

DEPARTMENT OF DEFENSE  
OFFICE OF INSPECTOR GENERAL

In the Matter of  Colonel EARL G. MATTHEWS, Judge Advocate, U.S. Army,  <i>Complainant.</i>	Title 10  Whistleblower Reprisal Complaint  October 20, 2023
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Office of Inspector General	OIG
Officer Evaluation Report	OER
Report of Investigation	ROI
Responsible Management Official	RMO
Senior Leader Development Seminar	SLDS

Involved Federal Officials/Witnesses<sup>1</sup>

NAME	POSITION
<b>MG David C. Hill</b>	Commandant, U.S. Army War College
<b>COL Michelle M. Goyette</b>	Director, Army Strategic Education Program (ASEP)
COL Cary Metz	Military Deputy Director, ASEP
Mr. Randolph C. White	Civilian Deputy Director, ASEP
<b>Mr. Daniel A. Pinnell</b>	Director, Senior Leadership Development Seminar (SLDS)
<b>LTG Jody J. Daniels</b>	Chief of the Army Reserve
Mr. Stephen D. Austin	Asst. Chief of the Armu Reserve
BG Kelly M. Dickerson	OCAR G-3/5/7
<b>COL Betty S. Cumiskey</b>	Director, Army Reserve GOMO
COL Orlando G. Ortega	U.S. Army War College AR 15-6 Investigating Officer
LTC Amanda O. Clare	Reserve Coordinator, CSL, ArmyWar College
Mr. Keith D. Barrett	U.S. Army CID/Hyatt Hotel Security Officer
Ms. Litrena D. Gordon	ASEP Program Analyst

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<sup>1</sup> Names of Responsible Management Officials (RMOs) are in **bold** type. A number of these individuals no longer hold the positions indicated. Inclusion on this list does not imply wrongdoing. Most of those listed are merely witnesses.

## *Introduction*

The complainant, Colonel Earl G. Matthews (“COL Matthews”), is currently a senior Judge Advocate in the U.S. Army Reserve and is presently assigned in his reserve capacity as an Observer/Controller within the Center for Strategic Leadership at the U.S. Army War College. From May 2018 until April 2021, he was the Staff Judge Advocate of the District of Columbia National Guard, its chief legal officer, and the principal legal adviser to its commanding general, Major General William J. Walker.

In May 2021, COL Matthews transitioned out of the D.C. National Guard and rejoined the U.S. Army Reserve, serving briefly within the Office of the Secretary of Defense before transitioning to the Army War College in August 2022. In December 2021, in response to a flawed November 2021 investigative report by the Department of Defense Office of Inspector General (“DoD OIG”) on the Department’s response to the events of January 6, 2021, COL Matthews drafted a memorandum which, among other things, alleged that the Director of the Army Staff, Lieutenant General Walter E. Piatt (“LTG Piatt”) and the Army’s former Deputy Chief of Staff for Operations (G-3/5/7), now-General Charles A. Flynn, (“GEN Flynn”) had not been completely factual or truthful in their June 2021 oral and written testimony to the House Oversight and Government Reform Committee or in their testimony to the DoD OIG. Furthermore, COL Matthews asserted that LTG Piatt had overseen the creation of a misleading, factually flawed, and revisionist recitation of events called the *Report of Operations of the United States Army*. Subsequently, LTG Piatt provided the factually flawed report to several committees of the U.S. Congress.

COL Matthews believes that LTG Piatt did so to improperly absolve certain Army senior leaders, including himself, of any responsibility for the delay of the D.C. National Guard in assisting beleaguered U.S. Capitol Police and the D.C. Metropolitan Police Department personnel at the Capitol on January 6, 2021.

COL Matthews submitted his December 2021 memorandum to two congressional committees: the House January 6<sup>th</sup> Committee and the Senate Homeland Security and Governmental Affairs Committee. The memorandum was also obtained by the press and was the subject of widespread media coverage.<sup>2</sup>

As a direct result of COL Matthews' protected communications, Responsible Management Officials ("RMOs") associated with the U.S. Army War College retaliated against him by, among other things: 1) falsely accusing him of misconduct and/or unprofessional behavior; 2) by abruptly curtailing a scheduled 12-day reserve duty assignment midway through; 3) by having COL Matthews physically and visibly escorted out of a publicly accessible hotel by security personnel; and 4) by providing COL Matthews' name and likeness to military police personnel assigned onsite as a person of concern who might attempt to disrupt the military conference that Matthews had previously been assigned to support in his reserve capacity. In addition to causing him the loss of military pay and reserve retirement points, the retaliatory actions of the Army War College RMOs caused COL Matthews grievous reputational harm, significant personal embarrassment and public humiliation.

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<sup>2</sup> Betsy Woodruff Swan and Meridith McGraw, 'Absolute liars': Ex-D.C. Guard official says generals lied to Congress about Jan. 6," *Politico* (Dec. 6, 2021) <https://www.politico.com/news/2021/12/06/jan-6-generals-lied-ex-dc-guard-official-523777> (Last accessed on Oct. 19, 2023); Rebecca Shabad, "Former D.C. Guard official accuses Army generals of lying to Congress about Jan. 6 response," *NBC News*, (Dec. 6, 2021), <https://www.nbcnews.com/politics/congress/former-d-c-guard-official-accuses-army-generals-lying-about-n1285423> ; <https://www.rollingstone.com/politics/politics-news/generals-lied-congress-jan-6-1267258/> Last accessed on Oct. 19, 2023).

Also, as a result of his protected communications, RMOs associated with the Office of the Chief of the Army Reserve have refused to “slate” COL Matthews to (i.e., to consider him for assignment to) any existing, projected or programmed O7-level general officer vacancies in the Army Reserve. They do so despite COL Matthews having been recommended for promotion to Brigadier General by a statutory promotion board, him being qualified for numerous existing or projected vacancies, and officers ranking below COL Matthews on the Order of Merit List (“OML”) having been slated for assignment to general officer billets. The actions or inaction of these RMOs constitute the de facto and constructive removal of COL Matthews from a promotion list due to his protected disclosures to the Congress of the United States.

A thorough investigation will establish that the actions taken against COL Matthews were done in reprisal for his protected disclosures, thus violating 10 U.S.C. § 1034 and DoD Directive (DoDD) 7050.06. We therefore respectfully request that a whistleblower reprisal investigation be opened. The relief requested is set forth below.

*Related Proceedings and Request for Referral out of DoD OIG*

COL Matthews’ underlying disclosure in this matter directly involves his challenging a Report of Investigation (ROI) issued by DoD OIG. Notably, the ROI at issue was overseen and issued by Deputy Inspector General Marguerite Garrison (“Ms. Garrison”), who also oversees Whistleblower Reprisal Investigations. *See* DoD OIG ROI, included at Appendix “A”. Furthermore, COL Matthews had previously asserted that an apparent longstanding conflict of interest exists concerning various DoD OIG officials, to include Ms. Garrison. A copy of documents associated with the recusal matter is included at Appendix “B”.

Given the fact that DoD OIG is part of the fact pattern in COL Matthews’ disclosure, DoD OIG must respectfully be recused, and this case should be referred to another statutory Inspector

General. Furthermore, given that senior leadership within the U.S. Army are implicated within both COL Matthews' disclosure as well as the adverse actions alleged herein, the Army Inspector General is also inherently conflicted out not only because of the issues implicating the Army, but because all whistleblower reprisal investigations conducted by the Army Inspector General are overseen by DoD OIG Whistleblower Reprisal Investigations.

Accordingly, given the web of conflict of interest in this matter, COL Matthews' complaint must be referred to another statutory Inspector General through the Council of Inspectors General on Integrity and Efficiency ("CIGIE").

#### *Jurisdiction and Timeliness*

As a member of the armed forces, COL Matthews is protected by the Military Whistleblower Protection Act. 10 U.S.C. § 1034. Section 1034(b)(1) forbids retaliation by any person. Accordingly, DoD IG has jurisdiction.

This complaint is timely filed because the retaliatory actions complained of were taken less than one year ago. *Id.* at § 1034(c)(5).

#### *Elements and Standard of Proof*

The elements of reprisal are summarized in chapter 1 of the *Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints*. There must be (1) a protected communication; (2) knowledge of the protected communication on the part of the RMO; (3) a personnel action taken, threatened, or withheld; and (4) a causal connection between the protected communication and the personnel action. The elements must be established by a preponderance of the evidence for a complaint to be deemed substantiated. COL Matthews' disclosures satisfy all four elements. The burden is on Army officials to prove that the same adverse personnel actions would have been taken even if there had been no protected communications. *See, e.g., Whitmore*

*v. Dep't of Labor*, 680 F.3d 1353, 1367 (Fed. Cir. 2012); *Figueroa v. Nielsen*, 423 F. Supp. 3d 21 (S.D.N.Y. 2019); *Miller v. Dep't of Justice*, 842 F.3d 1252 (Fed. Cir. 2016) (once the complainant establishes a *prima facie* case, the burden of proof shifts to the U.S. Government to establish that the personnel actions taken, threatened, or withheld would have occurred absent the protected communication).

### *The Complainant*

COL Matthews is an Army judge advocate and has served as such in either the Army Reserve or the Army National Guard for most of the last 24 years. His military service includes multiple operational deployments to overseas combat or hazardous duty zones, and he has had significant active-duty service on both the Army Staff and the Joint Staff at the Pentagon. In his civilian capacity, COL Matthews has served in both career civil service roles and in appointed political positions at the highest levels of the federal government. For example: in June 2017, COL Matthews was appointed as the Principal Deputy General Counsel of the Department of the Army and served as the Acting General Counsel of the Army until January 2018. COL Matthews continued his civilian service as Principal Deputy General Counsel of the Army until May 2018, whereupon he was detailed to the White House as the Senior Director for Defense Policy and Strategy on the National Security Council staff. At the White House, he was also commissioned as a Special Assistant and later as a Deputy Assistant to the President. COL Matthews left his White House role in November 2019. Subsequently in July 2020, COL Matthews transitioned out of the federal civilian service to the private sector. He is currently the General Counsel at Albers Aerospace.

Senior government officials have continued to have such confidence in his fidelity, probity, and abilities that the Acting Secretary of Defense appointed him to the Defense Business Board

and the Base Naming Commission (2020-21), and the Governor of Virginia appointed him to serve on the Commission to Combat Anti-Semitism (2022-23).

Highly decorated, COL Matthews' honors and awards include: the Secretary of Defense Medal for Outstanding Public Service, the Department of the Army Decoration for Exceptional Civilian Service, the Legion of Merit, two Bronze Star Medals, the Defense Meritorious Service Medal, two Meritorious Service Medals, and two Joint Service Commendation Medals. A copy of COL Matthews' Resume is included at Appendix "C" and copies of his honors and awards are included at Appendix "D".

COL Matthews' tenure as the D.C. National Guard's chief legal officer included the D.C. Guard's response to the civil unrest in the nation's capital following the May 2020 murder of George Floyd, its response the riot at the U.S. Capitol on January 6, 2021, and the subsequent National Guard protection mission at the Capitol from January through early spring 2021.

The Army senior leaders for whom COL Matthews has worked throughout his career have consistently and repeatedly lauded his character, leadership, analytical abilities, strategic capacity and commitment to Army Values in Officer Evaluation Reports ("OERs"). Below are excerpts from the last 4 OERs COL Matthews received before the February 4, 2023 incident which is in part the subject of this complaint:

<b>d1. Character:</b> <i>(Adherence to Army Values, Empathy, and Warrior Ethos/Service Ethos and Discipline. Fully supports SHARP, EO, and EEO.)</i>	LTC Earl Matthews possesses impeccable character and conducts himself in keeping with the highest moral and professional standards. His sense of selfless service and dedication are distinguishing even among the superb set of officers I supervise, and his integrity is absolutely unquestionable. Totally committed to Army values, Earl strongly supports SHARP, EO, and EEO.
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DA FORM 67-10-2, NOV 2015

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APD LC v1.00ES

PART VI - SENIOR RATER	
<p>a. <b>POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)</b>  HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px 0;"> <b>MOST QUALIFIED</b> </div> <p>RO: MATTHEWS, EARL, G</p> <p>SR: HUSTON, ROBERT, P</p> <p>DATE: 2018-07-07</p> <p>TOTAL RATINGS: 24</p> <p>RATINGS THIS OFFICER: 1</p>	<p>b. I currently senior rate <u>53</u> Army Officers in this grade.</p> <p>c. COMMENTS ON POTENTIAL:  Promote to COL now! #10 of the 53 extraordinary LTC judge advocates I senior rate, and my #1 choice for promotion to COL in the USAR. LTC Earl Matthews has the judgment and strategic vision that distinguish our most senior leaders. He is a brilliant lawyer with unparalleled strategic policy experience and truly unlimited potential. Future JAG Corps General Officer. Promote BZ to COL, and select now to be an LOD Commander.</p> <p>d. List 3 future <b>SUCCESSIVE</b> assignments for which this Officer is best suited:  LOD Commander; Staff Judge Advocate; AJAG for Military Law and Operations (IMA)</p>

DA FORM 67-10-2, NOV 2015

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APD LC v1.00ES

Field Grade Plate (05) Officer Evaluation Report, LTC Earl G. Matthews, Senior Rater: BG Robert P. Huston (period covered 20170607 Through 20180504), a copy of which is included at Appendix "E".

<b>c1.Character:</b> <i>(Adherence to Army Values, Empathy, and Warrior Ethos/Service Ethos and Discipline. Fully supports SHARP, EO, and EEO.)</i>	COL Matthews is a symbol of virtue and honorable service; broadly known for his honesty, fairness, respect for others, and the fidelity between his words and deeds. He understands people; holds himself and others to the highest military standards of conduct; does the right things for the right reasons, inspires trust and is trusted, promotes EO, EEO, SHARP, Army values, and champions fairness.
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PART VI - SENIOR RATER	
<b>a. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)</b> <b>HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED</b>	<b>b. I currently senior rate</b> <u>23</u> <b>Army Officers in this grade.</b>
<div style="border: 1px solid black; padding: 5px; text-align: center;">MULTI-STAR POTENTIAL</div> RO:MATTHEWS, EARL, G  SR: WALKER, WILLIAM, J  DATE: 2019-10-28  TOTAL RATINGS: 25  RATINGS THIS OFFICER: 1	<b>c. COMMENTS ON POTENTIAL:</b> COL Matthews exhibits unsurpassed potential. He is #2 of 23 Colonels I senior rate and the best soldier-lawyer I have ever encountered in 38 years of service. He thinks critically, creatively and strategically, acts decisively and well understands the national security milieu and civ-mil relations in a JIM environment. His character and reputation are unassailable and his academic credentials are unmatched. Earl is a tested and trusted strategic leader who inspires confidence and the very best in others. He is a must promote to BG now.
	<b>d. List 3 futureSUCCESSIVE assignments for which this Officer is bestsuited:</b>  Special Assistant to TJAG for NG Affairs, Dean of a SSC, National Guard Bureau Chief Counsel

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APD LC v1.00ES

Strategic Grade Plate (06) Officer Evaluation Report, COL Earl G. Matthews, Senior Rater: MG William J. Walker (period covered 20180509 Through 20190508), a copy of which is included at Appendix "E".

<b>c1.Character:</b> <i>(Adherence to Army Values, Empathy, and Warrior Ethos/Service Ethos and Discipline. Fully supports SHARP, EO, and EEO.)</i>	COL Matthews' character and reputation are unimpeachable. He is a virtuous strategic leader of unassailable integrity who understands and empathizes with Soldiers, civilians and their families. Earl inspires confidence, optimism and trust, and created an ethical command climate by holding himself and others to the highest standards of conduct while promoting Army values, EO, EEO and SHARP.
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APD LC v1.00ES

PART VI - SENIOR RATER	
<b>a. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)</b> <b>HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED</b>	<b>b. I currently senior rate</b> <u>23</u> <b>Army Officers in this grade.</b>
<div style="border: 1px solid black; padding: 5px; text-align: center;">MULTI-STAR POTENTIAL</div> RO:MATTHEWS, EARL, G  SR: WALKER, WILLIAM, J  DATE: 2020-12-14  TOTAL RATINGS: 26  RATINGS THIS OFFICER: 2	<b>c. COMMENTS ON POTENTIAL:</b> COL Matthews is a remarkably accomplished visionary of extraordinary capacity and rare promise who demonstrates the leadership competencies required to inspire the very best in others and achieve results. He is politically savvy; firm, yet fair; adaptive; culturally and geopolitically fluent, and armed with the optimal blend of military and national security expertise, critical thinking skills and cognitive attributes needed for success at the senior strategic leader levels. The absolute #1 Staff Judge Advocate I have ever senior rated, COL Matthews is a "must promote" to Brigadier General immediately!
	<b>d. List 3 futureSUCCESSIVE assignments for which this Officer is bestsuited:</b>  NGB Chief Counsel, NORTHCOM Staff Judge Advocate, JAG Legal Center Dean

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Strategic Grade Plate (06) Officer Evaluation Report, COL Earl G. Matthews, Senior Rater: MG William J. Walker (period covered 20190509 Through 20200508), a copy of which is included at Appendix "E".

<b>c1.Character:</b> <small>(Adherence to Army Values, Empathy, and Warrior Ethos/Service Ethos and Discipline. Fully supports SHARP, EO, and EEO.)</small>	Highest moral integrity of any officer I know. COL Earl Matthews personifies the Army Values and sets the standard for all to follow. Earl fully supported and aggressively enforced all Army SHARP, EO, and EEO policies; she understands, teaches, and insists on dignity and respect from all toward all.
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PART VI - SENIOR RATER	
a. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA) HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED  <div style="border: 1px solid black; padding: 5px; text-align: center;">PROMOTE TO BG</div> RO:MATTHEWS, EARL, G  SR:WALKER, WILLIAM, J  DATE: 2021-05-21  TOTAL RATINGS: 27  RATINGS THIS OFFICER: 3	b. I currently senior rate <u>23</u> Army Officers in this grade.  c. COMMENTS ON POTENTIAL: Promote to BG now! Earl Matthews is my most trusted advisor and most efficient and effective staff officer. Marked by unequalled vision and strategic capacity, Earl is the perfect counsel and leader of soldiers. In the D.C. National Guard, no officer has great potential for future service. Our Army must continue to tap this extraordinary officer's outstanding capabilities for its most critical positions.  d. List 3 future SUCCESSIVE assignments for which this Officer is bestsuited:  NGB General Counsel; Chief of Staff, DCNG JFHQ; The Adjutant General DCNG

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Strategic Grade Plate (06) Officer Evaluation Report, COL Earl G. Matthews, Senior Rater: MG William J. Walker (period covered 20200509 Through 20210424), a copy of which is included at Appendix "E".

### *Facts of the Case*

In December 2021, COL Matthews made a significant protected disclosure that involved one of the most challenging events to our nation's democracy – the insurrectionist riots that led to the U.S. Capitol being stormed on January 6, 2021. The following chronological narrative details the sequence of events that led to his retaliation and underscores the corrupt motive by which senior U.S. Army officials have acted towards COL Matthews.

- **On December 2nd and throughout December 2021**, COL Matthews submitted to two separate committees of the U.S. Congress a memorandum dated December 1, 2021, to correct the record in response to a flawed November 2021 report of investigation issued by the DoD OIG on the Department's response to the events of January 6, 2021. In the memorandum, COL Matthews alleged, among other things, that the Director of the Army

Staff, LTG Walter E. Piatt and the Army's former Deputy Chief of Staff for Operations, now-GEN Charles A. Flynn had not been completely factual or truthful in their June 2021 oral and written testimony to the House Oversight and Government Reform Committee or in their testimony to the DoD OIG. Furthermore, COL Matthews asserted that LTG Piatt had overseen the creation of a misleading, factually flawed, and revisionist recantation of events called the *Report of Operations of the United States Army*.

- COL Matthews' memorandum established that LTG Piatt provided this factually flawed report to multiple congressional committees in order to improperly absolve certain Army senior leaders, including himself, of any responsibility for the delay of the D.C. National Guard in assisting beleaguered U.S. Capitol Police and the D.C. Metropolitan Police Department personnel at the Capitol. COL Mathews submitted the memorandum to two congressional committees: the Senate Homeland Security and Governmental Affairs Committee and the House January 6th Committee. This memorandum was also obtained by the press and was the subject of widespread media coverage. A copy of this memorandum is included at Appendix "F".
- **In August 2022**, COL Matthews was assigned to the U.S. Army War College as a DIMA reservist. He obtained this reserve duty assignment based on the recommendation of a former National Security Council staff colleague who, like him, was also an Army Reserve Colonel. Furthermore, that staff colleague was then serving as a DIMA at the War College. Before being offered the position, COL Matthews was interviewed by a retiring officer who did not know about or was otherwise ambivalent to his role on January 6th or his subsequent protected activity to correct the narrative regarding the National Guard's response to the attacks on the Capitol. To COL Matthews' knowledge, none of the Army

War College’s senior leaders were consulted before he was offered or accepted his DIMA assignment.

- **In October 2022**, *The Washington Post* reported that President Biden declined to nominate LTG Piatt for promotion to full General due to concerns over his actions or inaction on and around January 6th.<sup>3</sup> The October 2022 Washington Post article on the President’s decision not to nominate LTG Piatt referenced COL Matthews’ December 2021 memorandum, which had been critical of Piatt’s activities surrounding the events of January 6, 2021. The article reports, in pertinent part:

The White House rejected a recommendation by senior Pentagon officials to promote an Army general who came under intense scrutiny after the Pentagon’s slow response to the riot at the Capitol, defense officials said, pushing the officer to a near-certain retirement.

**Lt. Gen. Walter E. Piatt, the director of the Army staff, was backed to become the four-star general at Army Futures Command by Defense Secretary Lloyd Austin and Army Secretary Christine Wormuth — both of whom were appointed by President Biden — and Gen. James McConville, the Army’s top officer, said two defense officials, speaking on the condition of anonymity due to the sensitivity of the issue. The White House declined to send a nomination for Piatt to the Senate for months, the officials said, effectively killing the possibility.**

\* \* \*

**After the release of the inspector general report, Walker’s former staff judge advocate, Col. Earl Matthews, sent a 36-page memo to the House that called Flynn and Piatt “absolute and unmitigated liars” in how they characterized the military’s response to the attack. The memo, first reported by Politico, accused the Army of creating “an alternate history” of events that was “a revisionist tract worthy of the best Stalinist or North Korea propagandist.”**

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<sup>3</sup> Dan Lamothe, “White House rejects promoting general involved in Capitol riot response,” *The Washington Post*. October 29, 2022, <https://www.washingtonpost.com/national-security/2022/10/29/walter-piatt-army-capitol-riot-national-guard/> (Last accessed on Oct. 19, 2023).

Walker, reached by email, said he did not have a reaction to the White House bypassing Piatt for promotion. His past testimony, as well as that of Sund and D.C. Police Chief Robert J. Contee III, is “accurate and unambiguous,” he said.

Walker said that Matthews’s memo “speaks for itself” and that he concurs with it.<sup>4</sup>

- Despite being denied nomination to higher rank by the President, Piatt reportedly continues to enjoy the full support and confidence of the Secretary of Defense, the Secretary of the Army, and the Chief of Staff of the Army – all of whom are said to be in favor of his promotion. LTG Piatt remains the Director of the Army Staff, which is considered to be the Army’s most senior 3-star position.
- **In November 2022**, the Army Reserve FY23 General Officer Vacancy Promotion Board (“GOVPB”) found COL Matthews among the “best qualified” of a select group of Reserve Colonels and recommended that he be promoted to Brigadier General. The board was comprised of Active Duty and Army Reserve generals and chaired by an Active Duty Army 3-star general. This board recommended COL Matthews for promotion based upon a review of his service record, performance evaluations, civilian accomplishments, and the personal knowledge that particular members of the board may have had about COL Matthews’ character and ability.
- Based upon information and belief, and specifically based upon information from well-placed officials who wish to remain anonymous, COL Matthews’ recommendation for promotion to Brigadier General by the promotion board displeased several senior officers within the Pentagon and the Office of the Chief of the Army Reserve.

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<sup>4</sup> Dan Lamothe, “White House rejects promoting general involved in Capitol riot response,” *The Washington Post*, October 29, 2022 (emphasis supplied), <https://www.washingtonpost.com/national-security/2022/10/29/walter-piatt-army-capitol-riot-national-guard/> (last accessed Oct. 19, 2023).

- **On January 30, 2023**, COL Matthews began what was supposed to be a 12-day period of Army Reserve duty to support a Senior Leader Development Seminar (“SLDS”) for new Army generals, both active-duty and reserve. The SLDS was held at the Hyatt Regency Hotel in Arlington, Virginia, and COL Matthews was staying at the hotel for the duration of the seminar, at Army expense.
- **On February 4, 2023**, Colonel Cary Metz (“COL Metz”), Military Deputy Director of the Army Strategic Education Program, informed COL Matthews that there had been a report made that he (COL Matthews) had either assaulted or threatened an Army Reserve General Officer – the exact nature of the allegation was ambiguous. The allegation was later changed to say that COL Matthews had disrupted a private meeting of reserve generals, invaded the “personal space” of one specific general, and then refused to leave when asked to do so. Without even having been asked or given an opportunity to provide his version of events, COL Matthews was abruptly relieved of his support duties. He was ordered to check out of the hotel immediately.
- Within ten minutes, as COL Matthews packed his belongings in order to leave the hotel, hotel security personnel came to his room and informed COL Matthews that they were present to escort him from hotel premises at the direction of U.S. Army War College officials. These hotel security personnel allowed COL Matthews to finish packing his belongings, albeit only with the hotel room door open, and then physically escorted COL Matthews through the hotel lobby to his parked vehicle. COL Matthews’ fellow SLDS support staff were informed that if he should reappear at the hotel during the duration of SLDS, that they should immediately notify the military police based at the hotel or hotel security personnel.

- **On February 16, 2023**, after 12 days of hearing nothing further from anyone at the Army War College as to why he had been summarily dismissed from his assignment and escorted from the hotel by security personnel, COL Matthews drafted a memorandum for record (“MFR”) detailing the circumstances of his removal and raising concerns about (1) inappropriate comments made to him about certain active and retired General Officers by a civilian employee of the War College, Mr. Daniel Pinnell (“Mr. Pinnell”), who was supervising him during this period of reserve duty; (2) the partisan political bias previously expressed against COL Matthews by another War College civilian supervisor, Mr. Randolph White (“Mr. White”); and (3) potential prohibited military whistleblower retaliation due to his protected communications to the U.S. Congress. In the MFR, COL Matthews recommended that an investigation be initiated by neutral parties from outside the U.S. Army War College, and he subsequently circulated a copy of the MFR among certain senior military and civilian officials both inside and outside of the Army War College. A copy of COL Matthews’ MFR is included at Appendix “G”.
- **On February 27, 2023**, pursuant to Army Regulation 15-6, MG David C. Hill, Commandant of the Army War College, appointed an investigating officer (“IO”), COL Orlando Ortega, to inquire into the facts and circumstances surrounding COL Matthews’ dismissal and removal from SLDS and the Hyatt Regency Hotel. The appointment of COL Ortega to investigate this matter occurred 23 days after COL Matthews was alleged to have committed misconduct so egregious that it necessitated that he not only be summarily removed (i.e., fired) from his reserve support duties, but that military police onsite be informed of the situation and that COL Matthews be escorted from hotel premises by civilian security personnel at the direction of War College officials. An IO was appointed

only after COL Matthews had circulated a copy of his MFR to senior Army leaders both in and outside of the War College. Notably, MG Hill, the appointing authority, was present at the hotel at the time of the incident in question, was the senior Army War College official onsite, and was almost certainly informed in near realtime of COL Matthews' removal and the purported reasons for said removal.

- The AR 15-6 investigation ultimately cleared COL Matthews of any wrongdoing. The IO found no actual evidence to suggest that COL Matthews had acted in an unprofessional, discourteous, or disrespectful manner towards anyone on the date of the alleged incident. The investigation revealed no circumstances that would have necessitated the abrupt curtailment of COL Matthews' duties nor required his physical expulsion from his hotel room by security personnel. A copy of the AR 15-6 Report of Investigation is included at Appendix "H".
- The AR 15-6 investigation directed by MG Hill, however, was deficient in several regards. MG Hill appointed an investigating officer to look into a matter in which Hill's own actions or inaction were potentially implicated. LTG Walter Piatt is and was MG Hill's immediate supervisor and was scheduled to be at the hotel the next business day. MG Hill was the senior official present onsite at the Hyatt Regency Hotel when COL Matthews was accused of misconduct, immediately dismissed from his duties and physically escorted out by hotel security personnel, at the request of Hill's subordinates. COL Michelle Goyette, ASEP Director, who purportedly made the decision to dismiss COL Matthews, was in continuous communication with MG Hill at the hotel throughout the date in question. COL Goyette allegedly made the decision to dismiss COL Matthews based upon the recommendation of SLDS Course Director, Mr. Daniel Pinnell. Pinnell claimed that COL Betty Cummiskey,

the Director of the Army Reserve's General Officer Management Office, brought COL Matthews' alleged misconduct and/or unprofessional behavior to his attention. Neither COL Goyette nor COL Cummiskey were interviewed by COL Ortega as a part of his AR 15-6 investigation. Indeed, COL Cummiskey declined to be interviewed or to provide a sworn statement despite multiple requests from COL Ortega that she be interviewed. COL Matthews was also not interviewed by the IO, although Matthews provided the IO with a copy of his MFR which detailed his version of events. The IO did not incorporate COL Matthews' MFR into his investigative report as an exhibit.

- The IO did interview Mr. Pinnell who in his sworn statement averred of COL Matthews: "[b]ased on his unprofessional actions during and following SLDS, and his widely publicized attacks on Army senior leaders in relation to the January 6 insurrection". . . "[it] would be improper to continue his service as a USAWC DIMA." Pinnell in referencing what he mischaracterized as "well publicized attacks on Army senior leaders," was referring to protected communications made by COL Matthews to committees of the U.S. Congress. In a sworn statement submitted for the record, Pinnell was shockingly asserting that COL Matthews should be permanently removed from his Army War College reserve assignment because of those protected communications. A reasonable inference can be drawn that those protected communications factored into Pinnell's decision to recommend that COL Matthews be removed from his SLDS support duties on February 4, 2023, and that they factored into Pinnell's decision to involve onsite military police personnel and to have COL Matthews escorted off premises by hotel security personnel. Mr. Pinnell's statement and actions are indicia of a prohibited personnel practice. That MG Hill and

COL Goyette were aware of these sentiments and actions, and yet took no corrective measures, at minimum implies a failure to act on their part.

**For purposes of clarification, we provide the following recitation of events concerning the events of February 4, 2023:**

- **On the morning of February 4, 2023**, COL Matthews was tasked to serve as an escort to Brigadier General (Ret.) Michael Meese (“BG (Ret.) Meese”), who was there to make a presentation to the Regular Army general officers assembled for SLDS. Before making his presentation, BG (Ret.) Meese wanted to drop in on a protégé of his, reserve Brigadier General Ray Phariss (“BG Phariss”). COL Matthews escorted BG (Ret.) Meese to the room where BG Phariss and the other Army Reserve SLDS participants were located.
- BG (Ret.) Meese briefly looked inside the room where BG Phariss and the other reserve General Officers were gathered. He did so in order to see if the session was on break. Standing in the hallway, COL Matthews was directly behind BG (Ret.) Meese. Also in the hallway outside the room were Brigadier General Kelly Dickerson (“BG Dickerson”) and Chief Warrant Officer 3 Ana Galante (“CW3 Galante”). BG Dickerson and CW3 Galante saw BG (Ret.) Meese looking in and informed BG (Ret.) Meese that he could not enter the room. COL Matthews recognized CW3 Galante, although he did not know her name at the time, but did not recognize or know BG Dickerson, with whom he had never seen before and had not been present the previous six days of the program.
- Everyone was dressed in civilian attire. As BG Dickerson and CW3 Galante approached them, COL Matthews said “I am COL Matthews, who are you?” BG Dickerson replied that he was “BG Dickerson, the G-3/5/7 at OCAR.” At that point COL Matthews recognized BG Dickerson’s superior rank by addressing him as “Sir,” introduced BG (Ret.) Meese, and explained who he was and why he wanted to enter the room. BG Dickerson then told

COL Matthews and BG (Ret.) Meese that they still could not enter the room but could wait outside for break which should be occurring shortly. The direct interaction between BG Dickerson and COL Matthews lasted no more than 2 minutes. BG (Ret.) Meese and COL Matthews waited a few minutes outside the room before giving up and departing the area.

- As reported by the investigating officer in the subsequent AR 15-6 investigation, BG (Ret.) Meese, and BG Dickerson, and COL Matthews all agreed that there was no shouting or raised voices. BG Meese noted that the volume of the conversation was somewhat “hushed” as everyone attempted to avoid disturbing anyone in the classroom. BG Dickerson described the interaction as having been conducted at “normal conversation volume.”
- The statements of all three individuals – BG (Ret.) Meese, BG Dickerson, and COL Matthews – corroborate one another and establish that COL Matthews never attempted to enter the room nor was he ever asked or told to leave the area. BG Dickerson acknowledges that COL Matthews “never made it to the breakout room door.” Furthermore, all three statements establish that COL Matthews never “invaded” BG Dickerson’s personal space. Although, when asked about it by the IO weeks later, BG Dickerson claimed that COL Matthews was in his “personal space” when Matthews inquired who Dickerson was during their brief encounter, Dickerson never informed Matthews that he felt in any way encroached upon during their 2 minute encounter. Dickerson also never discussed this “incident” with anyone in authority from the Army War College on the date this brief interaction occurred.
- BG (Ret.) Meese’s statement refutes any accusations that COL Matthews was in anyone’s “personal space” and noted that coffee and soda service were set up in the hallway, so

movement “was slightly restricted.” Still, BG (Ret.) Meese noted, “I don’t think that made anyone too close to each other.”

- BG (Ret.) Meese described COL Matthews’ conduct as normal and in no way “unbecoming” or “unprofessional.” BG (Ret.) Meese relayed that when he was informed that COL Matthews had been dismissed from SLDS duties because of this event, “that seemed surprising to [him] because there was nothing remarkable about that interaction.” BG (Ret.) Meese characterized COL Matthews’ conduct as that “of an eager escort officer wanting to take good care of me.” A copy of BG (Ret.) Meese’s statement is included at Appendix “I”.

### *Reprisal Analysis*

#### **A. COL Matthews made protected communications**

Section 1034 protects military personnel who make or prepare to make a protected communication. Examples of preparing to make a protected communication include drafting but not sending a complaint while expressing a known intention to make a protected communication. The statute also protects a member who is perceived as making or preparing to make a protected communication that is not actually made.

The complainant may have written a letter, sent an e-mail, or spoken to someone who can receive a protected communication. Determining whether the complainant’s communication or perceived communication was protected, therefore, relies on two basic factual questions: what was the communication, and too whom was it communicated?

## **Communication to Members of Congress and Inspectors General (IGs)**

Any lawful communication to a Member of Congress or an IG is protected under § 1034. Communications to Congress or IGs need not disclose wrongdoing to be protected; the only requirement is that the communication be lawful. Examples include routine constituent correspondence, complaints about chain of command, or testifying before Congress. Unlawful communications include disclosures of classified, Privacy Act-protected, and medical quality assurance information to an unauthorized recipient, or threats. 10 U.S.C. § 1034(a).

Officials authorized to receive protected communications include:

- a member of Congress;
- an IG;
- a member of a DoD audit, inspection, investigation, or law enforcement organization;
- any person or organization in the complainant's chain of command;
- a court martial proceeding; or,
- any other person designated pursuant to regulations or other established administrative procedures to receive such communications.

Communication made to an authorized recipient is protected if the member communicates (or is perceived as communicating) information reasonably believed to constitute evidence of:

- a violation of law or regulation to include a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of articles 120 through 120c of the Uniform Code of Military Justice, sexual harassment, or unlawful discrimination;
- gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or,
- a threat by another member of the Armed Forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the Armed Forces or civilians, or damage to military, Federal, or civilian property.

A belief is reasonable if a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the complainant could reasonably conclude that the disclosed information evidences one of the statutory categories of wrongdoing. As chapter 1 of the

OIG Guide notes, as long as his or her belief is reasonable, the complainant need not be right about the underlying allegation. Here, the allegations were both reasonable and correct.

COL Matthews engaged in at least two protected communications. On December 1, 2021, COL Matthews completed a memorandum that he drafted to correct the record in response to a flawed November 2021 report of investigation issued by the DoD OIG on the Department's response to the events of January 6, 2021. In his December 2021 memorandum, COL Matthews alleged, among other things, that the Director of the Army Staff, LTG Walter E. Piatt and the Army's former Deputy Chief of Staff for Operations, now-GEN Charles A. Flynn had not been completely factual or truthful in their June 2021 oral and written testimony to the House Oversight and Government Reform Committee and in their testimony to the DoD OIG. Furthermore, COL Matthews asserted that LTG Piatt had overseen the creation of a misleading, factually flawed, and revisionist recantation of events called the *Report of Operations of the United States Army*.

- **This memorandum was submitted separately via e-mail to two congressional committees:**

- The Senate Homeland Security and Governmental Affairs Committee (submitted on December 2, 2021);
- House January 6th Committee (submitted on December 3, 2021).

These disclosures are protected for purposes of § 1034. COL Matthews filed a detailed disclosure to two congressional committees providing evidence supporting that, at the very least, senior U.S. Army officials intentionally provided false statements to Congress and to the DoD OIG. Such false statements are a criminal violation. *See* 18 U.S.C. § 1001. COL Matthews' disclosure was made to Congress concerning not only violations of law, but an effort to correct

misrepresentations that contributed to an erroneous finding by DoD OIG about matters at the heart of American democracy and national security.

Accordingly, these disclosures are protected.

## **B. COL Matthews was subjected to unfavorable personnel actions**

The statute prohibits persons from taking or threatening to take unfavorable personnel actions or withholding or threatening to withhold favorable personnel actions in reprisal for protected communications. DoDD 7050.06 defines a personnel action as “any action taken on a member of the Armed Forces that affects, or has the potential to affect, that military member’s current position or career.” Personnel actions include promotion, a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for a mental health evaluation; or any other significant change in duties or responsibilities inconsistent with the military member’s grade.

### **Unfavorable Personnel Actions**

Unfavorable personnel actions may be administrative action that takes away a benefit or results in an entry or document added to the affected person’s personnel records that could be considered negative by boards or supervisors. The DoD OIG Guide provides a comprehensive list of favorable and unfavorable personnel actions. Each alleged personnel action on a case-by-case basis to determine whether it had or may have an effect on the complainant’s current position or career.

COL Matthews experienced two personnel actions that qualify as reprisal.

1. **On February 4, 2023**, 6 days into his 12-day period of Army Reserve duty to support an SLDS for new Army General Officers, Colonel Michelle Goyette (“COL Goyette”), then-Director of the Army Strategic Education Program at the Army War College, relieved COL

Matthews of his reserve support duties resulting in the loss of military pay and reserve retirement points.t.

2. Although recommended for promotion to Brigadier General by a statutory promotion board, from February 4, 2023, through to the present day, COL Matthews' promotion likelihood has remained in a state of stasis. RMOs within the Office of the Chief of the Army Reserve have refused to consider him for any positions that would require that his name be sent forward for nomination for promotion by the President. These RMOs have constructively removed COL Matthews from the promotion list by not assigning him or considering him for any O7-level assignments. For purposes of clarity: COL Matthews is qualified to assume multiple open or soon-opening billets – including non-Judge Advocate billets – and officers lower on the Order of Merit List from the FY23 U.S. Army Reserve General Officer Vacancy Promotion Board have been considered for or assigned to projected billets.
3. Relieving an officer from duty, thus leading to a loss of pay and benefits, and separately denying him promotion consideration, both constitute personnel actions. What's more, both actions, without question, affect COL Matthews' career. Accordingly, both of these actions, jointly and severally, qualify as reviewable personnel actions within the meaning of § 1034.

### **C. Responsible management officials knew about the protected communications**

In order to establish knowledge, each Responsible Management Official involved in the personnel actions is to have his or her knowledge of the protected communication independently analyzed. Knowledge can be established through direct or circumstantial

evidence.<sup>5</sup> That is to say, the acting official can have personal knowledge of the protected disclosures or have indirect knowledge through the influence of another individual. Moreover, knowledge can be established constructively by demonstrating that an individual with actual knowledge of the disclosure influenced the official accused of taking the action.<sup>6</sup> The Supreme Court has adopted the term “cat’s paw” to describe a case in which a management official, acting as a result of an improper animus, influences an agency official who is personally unaware of the animus when implementing the action.<sup>7</sup>

An Investigation will confirm that every RMO who was involved in the personnel actions knew of COL Matthews’ protected communications.

**Major General David C. Hill, Colonel Michelle Goyette and Mr. Daniel Pinnell**

According to the AR 15-6 investigation, **COL Goyette** was the RMO who made the decision to summarily dismiss COL Matthews from his duties at SLDS based on the recommendation of **Mr. Daniel Pinnell**. Mr. Pinnell was serving as COL Matthews’ direct supervisor during the event. The decision was conveyed to COL Matthews by Mr. Pinnell. COL Goyette did not discuss the matter or interact with COL Matthews at all on the date in question. According to his own sworn statement, Mr. Pinnell made the decision to involve military police and hotel security personnel in COL Matthews’ removal. Neither COL Goyette nor Mr. Pinnell informed COL Matthews of the specific allegations against him before directing his removal nor gave him the opportunity to respond to those allegations. Nor did either of them discuss the alleged incident with BG Dickerson whom COL Matthews supposedly acted inappropriately towards.

COL Goyette and Mr. Pinnell were undoubtedly aware of COL Matthews’ protected disclosures. COL Matthews was scheduled to support SLDS in his reserve capacity even before the October 2022 *Washington Post* story appeared which credited Matthews’ disclosures in part for torpedoing LTG Piatt’s nomination for promotion to full General. After the article appeared, COL Goyette and Mr. Pinnell could not help but be aware of COL Matthews’ protected

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<sup>5</sup> *Bonggat v. Dep’t of the Navy*, 56 M.S.P.R. 402, 407 (1993); *McClellan v. Dep’t of Defense*, 53 M.S.P.R. 139, 147 (1992).

<sup>6</sup> *Aquino v. Dep’t of Homeland Security*, 2014 MSPB 21, ¶ 19 (2014); *Dorney v. Dep’t of the Army*, 117 M.S.P.R. 480, ¶ 11 (2012). See also *McClellan*, *supra*.

<sup>7</sup> *Id.*, citing *Staub v. Proctor Hosp.*, 562 U.S. 411 (2011).

disclosures given that Matthews was scheduled to support SLDS, and that LTG Piatt was the immediate superior of MG Hill, who was Goyette's senior rater. LTG Piatt was scheduled to participate in SLDS and MG Hill was scheduled to be onsite for the entirety of the 2-week program. It is highly likely that COL Goyette, MG Hill and Mr. Pinnell discussed COL Matthews' disclosures in the context of his support to SLDS both before and during the conference. Mr. Pinnell provided a sworn statement to the AR 15-6 IO in which he characterized COL Matthews' protected disclosures as "well publicized attacks on Army senior leaders" and stated it was improper for COL Matthews to continue to serve as an Army War College DIMA as a result. MG Hill appears to have either endorsed, supported, or condoned the actions of his subordinates, COL Goyette and Mr. Pinnell.

### **Lieutenant General Jody Daniels and Colonel Betty Cummiskey**

**COL Betty Cummiskey** is the RMO who made false allegations against COL Matthews in order to sully his reputation and to further impair his chances for promotion. COL Cummiskey was not present for the hallway interaction that involved BG (Ret.) Meese, COL Matthews, BG Dickerson and CW3 Galante. Indeed, COL Matthews and COL Cummiskey have never met. However, on February 4, 2023, COL Cummiskey well knew who COL Matthews was. Cummiskey knew his background, that he was assigned as a DIMA at the Army War College and that he had made protected disclosures related to GEN Charles Flynn, LTG Piatt and others. COL Cummiskey knew these things because, as Director, OCAR GOMO, she was the principal adviser to the Chief of the Army Reserve on talent management and succession planning for Army Reserve General Officers and for officers, like COL Matthews, who had been recommended for promotion by the statutory promotion board. COL Cummiskey literally oversaw the board process by which COL Matthews was recommended for promotion. She knew he was on the promotion recommendation list before anyone who wasn't actually a member of the promotion board. After his name appeared on the promotion recommendation list, COL Cummiskey in effect became COL Matthews' career manager. Cummiskey's job was literally to consider and recommend him to the Chief of the Army Reserve for available general officer assignments. However, instead of taking action that would result in his assignment and nomination for promotion, she falsely accused him of misconduct. She then declined to make the same allegations when asked to cooperate with the AR 15-6 investigation.

**LTG Daniels is Chief of the Army Reserve (CAR)** and as such is by statute a principal member of the Army Staff. Daniels is a close colleague, friend, neighbor and collaborator of the Director of the Army Staff, LTG Walter Piatt. LTG Daniels is the RMO to whom COL Cummiskey reports. On information and belief, LTG Daniels was aware of and condoned COL Cummmiskey's refusal to cooperate with the AR 15-6 investigation into COL Matthews' removal from his SLDS duties. LTG Daniels has the power and discretion to act on the recommendation of the promotion board

to slot COL Matthews into a general officer position, or not to act. Because of COL Matthews' protected disclosures to Congress, she has declined to take any action which would result in his eventual nomination for promotion by the President.

As established above, COL Matthews' disclosure and its impact on the promotions of individuals like LTG Piatt were explicitly reported about by *The Washington Post*. Moreover, the news of LTG Piatt's promotion being rejected by The White House was most certainly well discussed among General Officer circles. Given that *The Washington Post* subscribed COL Matthews' disclosure as being a, if not the, reason for the President to deny LTG Piatt a fourth star, makes it a virtual certainty that COL Cumiskey and LTG Daniels – as well as any other RMOs identified during the course of an investigation – had knowledge of COL Matthews' protected communication.

**D. The unfavorable personnel actions would not have been taken absent the protected communications**

To determine the answer to the “causation” question, the investigation must analyze what bearing, if any, the protected communications had on the decisions to take, threaten, or withhold the personnel actions. For each personnel action, the investigation must analyze the following factors and then weigh them together to determine whether the personnel action would have been taken absent the protected communication:

- Reason stated by responsible management officials for taking, withholding, or threatening the personnel action;
- Timing between the protected communications and personnel actions;
- Motive on the part of the responsible management officials to reprise; and,
- Disparate treatment of the complainant as compared to other similarly situated individuals who did not make protected communications.

The burden of proof, during this phase of the investigation, shifts to the U.S. Government. See e.g. *Whitmore v. Dep't of Labor*, 680 F.3d 1353, 1367 (Fed. Cir. 2012); *Figueroa v. Nielsen*, 423 F. Supp. 3d 21 (S.D.N.Y. 2019); *Miller v. Dep't of Justice*, 842 F.3d 1252 (Fed. Cir. 2016) (once the complainant establishes a *prima facie* case, the burden of proof shifts to the U.S.

Government to establish that the personnel actions taken, threatened, or withheld would have occurred absent the protected communication).

In analyzing the actions that have been taken against COL Matthews, there is no independent basis for those actions other than his protected activity.

### **The War College RMOs Would Not Have Acted Absent COL Matthews' Protected Disclosures**

First and foremost, the underlying allegations that formed the basis for COL Matthews being relieved of duty on February 4, 2023, never happened. Quite simply, the allegations made about COL Matthews' behaving in an unprofessional manner have been disproven by an objective AR 15-6 investigation. Moreover, the speed by which, or lack thereof, in an IO being appointed to investigate – three weeks – underscores that the concerns surrounding COL Matthews' behavior were not of significant nature. This is simply because RMOs knew the allegations were fabricated. As such, by definition Army leadership will not be able to demonstrate evidence supporting the action.

Based upon information and belief, the underlying purpose of the allegations against COL Matthews appears to have been to manufacture a pretext by which he would be removed initially from his support role at SLDS, but ultimately from his DIMA position at the U.S. Army War College and from any role in the Army Reserve, because of his protected disclosures. Mr. Pinnell stated in sworn testimony that COL Matthews should be permanently removed from his DIMA position because of what Pinnell called “attacks on Army seniors leaders in relation to the January 6 insurrection.” As evidence of the pretextual nature of the allegations against COL Matthews, consider that on the evening of February 3, 2023 (the night before the alleged incident), ASEP's Military Deputy, Colonel Cary Metz, called the CSL reserve coordinator back at Carlisle, Pennsylvania and asked, hypothetically, if there'd be any issues with sending one of the DIMAs

home early and how it could be done. (See AR 15-6 investigation). With COL Cummiskey's fabricated allegations, Mr. Pinnell found a way to send COL Matthews home early.

As the AR 15-6 investigation found, there was no evidence that COL Matthews had failed to satisfactorily perform his assigned duties at SLDS in the 6 days prior to his expulsion. Further, there had been no history or indications of potential violence, belligerency, or hostility on the part of COL Matthews. Despite this, Army War College RMOs chose to involve military police and hotel security personnel to effectuate his removal. What plausible reason could there have been to remove a senior Colonel, with an unblemished record of service, under such circumstances, except as reprisal for protected disclosures that negatively impacted a serving general officer who had responsibility for the War College? There is none.

As Director of the Army Staff, LTG Piatt remains MG Hill's immediate superior and LTG Piatt regularly visits the War College campus. LTG Piatt and MG Hill are both Pennsylvania natives who enjoy a close personal and professional relationship. LTG Piatt presided over the Change of Command ceremony in which MG Hill assumed command of the Army War College in August 2021. COL Matthews was dismissed and removed from hotel premises on a Saturday afternoon. LTG Piatt was scheduled to be at the hotel most of the following Monday, as was then Army Chief of Staff, GEN James McConville. COL Matthews was and is well known to both of these senior Army leaders, having worked with both of them in the past. The false allegations against COL Matthews which led to his dismissal may have been a pretext because, given his protected disclosures, MG Hill, COL Goyette, Mr. Pinnell or others did not want to make these 2 senior general officers uncomfortable by COL Matthews' presence.

## **The Actions and Inaction of Daniels and Cummiskey Are Directly Attributable to COL Matthews Protected Disclosures**

When COL Cummiskey made her false accusation against COL Matthews to Army War College officials, she engaged in an act of reprisal against a military whistleblower. Based upon information and belief, COL Cummiskey falsely accused COL Matthews on behalf of her superior, mentor, and patron – LTG Daniels. The motivation for reprisal is significant given the significant notoriety of COL Matthews’ disclosure to Congress and the fact that *The Washington Post* **so publicly** connected his disclosure to LTG Piatt’s failed promotion to General.

COL Cummiskey knew that COL Matthews was on the Order of Merit List recommending him for promotion to Brigadier General in the Army Reserve because she controls and maintains the list. Based upon information and belief, armed with this knowledge she targeted COL Matthews in reprisal by creating the conditions that might ultimately remove him from further consideration for promotion. COL Cummiskey knew that accusing COL Matthews of attempting to barge into a room full of General Officers, disrupting their discussions, and then of resisting a request to leave had the potential to affect, and in fact did negatively affect, COL Matthews’ reputation and career. His immediate duty assignment was curtailed, he was physically escorted out of the hotel, and his conduct became the subject of an official investigation.

Further, COL Cummiskey and Daniels have constructively removed COL Matthews from the promotion recommendation list solely because of his protected disclosures. On information and belief, LTG Daniels and COL Cummiskey have no intention of ever “slating” COL Matthews to an assignment which will result in his promotion to Brigadier General in reprisal for his protected disclosures. As background, the nomination of General Officers in the Army Reserve for promotion is somewhat arcane and different from the process by which active Army officers are nominated. Like in the Regular Army, Army Reserve officers must be recommended for

promotion through a statutory promotion board composed of General Officers. Once recommended by the board and placed on an Order of Merit list, however, there is far more discretion involved.

Reserve officers must be “slated” against a specific Army or joint billet before their names are moved forward through the Secretary of the Army and the Secretary of Defense to the President, who ultimately nominates these officers for Senate confirmation absent unusual circumstances. In the Army Reserve, the slating process is controlled exclusively by the CAR with few constraints, if any. With respect to the assignment and promotion of Army Reserve General Officers, the CAR has arbitrary power to select who is forwarded on up. An officer can be on the Order of Merit list without the CAR slating that officer, even if there are billets available and even if the officer has no derogatory information in their file. The CAR can simply decline to fill a Reserve General Officer vacancy. A recommended officer could languish on the promotion list for roughly 18 months. By law, only the President can remove an officer from a statutory general or flag officer promotion list. However, the CAR can effectively do the same by simply declining to slate an officer before that time expires. *See generally*, Army Regulation 600-8-29, *Officer Promotions* (issued Sept. 9, 2020).

In the end, the facts are clear: COL Matthews’ promotion had been recommended by a neutral, apolitical board of Army General Officers – and after his protected communications to Congress.

We are aware of no evidence that any of the adverse actions COL Matthews experienced would have occurred absent his protected disclosures. The burden is on the RMOs to come forward with that evidence. If they have any, we intend to refute it. If they fail or refuse to cooperate in the investigation, an adverse inference should be drawn.

The retaliatory actions taken against COL Matthews are a textbook example of the vice § 1034 was intended to both remedy and deter. If public confidence in the integrity of government operations is to be restored, he must be made whole and the responsible officials appropriately disciplined.

*Relief Requested*

For the foregoing reasons, the IG should recommend the following relief:

- (a) COL Matthews be slated for an assignment as Brigadier General;
- (b) Both COL Cummiskey and LTG Daniels be permanently recused from making assignment decisions affecting COL Matthews;
- (c) That each officer or employee of the government who retaliated against COL Matthews for his protected activities should be reprimanded in writing, such writing to be made a part of his or her permanent official personnel record, or otherwise subjected to appropriate corrective or disciplinary action;
- (d) Reasonable attorney's fees; and
- (e) Such other and further relief as may in the circumstances be just and proper.

Respectfully submitted,

/s/ Mark S. Zaid

/s/ Andrew P. Bakaj

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*Attorneys for Complainant*

Verification

I declare under penalty of perjury that the facts stated in the foregoing Whistleblower Reprisal Complaint are true and correct. Executed on October 20, 2023.

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Earl G. Matthews  
Colonel, Judge Advocate  
U.S. Army Reserve