



# Investigations—Part I: Why Official Inquiries Are Needed

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*This is the first of a two-part discussion of why an official investigation is often helpful to the Soldier, the unit, and the United States Army, and how this useful tool can best be conducted.*

**T**his two-part article is designed for two audiences: the commander who is wary of intrusive or distracting investigations that lack a positive goal; and the leader who is likely to be tagged as a unit's next investigating officer and who may not have any relevant experience investigating. It will delve into why it is almost always in the best interests of the Soldier, the unit, and the Army to investigate when a commander asks, "How did this happen?" and the answer is, "We don't exactly know."

Part II, to be published in the January–April 2011 issue, will focus on the mechanics and tactics, techniques, and procedures for executing lawful, thorough, and productive investigations. Like an engineer route sanitization mission, these two parts will push away some of the debris of misconceptions and obstacles to good detective work, fill in the potholes of poor execution with sound procedures, and give commanders and investigating officers some advice for traveling the road to executing legally sufficient and helpful investigations.

## Balancing Act

**C**ommanders often struggle to balance their focus between accomplishing the mission and maintaining good order and discipline among their formations. Of course, as all experienced leaders can attest, the one often affects the other. This balancing act is even more accented during a deployment, where there is little distinction between Soldiers' living and working environments. Tensions and stress levels are high, and the availability of "down time" is sometimes scarce. In such conditions, spending time and energy to question and answer nagging problems may not sit at the top of the priority list.<sup>1</sup> But the absence of clear and fair processes to deal with the nagging disciplinary problems that frequently arise may only serve to exacerbate small issues, turning them into large crises. These crises are often attributable to an earlier failure to deal with the problem. Consequently, the command's attention is drawn away from operations, which may result in a degraded ability to accomplish the mission. In other situations, misconduct is less a concern than a systemic failure

in leadership, training, maintenance, or elsewhere. In all of these cases, it is imperative that the method of uncovering facts and making recommendations—how problems are investigated—is rational, reasonable, and internally cogent. This ensures that—

- The Soldiers' rights are protected.
- The right evidence is collected for the right reasons and in the right way.
- The chain of command is put in the best possible position to make sound decisions.

But before we get to *how* we investigate, it is equally important to know *why* we investigate.

## Why We Investigate

**U**nder Rule 303 of the Manual for Courts-Martial United States,<sup>2</sup> commanders are authorized to commit time and effort to investigating misconduct. It is a basic application of command authority to ensure the good order and discipline of the unit. The gist of this authority is the ability of the immediate commander, who has direct contact with and knowledge about a particular Soldier, to ask relevant questions to jump-start a more formal investigation or help drive an efficient and effective decision. Asking questions might take the shape of an investigation under Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Boards of Officers*<sup>3</sup>; a formal Criminal Investigation Division inquiry driven by law enforcement specialists; or an immediate administrative response by the commander.

Of course, not all fact-finding efforts are about criminal misconduct, but fact-finding inquiries are permitted or even encouraged, even if the event or incident in question is not likely to lead to a court-martial. Consider a scenario in which a commander reasonably predicts that a vehicle accident "outside the wire" between a mine-resistant, ambush-protected (MRAP) vehicle and a pickup truck driven by a local national civilian was caused by poor road conditions or driver fatigue. The commander may be inclined to order

a response plan that includes nothing more than retraining, better route reconnaissance, and confirmation of crew rest. However, during the course of the inquiry or investigation, the commander may learn that the Soldier's fatigue was caused by his reckless choice to remain awake playing video games in his containerized housing unit (CHU) until 0430 on the day of the patrol. Or that the unit's patrol leader knew of a dangerous, accident-prone intersection on the planned route, yet never warned his Soldiers or trained them on mitigating that risk. In this case, the commander may want to consider adverse actions. The opposite scenario is equally plausible. The Soldier's actions may be labeled as misconduct at first, until investigation reveals that environmental factors or leadership failures set conditions for the accident. Every investigation has a potential for legal consequences and is therefore triggered by the body of law that governs military justice.

Since this potential exists in all investigations, it makes sense to give quasi-law enforcement authority to commanders before they engage their quasi-prosecutorial powers. Because of the unique environment in which the United States Army works and lives, efficiency—balanced against fairness of process—is essential to the promotion of justice in the functioning of a disciplined, ordered unit. In other words, there are situations—sometimes as a unique attribute of military service such as minor disrespect or failure to obey a lawful order while living in the barracks—wherein the commander can gather facts, review and reflect on them, draw reasonable conclusions from them, and dispose of the incident with some administrative or punitive consequence.

### **Sending a Positive Message**

Sometimes, in an information-operations or public relations sense, commanders may find great utility in starting an investigation. There is a “strategic messaging” value to be gained when Soldiers, their families, the public, or superior commander see that the unit recognizes that an issue exists and takes reasonable steps to understand why. By initiating an investigation, a commander can counter the fear that “airing dirty laundry” somehow opens the unit to outside criticism. Telling superiors that an issue exists and what actions are being taken to investigate it and proposing reasonable and deliberate courses of action demonstrate the commander's depth of situational awareness, thoroughness of fact-finding, and calm maturity as a leader.

Sometimes, though, commanders will not have a choice. Many commands impose mandatory investigations for certain events, such as an AR 15-6 investigation for the suspected suicide of a Soldier. Formal equal opportunity complaints automatically spark investigations.<sup>4</sup> In these cases, the value gained by conducting a dignified, independent, official review of the facts to satisfy the concerns of interests such as the media, families, and fellow Soldiers is thought to outweigh the potentially negative effect such an investigation might have on the operational capability of the command.

### **Keeping Commanders Grounded**

“Commanding officers exercise broad disciplinary powers in furtherance of their command responsibilities. Discretion, fairness, and sound judgment are essential ingredients of military justice.”<sup>5</sup> Slowing down, pausing to reflect, and initiating an investigation is a field-tested and field-proven method for ensuring that a commander's first, visceral response to a troubling event is not some irrational or irresponsible action that could potentially end the career of a Soldier, seriously hinder promotion opportunity, take away pay, or rob a Soldier of liberty through confinement in prison. An investigation is one of the checks and balances on the commander's inherent disciplinary authority and helps ensure that the application of power is “warranted, appropriate, and fair.”<sup>6</sup>

Resourcing an investigation early to immediately address incidents, when evidence and memories are fresh, allows the commander to make better-informed and relevant decisions. In contrast, waiting to investigate may seriously narrow options later on. Consider a verbal dispute between Soldiers in their shared CHU, where one has an M4 rifle loaded with a magazine. The platoon sergeant, upon breaking up the argument, sees the weapon and concludes that the rifle's owner intended to threaten his roommate and so launches a chain of events that lead to an Article 15. The commander may find that if an inquiry had started as soon as credible information surfaced, it would have revealed that the argument between the roommates started when one entered the room, saw his despondent roommate with a full magazine in his rifle, staring at pictures of his wife, and smelled alcohol on his breath. A reasonable person could believe that this was not an aggressive—or homicidal—threat but the interruption of a potential suicide. Consequently, the command's legal and leadership challenges would be different. Waiting, or choosing not to investigate at all, was tantamount to deliberately avoiding better situational awareness, not to mention losing the chance to act in a way that was most appropriate.

### **Improving Institutional Memory**

Investigations serve purposes and create value in similar ways that after action reviews do. Just as such reviews identify what *actually* happened compared to what *should have* happened and formulate recommendations for improvement, investigations can be thought of as organized lessons-learned libraries for the next command. An investigation gathers information about an event or incident; assembles those facts into a complete picture of what occurred; draws conclusions based on applicable standards, guides, or laws; then proposes recommendations from the lesson of that particular case. When faced with a pressing issue or systemic concern, future commanders can find substantial utility in going back into the records to discover how previous leaders identified and dealt with similar issues or concerns.

Though there are several types of cases that they should refer to professional investigators (*to be discussed in Part II*), commanders should not be reluctant to exercise their authority to investigate. The military has given commanders the ability and authority to be their own “internal affairs bureau.” The difficult choice to trigger an investigation might be eased if a commander’s inquiry or AR 15-6 investigation is considered a fact-finding trip led by a neutral observer. Would the unit benefit from a dedicated examination of the problem and a neutral set of recommendations about it? Commanders will consider all the information available and conduct a cost-benefit analysis, but a realistic standard guide could be quite simple. If a superior commander is likely to take an interest in an issue, incident, or event and would probably ask for an analysis of cause and effect—then an official inquiry is probably needed.

However, not every issue, incident, or event needs an expansive AR 15-6 investigation. Part II will look into the mechanics of executing an investigation, from deciding how big the scope ought to be, to planning the investigative mission, to the critical thinking inherent to solid probing and fact-finding.



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## Endnotes

<sup>1</sup>Investigations are not limited to cases of property accountability or possible misconduct. Any systemic problem that could be found on a commander’s desk can call for a rational, ordered inquiry with a purpose and scope, gathered for independent scrutiny.

<sup>2</sup>*Manual for Courts-Martial United States*, Rule 303, p. II-19, 2008. “Upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses.”

<sup>3</sup>AR 15-6, *Procedures for Investigating Officers and Boards of Officers*, 2 October 2006.

<sup>4</sup>AR 600-20, *Army Command Policy*, Chapter 6 and Appendix D, 18 March 2008.

<sup>5</sup>*Ibid.*, para. 4-7a.

<sup>6</sup>*Manual for Courts-Martial United States*, Rule 306 (b) Discussion.