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THIS WEEK'S FEATURE

The Lawyer in the Room Isn't Yours

How legal oversight of the IG system shapes what happens to the people who file complaints, and to the IGs who receive them

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When a service member files an Inspector General complaint, most assume the process is neutral: the IG gathers the facts, weighs the evidence, and reaches a fair conclusion. What most complainants don't know is who advises the IG along the way.

HOW IT WORKS

At most command levels, IG offices do not have their own lawyers. Their legal advisor is the same staff judge advocate's office that advises the commander.

- **Army:** AR 20-1 states that the staff judge advocate and attorneys "provide legal advice to the commander, subordinate commanders, and their respective staff members," and are "also the IG's immediate legal advisors." Because of that, they are routinely brought inside the IG's "triangle of confidentiality."
- **Air Force:** DAFI 90-301 requires the servicing staff judge advocate to review every IG Report of Investigation for legal sufficiency before the commander sees it.
- **Navy and Marine Corps:** SECNAVINST 5370.7E sends whistleblower reprisal reports to a Navy or Marine Corps judge advocate or a General Counsel attorney for legal sufficiency review.
- **The exception:** only at the very top, the service headquarters IGs and the DoD Inspector General, do IG offices have their own dedicated legal staff.

The arrangement is efficient. But it has consequences that ripple through the entire system.

IMPACT ON THE PEOPLE WHO FILE COMPLAINTS

- **The lawyer isn't theirs.** The attorney shaping how the IG views the evidence works for the command, often the same command whose actions are under review. The complainant has no lawyer at all, unless they pay for one or their case falls into the narrow categories where the services provide counsel to victims.
- **Information flows one way.** The command's lawyers are inside the IG's circle of confidentiality. The complainant, whose career is on the line, is outside it.
- **The legal standard is set without them.** "Legal sufficiency" is decided by attorneys the complainant never meets and can't respond to.
- **They must bring the law themselves.** Complainants are routinely expected to cite the laws and regulations they believe were violated, with no training and no legal support, while the IG has a lawyer on call.
- **Conflicts go unseen.** The same legal office that advised a commander on an adverse action may later review the IG's findings about that action. The complainant has no way of knowing.

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IMPACT ON THE IGS THEMSELVES

- **IG work starts to look like legal work.** When every finding goes to a lawyer before it becomes final, it's easy for IGs to conclude that reprisal and restriction are "legal matters" best left to attorneys. That may help explain why senior IGs we've spoken with could not speak to 10 U.S.C. § 1034, the statute at the center of their job.
- **Information gets held closer.** An office that sees its work as legal tends to treat it like litigation: limit what's shared, say less to the complainant, redact more, and route every question through counsel. The result is a chill on the free flow of information the IG system was designed to encourage.
- **Deference replaces judgment.** IGs exist to bring independent, fact-based judgment. When they come to see lawyers as the real decision-makers, that independent judgment weakens.
- **Independence erodes quietly.** An IG who depends on the commander's lawyer for every significant call is less independent than the organization chart suggests.

IMPACT ON THE WHOLE SYSTEM

- **Service members pay for lawyers to do administrative work.** Because the system looks and feels legal, people assume they need an attorney, and many spend thousands of dollars on lawyers for IG complaints, records corrections, and rebuttals that are administrative at their core.
- **Non-attorney advocates are shut out.** In many settings, only legal counsel is recognized as a representative. Knowledgeable advocates who could help, often for little or nothing, can't sit in.
- **The legal framing has no legal remedy.** Here is the irony: the system treats these matters as legal enough to require lawyers at every step, yet the Feres doctrine bars most service members from suing the government for the harm. The legal protections run one way.
- **Trust collapses.** When the process feels like a closed legal proceeding in which one side has counsel and the other doesn't, people stop believing it's fair, and many stop reporting at all.

WHAT WE SEE IN OUR DATA

Of 236 coded intakes at Walk the Talk Foundation:

- **96%** reported losing trust in the system
- **47%** reported financial hardship
- **46%** described pre-determined outcomes
- **34%** reported command influence
- **23%** reported a lack of independent IG authority
- **17%** reported having no access to the evidence used against them

These are client-reported experiences, not adjudicated findings. But they track closely with the structural problems above.

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WHAT SHOULD CHANGE

- Independent legal advice for IGs at every level, from attorneys outside the chain of command whose conduct is being reviewed
- Clear disclosure to complainants of who provides legal review in their case, and whether that office advised on the underlying action
- IG training that treats § 1034 as core IG knowledge, not a legal matter for someone else
- Recognition of non-attorney advocates in administrative processes, so service members aren't forced to hire lawyers for administrative work

THE BOTTOM LINE

The IG system was built to be a place service members could go safely when something was wrong. But when the only lawyer in the room works for the command, and the IG learns to treat every case like litigation, that safe place starts to look like one more proceeding stacked against the person who spoke up.

Fixing that doesn't require dismantling the system. It requires remembering who the system is supposed to serve.

This article is for informational and educational purposes only and does not constitute legal advice. It does not create an attorney-client relationship. Walk the Talk Foundation is a nonprofit organization (EIN 33-1659930) providing expert advising and congressional advocacy to service members, veterans, federal civilians, and DoD and Coast Guard personnel.

LTC (Ret) Francesca Graham is the Vice President of the Walk the Talk Foundation. All articles are posted on LinkedIn and online at walkthetalkfoundation.org. The Star Chamber podcast is available on Apple, Spotify, and YouTube.

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