Agenda

Purpose - Pointers on Advising & Helping IOs

Topics: 1. Preliminary Questions
2. Selecting & Briefing IOs
3. JAG Roles During the Investigation
4. Reviewing Reports

Conclusion
Preliminary Questions

• Does this matter need an investigation?

• Is there a legal or regulatory requirement for an investigation?

• Is an investigation required to resolve an issue?

• What is the best type of investigation?
  • IG?
  • Law enforcement? Civilian or military?
  • Informal AR 15-6 or Commander Directed Investigation?
  • Other type of investigation?
Preliminary Questions

- Is there an established forum or process for the matter?
  - Claims against the government - JA
  - Performance report appeals - Personnel
  - Article 15 or Court-Martial problems - JA or Defense Counsel
  - Equal Opportunity Cases - EEO Counselor
  - Use the established forums & processes whenever possible.
  - See AFI 90-301, Table 2.9, for referral tips.
Preliminary Questions

• Who can do this investigation?

• Allegations about O-7 selects and other senior officials must be immediately reported to NGB/IG, DAIG or SAF/IG for their information & action.

• IGs must handle cases of reprisal, restriction or improper mental health evaluation referral.

• Commanders may investigate their command to correct problems.

• Avoid “self-investigation.” A commander should not investigate their own misconduct.
Selecting IOs

- Recommend IOs with judgment, knowledge of any specialty area, & no conflicts of interest.
- People skills & maturity are important.
- IOs must outrank subjects.
- It is difficult to estimate the time for some cases, so don’t pick an IO with an upcoming retirement.
- Good writing skills are essential.
- Do you need an “outsider” for a neutral IO?
Selecting IOs

• Does the IO need any administrative support from the appointing authority?
  • Help collecting and tabbing evidence?
  • Help transcribing interviews?

• The “ideal IO” is a hard-working, mature, dedicated person.
  • Can they abandon their primary duties to focus on the investigation?
Briefing IOs - Materials

• Have materials ready for the IO:
  • Appointment Memo
  • Documentary Evidence & Reports
  • AR 15-6 & DA Form 1574 (& AR 15-6 Investigation Guide for Informal Investigations)
  • USAF Commander-Directed Investigation Guide (& referral to www.ig.hq.af.mil/igq/Downloads/IGQDownloads.htm)
Briefing IOs - Materials

• Statement & Rights Advisement Forms
  • DA Forms 2823 & 3881
  • AF Form 1168 at www.e-publishing.af.mil

• UCMJ Articles or State Codes
  • Dereliction of Duty
  • False Official Statements
  • Other Articles
  • DA Pam 27-9, Military Judges Benchbook
Briefing IOs - Materials

• ARs & AFIs for Specific Cases
  • AR 600-8-4 & AFI 36-2910, Line of Duty Cases
  • Reports of Survey, Security Incidents, Lost Weapons, Serious Injury, etc

• Any special ARs & AFIs with Standards
  • DoD 5500.7R, Joint Ethics Regulation
  • AFI 36-2909, Professional & Unprofessional Relationships
  • AR 600-20, Army Command Policy (Relationships & Fraternization, paragraphs 4-14 to 4-16)
Briefing IOs - Materials

- Sample Investigation Report
- Office Supplies
- Tape Recorders
- Office space with computer & phone
- Name, rank, phone number & location of the JAG assigned to advise the IO
- Privacy Act statements for witnesses
Briefing IOs - Materials

• Draft allegations
  • Well written allegations are the foundation for a good investigation

• Sample questions for witnesses & subjects

• Sample statements (verbatim, summarized, samples for phone interviews, etc)
Briefing IOs - Process

• Help IOs understand the goals of the case
  • Fact Finding Cases
  • Accusatory Cases
  • Diagnostic Cases
• Will the IO write recommendations?
• What are the appointing authority’s goals for the case?
• Who is the audience for the report?
Briefing IOs - Process

• Give the IO an outline of the process
  • Courtesy calls, if required
  • Gather all documentary evidence
    • Review it all, put relevant material in report
  • Interview witnesses
    • Talk to background witnesses first, subject last
• Write & rewrite report
• Submit for legal review & comments
• Gather additional information and revise report
• Submit final report to appointment authority
• Brief appointment authority
Briefing IOs - Rules

• Be sure the IO knows the standards involved in the case
  • Rules for rights advice & elements of any offenses that may be raised by the facts
  • Preponderance of evidence
  • Any specific rules, requirements or guidance for the case, such as:
    • Use of government credit cards for supply purchases
    • Use of government travel credit cards
    • Line of Duty standards
    • Rules for the use of government property
Briefing IOs - Errors

- Tell the IO the most common errors
  - Poor English
  - Poorly organized report
    - Identify the FACTS, ANALYSIS, CONCLUSIONS & RECOMMENDATIONS
    - Use tabs, page numbers and proper administrative work
  - Leaving out key facts
  - Missing issues or recommendations
Briefing IOs - Errors

• Common errors

  • Superficial report that does not resolve an issue

  • Not collecting or reviewing available evidence

  • Failure to anticipate follow up questions

    • Tell the readers what you reviewed

    • Consider what your audience will ask about

    • Answer questions in advance
Briefing IOs - Errors

• Common errors
  • Assuming the reader knows something about the case or standards
  • Refusal of the IO to apply their common sense to the facts, analysis, conclusions & recommendations
  • Failure to resolve conflicts in testimony
    • Who & what does the IO believe & why?
JAG Roles in Investigation

• Advise command on proper type of investigation & recommend IOs
• Brief IO & provide materials
• Write draft allegations
• Answer legal & practical questions
• Advise IO
• Suggest information sources
JAG Roles in Investigation

• Help the IO with witness issues
  • Prepare IO for any rights advisements
  • Help IO with key interviews & rights advice
  • Prepare IO for any union representation issues
  • Tell the IO who the military defense counsel is
  • Role play interviews to practice questions

• Proofread report
JAG Roles in Investigation

• Be a “Buffer” for the IO
  • If the IO runs into any problems getting information or documents, they must not get into a conflict with any person or office.
  • The IO should refer the matter to the JAG, so the JAG can get the information or documents.
  • JAGs may have to educate people about the purpose & authority of the investigation.
• IOs must appear & be neutral during their cases.
Reviewing Reports

• Use the “two JAG process”
  • One JAG advises the IO.
  • A different JAG does a legal review.
  • A new perspective on the report helps insure it is truly complete, logical & legally sufficient.

• Get help
  • If you are reviewing a type of investigation for the first time, ask the JAG experts for guidance.
  • Protect your reputation & your command by making sure you know the standards for review.
Conclusion

Give the IO the help they need to write a good report!

The time you save will probably be your own!
Questions?

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