvers must be viewed with caution, since even eyewitnesses with aeronautical experience have difficulty with these estimates.

Bear in mind that witness testimony is sensitive to how it is interpreted; a witness' ambiguous answers may be interpreted by investigators in accordance with the investigators' own beliefs, opinions, or preconceptions. Be sure to differentiate between what the witnesses say and how you interpret their testimony.

7.4. Reconciliation and Corroboration. Multiple, mutually corroborating witnesses greatly aid in resolving ambiguities. When witness statements are numerous, complex, or contradictory, they can be more objectively examined by preparing a matrix, with witnesses listed on one axis, and information provided on the other. Associating multiple witnesses with the information they have provided allows a check on their credibility against others that provided similar (or conflicting) information. This method has the added virtue of allowing investigators to examine the frequency with which a given item of testimony recurs (configuration, location, etc.).

8. Verbatim Testimony:

8.1. Verbatim Testimony -- testimony appearing in the report as a transcript of questions and answers -- is most useful when taken in a formal interview from a direct participant in the mishap sequence. However, it should be used judiciously. It's much easier to conduct an interview than it is to transcribe the results; as a rule-of-thumb, expect your admin staff to need 7

hours worth of transcribing and typing for each hour of testimony (a “best case” estimate, assuming the transcriber understands the technical jargon used).

Transcription from a transcriber that doesn't know the jargon will take over 12 hours of work per hour of interview before it is accurate.

8.2. **Verbatim Testimony** that simply repeats information provided in a written statement generally adds little to a report. However, if verbatim testimony is considered necessary to expand upon or further explain some aspect of written testimony, it should be kept focused. For an effective session, the interviewer should read the previous statements and develop specific questions. If that's not possible, an interview, particularly with verbatim testimony, is probably premature.

8.3. **Verbatim Testimony** is subject to two common transcription problems:

- Inadequate identification of questioners and interviewees -- the average typed transcription lists the witness' name when first introduced and nothing but a bunch of "Qs" and "As" afterwards. When the transcripts are reproduced, they're easily mixed up and hard to restore to the correct order. Sometimes, they are not even sure which witness was talking; avoid this by having the typist put the last name of the witness and the page number of his or her testimony at the bottom of each page. This also makes testimony easier to find and to reference in the analysis part of the report.

Have the person conducting the interview state the name of everyone present. The first time each person speaks, they must introduce themselves. When the transcriber is typing, have them start with a list of speakers in chronological order and assign acronym titles to each speaker, i.e. Mishap Pilot – MP, Board President – BP, Investigating Officer – IO. Instead of typing Q and A, insist that the acronym title of the speaker be used. At the end of the interview, assess the information gathered and determine whether or not it is worth transcribing. If it isn't, file the interview tape(s) along with the Privileged or Non-Privileged Witness Statement Form and the AFSC Rep will take them with him or her to HQ AFSC and hold them until the Memorandum of Final Evaluation has been completed for the mishap. If the decision is made to do a full transcription, insist that the first draft be double-spaced.

- Garbles in transcription -- typically, these have resulted from transcribing typists being unfamiliar with the terminology used during the interview; more recently, many have been the result of “auto-correction” and spell-checking associated with word processing programs. Read transcripts carefully and correct all such problems before going to press with the formal report.

The person that conducts the interview must be the first to proof the transcription. This must be done while listening to the tape of the interview. Mark corrections in red or green ink and have the entire transcript reprinted prior to the next proofreading. The transcript should be proofed by a minimum of three different board members.

9. Typical Problems Associated with Witness Testimony:

9.1. "The witness didn't sign the statement and has left town." As far as the safety investigation is concerned, a witness' signature doesn't contribute anything and is not absolutely necessary.

9.2. "The witness wrote out the statement before being advised of the purpose of the investigation or how their testimony will be used." Advise the witness after the fact; this also provides an opportunity to ask if he or she has anything to add to their initial statement.

9.3. "The witness wrote the statement on plain paper instead of the approved witness form and left town." When arguing in court against releasing witness statements, it is helpful to have had them sign on the form specified in AFI 91-204. However, this is not always practical, particularly in the case of a transient civilian witness, and the law recognizes this. As long as the report as a whole demonstrates a consistent effort to conform to the policy of advising witnesses on non-release of their statements, the occasional exception isn't a hindrance.

9.4. "The witness wants to give the same statement to the accident board." The witness can tell anyone anything; however, the SIB does not release the witness statement. Do not give the witness a copy of their statement for this purpose, either; they'll just have to tell the same story twice.

Privilege does not have to be extended to everyone, or accepted when it is offered. If a statement is not privileged, it can be given to the AIB. If it is pertinent, it will go in Tab O of the formal report.

9.5. "There are 100 witnesses, and they all say the same thing." Select a representative statement, and use it. Keep a list of the names of all witnesses to give to the accident board. They make their own decisions on who to talk to and which statements to use.

9.6. "The witness made a statement to an investigator, but we were unable to get it taped, copied verbatim, or in writing." Have the investigator who interviewed the witness prepare a statement on what was said, but indicate it is not verbatim.

Privileged, Limited-Use Advisory to Witnesses Providing Written Statements

(Date)

I, (Name) _____, (Grade) _____,

(Organization) _____ do hereby make the following statement, having been advised that as a witness to this investigation, my testimony will be used solely for mishap prevention purposes. This statement will not be made available to anyone other than Air Force officials responsible for the assembly and approval of this investigation's report. The only exceptions to this would be to act on an allegation of false testimony or investigative misconduct, or to comply with a valid court order on behalf of a defendant in a criminal trial. This statement may not be used as evidence by the Government in punitive actions or adverse administrative

actions, such as a Flying Evaluation Board, a determination of line of duty status or pecuniary liability, or elimination from military service.

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THIS CONTAINS PRIVILEGED, LIMITED-USE SAFETY INFORMATION. UNAUTHORIZED USE OR DISCLOSURE CAN SUBJECT YOU TO CRIMINAL PROSECUTION, TERMINATION OF EMPLOYMENT, CIVIL LIABILITY, OR OTHER ADVERSE ACTIONS. SEE AFI 91-204, CHAPTER 2 FOR RESTRICTIONS.

10. Defining Types and Limiting Use of Safety Reports. Produce safety reports to document causes of mishaps and to take preventive actions. These reports are for official use only (FOUO) if they are not classified. They may be privileged or non-privileged mishap reports. The following terms and information implement AFD 91-2 policies on safety reports, their uses, and prohibitions on their use. (**NOTE:** See AFI 37-131, *Air Force Freedom of Information Act Program*, for a complete definition of FOUO.)

10.1. Privileged Reports. Aircraft, space, missile, and nuclear safety investigation reports are privileged reports containing privileged and non-privileged information. SIB message reports (except the 8-hour preliminary message report) and Part II of Class A and B formal reports are privileged portions of the reports. Class C and HAP reports for these categories are not prepared in two parts, but contain privileged information. **NOTE:** Aircraft reports include flight, flight related, and aircraft involvement reports.

10.1.1. Privileged Information. This refers to information that is exempt by law from disclosure outside the Air Force safety community. The Air Force treats this information confidentially to ensure commanders quickly obtain accurate mishap information, thereby promoting safety and combat readiness. Privileged information includes:

- Findings, conclusions, causes, recommendations, and the deliberative process of the SIB.
- This protection also applies to the findings, conclusions, causes, recommendations and deliberative process of the investigator in a ground or explosive mishap.
- Any information obtained from a contractor who built, designed, or maintained equipment involved in a mishap, which information was provided pursuant to a promise of confidentiality.
- Statements given to the SIB pursuant to a promise of confidentiality.
- Computer generated videotape simulations or simulator reenactments created in conjunction with safety investigations, except those associated with space mishaps.
- Life Science Materials

10.1.2. Promise of Confidentiality. Because critical information related to a mishap is often available only from persons directly or indirectly involved in the mishap, it is necessary to establish a means of providing a frank and open exchange of such information without fear of incrimination or otherwise adverse action. Therefore, the Air Force may give a promise of confidentiality to encourage frank and open communications to individuals who provide witness statements to a SIB or investigating officer and to government contractors who built, designed, or maintained the equipment and participate in the investigation. Only primary duty safety personnel as members of the Disaster Control Group, or the designated interim and permanent SIB members may offer promises of confidentiality for witness testimony. This information is privileged and protected from disclosure to unauthorized personnel.

10.1.3. Official Use of Privileged Information. The Air Force ensures privileged safety information is used only by persons and agencies whose duties include relevant mishap prevention responsibilities. Access will be limited to information necessary for and consistent with mishap prevention:

- When their duties include mishap prevention and when it is necessary to develop, take, or review preventive action, the following officials may obtain access to privileged safety information: commanders of flying, space, and missile organizations, safety officers, flight surgeons, and HQ USAF/SE personnel, air, space, and missile crews, those who supervise and train air, space, and missile crews, mishap board members, and those who are appointed to assist mishap board members.
- Other US military services and DoD agencies responsible for flying, supporting or maintaining
- Air Force aircraft may receive comparable privileged safety information when needed for mishap prevention. In certain cases, the Air Force has agreed to exchange privileged mishap information with other US government agencies solely for mishap prevention purposes.
- Comparable persons and offices within EAPAF countries may have access to privileged information pertaining to F-16 mishaps only. These countries are participants in the multinational fighter program of co-production of the F-16 with the United States. The release authority (HQ USAF/SE) delegates F-16 SIBs authority to release a version of F-16 final mishap message reports solely to the EAPAF via AIG 9399. This information is for mishap prevention purposes only.
- Agencies such as the staff judge advocate, historian, and public affairs do not receive privileged information because of possible conflict of interest and because use by such agencies is not for mishap prevention purposes. If you need legal counsel about the use of privileged information, contact HQ AFSC/JA

10.1.4. Controlling and Handling Privileged Reports. Any Air Force personnel having access to these reports and their attachments, or information derived from them, have a duty to control them in a way that prevents their use in any other way other than their authorized purpose: mishap prevention. The Air Force does *not* use privileged reports (including message reports produced after the preliminary 8-hour report), their attachments, or information extracted from them, as evidence for punitive, disciplinary, or adverse administrative actions, for determining the misconduct or line-of-duty status of any person, in flying evaluation board hearings or reviews, to determine pecuniary liability or liability in claims for or against the United States, or in any other manner in any action by or against the United States. Any release outside the Air Force, even to members of Congress or officials of the Department of Justice (including offices of US Attorneys), is governed by this instruction and must be approved by HQ USAF/SE. For purposes of this and the following paragraph, the terms "control" and "access" include both control and access obtained in the normal course of one's duties and control and access obtained by any other means--whether or not incident to normal duties and whether or not such access was authorized. When these reports are no longer needed for mishap prevention purposes, destroy them according to AFMAN 37-139, *Records Disposition--Standards*.

10.1.5. Prohibited Uses of Privileged Safety Reports. Members, Air Force employees and government contractors will not wrongfully use, permit the use of, gain access to, or allow access to any privileged safety report, portions thereof, or the information therein for other than officially authorized mishap prevention purposes. Members, Air Force employees and government contractors will not append or enclose these reports, in whole or in part, in any other report or document unless the sole purpose is to prevent mishaps or is factual information that has been released pursuant to law or regulation. These prohibitions pertain to Part II of formal reports (AF Form 711, **USAF Mishap Report**); interim status and final message reports on aircraft, missile, and space mishaps as well as nuclear reports; and special safety investigation reports prepared by HQ AFSC relating to aircraft, missile, and space mishaps and nuclear reports. Violations of these prohibitions are punishable under Article 92(1), UCMJ, and may be grounds for disciplinary actions according to civilian personnel regulations.

10.2. Handling Non-privileged Reports. Ground, miscellaneous air operations, and explosives safety investigation reports normally do not contain privileged information and are non-privileged reports. Non-privileged information is releasable outside the Air Force safety community and outside the Air Force once Privacy Act information is removed. The installation chief of safety is the release authority for non-privileged reports to other Air Force personnel. When release will be made outside the Air Force, HQ AFSC/JA is the release authority. **NOTE:** There might be occasions, such as mishaps involving complex weapon systems, equipment, or military-unique items, when explosives and ground safety investigations would require privileged status. When this appears to be the case, contact HQ USAF/SE for approval of privileged status for these safety reports.

11. Witnesses. Physical and documentary evidence are usually the most credible forms of evidence, but witness accounts often provide important leads. Witnesses include those involved in the mishap, those who saw it, and those whose training and experience qualify them as experts. Use the following guidelines for witnesses appearing before an investigator or SIB:

- Do not administer truth serums, hypnotic techniques, drugs, or polygraph tests. If a witness provides a statement under medication, add a notation to their statement.
- Do not have witnesses testify under oath or give sworn testimony. Ensure witnesses understand that they are obliged to give honest, good faith testimony.
- Advise witnesses in all privileged safety investigations of the purpose and privileged nature of the investigation before they testify. A privileged witness statement is attached. Do not advise witnesses of their Article 31, UCMJ, or 5th Amendment rights.
- The sole purpose of investigations and reports is mishap prevention. If Air Force personnel, questioned in the investigation, may be guilty of intentional misconduct, contact the HQ AFSC/JA
- The primary purpose of investigations producing non-privileged reports is mishap prevention.

Do not offer protection beyond this assertion to Air Force personnel involved in investigations producing non-privileged reports. Safety investigators producing non-privileged reports should consult the base SJA before interviewing someone suspected of criminal misconduct. Criminal

investigators must know if the safety investigators conduct an interview without rights advisement. Sometimes a safety interview should be delayed pending criminal investigation.

11.1. Retaining Access to Participants. Safety investigators may need frequent access to, or multiple interviews with, participants in a mishap. Commanders will make all participants available to investigators upon request of the board president/single investigating officer (IO). The Board president/single IO will advise the commander when participants are no longer needed.

11.2. Returning Participants to Duty. Safety investigators make no determinations regarding the fitness of participants to be returned to normal duties. Commanders must decide how and when participants are to be managed once investigators no longer need require them for interview purposes.

11.2.2. Tab U, Statements and Testimony of Witnesses and Persons Involved. Investigators take statements from all individuals concerned with the mishap or who were eyewitnesses to it. A promise of confidentiality may be given to any witness who the board president, in his discretion, determines should be extended such a promise. A promise of confidentiality shall not be given on a blanket basis to every potential witness. The promise of confidentiality must be clearly understood by those witnesses extended the promise and they must be given the opportunity to waive any confidentiality. Non-privileged statements will be placed in Tab O. **It is not necessary to publish every statement taken from every individual interviewed.**

11.2.1. Investigators must read the following Promise of Confidentiality advisory to each witness offered privilege, and must actually read it onto all tape recordings of interviews:

“You are hereby advised that, as a witness to this investigation, your testimony will be used solely for mishap prevention purposes. Your statement will not be made available to anyone other than Air Force officials responsible for the assembly and approval of this investigation’s report. The only exceptions to this would be to act on an allegation of false testimony or investigative misconduct, or to comply with a valid court order on behalf of a defendant in a criminal trial. Your statement may not be used as evidence by the Government in punitive actions or adverse administrative actions, such as a Flying Evaluation Board, a determination of line of duty status or pecuniary liability, or an elimination from military service.” Transcripts of complete interviews must contain this advisory. In cases where witness testimony is summarized by the interviewer, it must be clear that the witness was advised of and understood this advisory.

11.2.2. Where a promise of confidentiality has been extended, use the “Privileged Witness Statement” (attached). Select only meaningful statements and testimony to include in this tab. It is not necessary to publish every statement taken from every individual interviewed. Place the statements and testimony of each individual together in chronological order with the earliest on top to make it easier to compare the individual’s impressions. Consider all statements and testimony included at this tab in the analysis at Tab T. Provide a complete list of all witnesses contacted to the AIB after the SIB has completed all of its interviews.

11.2.3. Where a promise of confidentiality has not been extended, use the “Non-Privileged Witness Statement” (attached). Select only meaningful statements and testimony. These

statements will normally be placed in Tab O. However, non-privileged statements that include sensitive or personal information shall not be placed in part one of the formal report. These statements will be passed to the AIB president under separate cover.

11.2.4. Place the selected statements and testimony of each individual together in chronological order with the earliest on top to make it easier to compare the individual's impressions.

11.2.5. Provide a complete list of all witnesses, even if they were not interviewed, to the AIB after the SIB has completed all of its interviews. This list should include the witnesses' name, rank or title, work and home telephone numbers and work and home addresses.

PRIVILEGED WITNESS STATEMENT

(Date) _____

1. I, (Name) _____, (Grade) _____,
(Organization) _____, have been advised by
(Name) _____ of the following:

a. This investigation is being conducted under the provisions of AFI 91-204 solely for the purpose of mishap prevention within the United States Air Force; to determine all factors relating to the mishap and to prevent recurrence.

b. I have been promised confidentiality concerning this statement if I choose to have my statement remain confidential.

c. If I elect to have my statement treated as confidential, this means it will not be distributed outside Air Force nor used as evidence to support any disciplinary action, adverse administrative action such as Flying Evaluation Board, determining line-of-duty status or pecuniary liability, or elimination from the Air Force. The only exception to this would be to act on an allegation of false testimony given to the investigation board or investigative misconduct, or comply with a valid court order on behalf of the defense in a criminal trial.

d. Non-confidential witness statements may be released to the public pursuant to a Freedom of Information Act request. Only statements given under a promise of confidentiality are protected from release outside safety channels.

e. Whether or not a statement is considered confidential, the chain of command will review the final mishap report, but the chain of command may only use the materials for safety and mishap prevention purposes. When a statement is given under this promise of confidentiality, the chain of command will review the final mishap report, but this statement may only be used for mishap prevention.

2. I understand I am being interviewed as a witness in a mishap investigation and I acknowledge that a promise of confidentiality has been extended to me. I further understand the effect of this promise. I (do) (do not) desire my statement to be treated as confidential.

(Signature)

(Date)

3. (To be completed after the witness has given a statement) I (still desire) (do not desire) to have my statement to remain confidential.

(Signature)

(Date)

(NOTE: This statement is for all aircraft, missile, space, or nuclear mishaps. This format will also be used for those ground or explosives mishaps where HQ USAF/SE has approved privileged status according to paragraph 1.12.2. This figure depicts the approved format and its content only. Use 8-1/2 by 11-inch paper for inclusion in safety reports.)

FOR OFFICIAL USE ONLY.

THIS CONTAINS PRIVILEGED SAFETY INFORMATION. UNAUTHORIZED USE OR DISCLOSURE CAN SUBJECT YOU TO CRIMINAL PROSECUTION, TERMINATION OF EMPLOYMENT, CIVIL LIABILITY, OR OTHER ADVERSE ACTIONS. SEE AFI 91-204, CHAPTER 2 FOR RESTRICTIONS. DESTROY IN ACCORDANCE WITH AFMAN 37-139 WHEN NO LONGER NEEDED FOR MISHAP PREVENTION PURPOSES.

NON-PRIVILEGED WITNESS STATEMENT

(Date) _____

1. I, (Name) _____, (Grade) _____,
of (Organization) _____, have been advised by
(Name) _____ of the following:

a. This investigation is being conducted under the provisions of AFI 91-204 solely for the purpose of mishap prevention within the United States Air Force to determine all factors relating to the mishap and to prevent recurrence.

b. I have not been promised confidentiality concerning this statement.

c. This witness statement may be released to the public pursuant to a Freedom of Information Act request.

d. The chain of command will review the final mishap report.

2. I understand I am being interviewed as a witness in a mishap investigation and I acknowledge that a promise of confidentiality has not been extended to me.

(Signature)

(Date)

OPPORTUNITY TO SUBMIT AN ADDITIONAL WITNESS STATEMENT

MEMORANDUM FOR *(Rank, Name)*

FROM: *(SIB President)*

SUBJ: Opportunity to Submit Witness Statement

1. The SIB investigating the mishap involving *(Aircraft type, Serial Number XX-XXXX)*, which occurred on *(DD Month Year)*, named you in its safety investigation report.
2. A copy of the final message report is available for your review at *(Wing Flight Safety)*. You cannot remove the message from that office nor reproduce any portion of it. The message is for official use only, and information contained therein is privileged, not releasable in whole or in part to persons or agencies outside the US Air Force without the express approval of the disclosure authorities specified in AFI 91-204.
3. You are required to endorse the original of this memorandum indicating receipt and your intention to either decline commenting on the findings or provide a Witness Statement. If you provide a Witness Statement, it is privileged and becomes part of the safety investigation report. It shall be used solely to determine all factors relating to the mishap and, in the interest of mishap prevention, to preclude recurrence.
4. If you decide to provide a Witness Statement, deliver one signed, reproducible copy to *(Wing Flight Safety)*, not later than 30 days from the dated receipt of this memorandum.

(SIB President's Signature Block)
AFI 91-204 Safety Investigation Board President

Receipt acknowledged.

Intention:

- a. I decline commenting on the safety investigation report findings.
- b. I will submit a statement commenting on the safety investigation report findings and furnish it as instructed not later than _____, 30 days from today, _____.
Date Date

(Signature Block of Person Named)

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WITNESS LOG

Name (Last, First, MI)	Address (Organizational and Home)	Phone (Duty and Home)	Date	CM	OP	OB	Other	Statement	Taped Test.	Interviewer Summary

Key:

“CM” = crewmembers

“OP” = other personnel listed as “directly involved” on AF Form 711

“OB” = observer/bystander

“OTHER” = self-explanatory. May include media, expert witnesses, uninvolved air traffic controllers, etc.

Statement = Written statement provided

Taped Test. = Testimony was taped

Interviewer Summary = Interviewer has taken notes and summarized verbal testimony.