

The DoD Times (Redacted)



The Blind Spot – The Futility of Legal Reviews in Military Administrative Investigations and Their Utter Ineffectiveness

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At the Walk the Talk Foundation, with each case we examine, a legal review accompanies the Report of Investigation (ROI). Yet, time and again, despite the reviewer's stamp of 'legal sufficiency,' the report falls woefully short. We have observed troubling patterns, where legal reviews are found wanting and where the legal office's role in ensuring thorough and proper investigations is, at best, inadequate—whether by neglect or design.

Issue 1: JAs - You Don't Know What You Don't Know

In far too many cases, when a Report of Investigation is deemed 'legally sufficient,' it is so only in the narrowest sense of the term. The report, in its structure, may satisfy the legal eye, but it is the substance—the facts—that are woefully absent. Time and again, we have witnessed critical facts ignored, key witnesses unheeded, and vital regulations cast aside. When these reports reach the legal review, evidence that could have supported the complainant's cause is mysteriously absent. Yet the Judge Advocate (JA) arrives, gives it little more than a passing glance, declares it 'sufficient,' and another investigation is filed away—another voice of dissent silenced, another brave soul dismissed as a 'troublemaker' for daring to challenge the institution. But here lies the heart of the matter—the 'blind spot.' It is not the task of the JA to unearth every hidden piece of evidence. Such a burden would be untenable. That responsibility belongs to the investigator, who, by the cold reality of statistics, is far too often ill-equipped to handle investigations of such serious consequence.

Issue 2: Last Week You Couldn't Spell "I.O." - Now You Are One

Consider for a moment the grave consequences of being found culpable in a military administrative investigation. Did you know that such a finding could lead to a discharge under the ignoble banner of 'Other-Than-Honorable'? And with it, the painful forfeiture of VA benefits, health coverage, educational opportunities, and even the loss of your current and future career. Now, contrast this with the sobering reality of who sits across from you in such an investigation—a random officer or non-commissioned officer (NCO), plucked from their duties, perhaps with no more than a week's notice. Yesterday, they were navigating a ship, flying a plane, or performing any number of tasks far removed from the intricacies of justice. Today, after receiving a cursory briefing or maybe even just a memo from the JA—a training program that inspires little confidence—they are sent forth to investigate matters of

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profound consequence. And so it is that this officer/NCO, appointed by the very command whose interests may well be at stake, is deemed 'legally sufficient' after little more than an unconscious perusal of a slide deck/memo. And with that, they begin their task—an investigation that may well determine a person's future, both professional and personal. Frightening, indeed.

Issue 3: Improper Application of Burden of Proof

Here lies the crux of the matter: investigators ought to be “blind”—blind to preconceived notions, to bias, and to any agenda imposed by command. Alas, they are nothing of the sort. To prove a proposition by the [preponderance of the evidence](#) requires only that it be more likely true than false—51% certainty, no more. Yet from the very outset of most investigations, the scales, which should stand at a neutral 50%, are already tipped by bias, coercion, or undue influence. Consider one such case: a Reprisal investigation, where the complainant alleged a poor performance report was issued in retaliation for exposing dereliction of duty within his unit. To substantiate his claim, he presented two signed statements from independent parties who sat on promotion boards for that officer's grade, both attesting that the report placed him in the bottom quartile. Yet, the Inspector General's office, in their report, chose to ignore these expert testimonies, seizing instead upon a single line from the performance report as irrefutable proof to the contrary. The legal office, in turn, deemed this report 'legally sufficient.' It most certainly was not. The unqualified opinion of a lone investigator swept aside the evidence of two impartial experts. Curious. Curious, but tragically, not rare.

Issue 4: A Lack of Independence...Yet Again

This, of course, is an issue upon which we have relentlessly pressed the current Inspector General system, and it is precisely why our [petition](#) for an independent IG continues to gather momentum. How, pray, can the Inspector General claim to be 'independent'—as proudly stated on the [DoDIG website](#)—while simultaneously declaring its mission to be the 'eyes and ears of the Commander'? It is an irreconcilable contradiction. But does not the Judge Advocate find itself in a similar quandary when it comes to administrative investigations? Are they not, too, subordinate to the very commander who oversees the investigation—the same commander who, as the sworn defender of the institution, can manipulate, disregard, distort, or even overturn the investigative findings of both the Investigating Officer and the legal team? The phrase 'same church, different pew' comes to mind, and it rings true. For the integrity of these investigations is but a mirage when those in power hold the strings, free to rewrite the conclusion as they see fit.

Conclusion: A Legal Review of Legal Reviews

The stock phrase attesting to 'legal sufficiency' in a military administrative investigation is scarcely worth the paper upon which it is written. It offers no assurance that investigators were trained to the standard that true justice demands—not the minimal requirements of regulations, but the due process every American service member deserves through professional and impartial investigations. This so-called 'legal sufficiency' does not account for the investigator's failings, nor the omission of critical evidence from the report—and thus from the Judge Advocate's view. It does not remedy the foregone conclusions that the chain of command may seek to fulfill, nor does it guard against the insidious influence of bias, coercion, or hidden agendas. Indeed, it seldom ensures that the evidence has been weighed fairly, or that the appropriate standard of proof has been applied. In truth, it serves merely as another layer of institutional protection, a thin veneer over deeper flaws. And for these reasons, this empty assertion amounts to nothing resembling justice—at least, not as we Americans understand the word.

If you feel that you have been a victim of these types of concerns, feel free to reach out privately at francescagraham@walkthetalkfoundation.org, or share your story in the comments.

PETITIONS:

1. [SIGN THIS PETITION](#) urging the Supreme Court of the United States to hear the case of Staff Sergeant Ryan Carter who was paralyzed from the chest down following a routine surgery at Walter Reed.

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2. [SIGN THIS PETITION](#) demanding that our leaders in Congress change the DoD's unjust administrative investigatory system.
3. [SIGN THIS PETITION](#) demanding real anti-harassment reform in the Military and Coast Guard now.

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