

CHAPTER 17

ADMINISTRATIVE INVESTIGATIONS

SENIOR OFFICER LEGAL ORIENTATION COURSE

I. REFERENCES.

- A. 10 U.S.C. § 1034 [Military Whistleblower Act].
- B. Pub. L. 102-484, div. A, title X, § 1072, Oct. 23, 1992, 106 Stat. 2508 (10 U.S.C. § 113, note) [Family Presentation Requirements in Fatality Cases].
- C. DoDD 7050.6, Military Whistleblower Protection, 23 June 2000.
- D. DODI 6055.7, Accident Investigation, Reporting, and Record Keeping, 3 October 2000.
- E. AR 15-6, Procedure For Investigating Officers and Boards of Officers, 11 May 1988 (w/ change 1, 30 Sep 96).
- F. AR 20-1, Inspector General Activities and Procedures, 29 March 2002.
- G. AR 385-40, Accident Reporting and Records, 1 December 1994.
- H. AR 600-20, Army Command Policy, 13 May 2002.
- I. AR 600-34, Fatal Training/Operational Accident Presentations to the Next of Kin, 2 January 2003.

II. INTRODUCTION.

- A. A senior commander should be familiar with several types of military investigations.
- B. This outline will discuss the following investigations:
 - 1. Rule for Courts-Martial (R.C.M.) 303 Inquiries.
 - 2. AR 15-6 Investigations.
 - 3. Inspector General Investigations.
 - 4. Military Whistleblower Investigations.
 - 5. Accident Investigations.
 - 6. Family Presentations.
 - 7. Evaluation Reports.
 - 8. Article 138 Complaints.
- C. Aside from the brief discussion of R.C.M. 303 inquiries, this outline does not discuss criminal investigations.

III. R.C.M. 303 PRELIMINARY INQUIRY.

- A. If a commander receives information that a member of his or her command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander is required to make or cause to be made a preliminary inquiry into the charges or suspected offenses.
- B. Not the same as an Article 32 (UCMJ) investigation.

- C. The preliminary inquiry is usually informal. It may be an examination of the charges and an investigative report or other summary of expected evidence. In other cases a more extensive investigation may be necessary. Although the commander may conduct the investigation personally or with members of the command, in serious or complex cases the commander should normally seek the assistance of MPI/CID.
- D. The commander should gather all reasonably available evidence on:
 - 1. Guilt or innocence;
 - 2. Aggravation; and
 - 3. Extenuation and Mitigation.
- E. A person who is an “accuser” under Article 1(9), UCMJ, may not convene a special or general courts-martial [R.C.M. 504(c)(1)]. Therefore, any commander who is a special or general courts-martial convening authority should appoint another officer in the command to conduct the preliminary inquiry and prefer charges, if necessary.

IV. AR 15-6 INVESTIGATIONS. AR 15-6, Procedure For Investigating Officers And Boards Of Officers (11 May 88, w/ch1, 30 Sep 96).

- A. **FUNCTION.** To ascertain facts, make recommendations, and report them to the appointing authority.
- B. **APPLICABILITY.** AR 15-6 establishes procedures for investigations and boards of officers not specifically authorized by any other regulation. It may also be made applicable to investigations or boards that are authorized by another regulation, by specific provision of that regulation (e.g., enlisted administrative separation board procedures under AR 635-200).
- C. **TYPES OF AR 15-6 PROCEDURES: FORMAL OR INFORMAL.**
 - 1. Formal (Chapter 5, AR 15-6).

- a) Requires a board hearing and provides extensive due process rights for named respondents. Also requires a president with voting members, recorder, notice to respondent with right to counsel, challenges for cause, and entitlement to be present at all open sessions, put on evidence, cross-examine witnesses, and make argument.
- b) Example: An enlisted administrative separation board conducted under AR 635-200 is a formal AR 15-6.

2. Informal (Chapter 4, AR 15-6).

- a) May be used to investigate individual conduct. Para 1-6: “The fact that an individual may have an interest in the matter under investigation or that the information may reflect adversely on that individual does not require that the proceedings constitute a hearing for that individual.” Para 1-4b(2): Even if the purpose of the investigation is to inquire into the conduct or performance of a particular individual, formal procedures are not mandatory unless required by other regulations or by higher authority.
- b) Great flexibility.
 - (1) Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation. No respondents are designated and no one is entitled to the rights of a respondent.
 - (2) An informal investigating officer (IO) may use whatever method he or she finds most efficient and effective for acquiring information. The IO may obtain witness testimony by personal interview, correspondence, telephone inquiry, or other informal means. Proceedings are not open to public; there is no right to counsel unless required by Art 31(b), UCMJ; and witnesses have no right to cross-examine.
- c) Selection of Procedure. In deciding whether to use informal or formal procedures, the appointing authority should consider:

- (1) Purpose of the inquiry;
- (2) Seriousness of the subject matter;
- (3) Complexity of issues involved;
- (4) Need for documentation; and
- (5) Desirability of providing a comprehensive hearing for persons whose conduct or performance of duty is being investigated.

D. APPOINTING AN INFORMAL 15-6.

1. Authority. A commander at any level or a principal staff officer or supervisor in the grade of major or above. Change 1 authorizes GS-14 agency head or division chief to appoint either formal or informal. An appointing authority can ratify the appointment of an IO. In other words, the decision of an official who lacks the authority to appoint an AR 15-6 IO can be ratified by an official with the authority to appoint an IO.
2. Method. May be oral or written appointment. A written memorandum of appointment is preferred and an oral appointment should be confirmed in writing. Appointment should specify purpose and scope of investigation and nature of findings and recommendations required. The command's Judge Advocate, and other appropriate staff, should assist in drafting the appointment memorandum.
3. Choosing the Investigating Officer.
 - a) Commissioned/Warrant Officer/GS-13, senior to soldier whose conduct is under investigation; **best qualified** by reason of education, training, experience, length of service and temperament.
 - b) **The IO must consult with OSJA for legal guidance before beginning an informal investigation.** IO should continue to consult with OSJA during the entire investigation process, including the development of findings and recommendations.

E. SPECIAL CASES.

1. Only a GCMCA can appoint an AR 15-6 investigation if:
 - a) Property damage of \$1M or more;
 - b) Loss or destruction of Army aircraft or missile; or
 - c) Injury or illness likely to result in death or permanent total disability.
2. Investigation into fratricide/friendly fire incident must be forwarded after action by the appointing authority to next higher Army HQs for review.

F. CONDUCTING THE INVESTIGATION.

1. Appointment Memorandum. The appointment memorandum should contain sufficient information to enable the IO to begin developing an investigative plan.
 - a) It should direct the IO to immediately set a briefing with the advising judge advocate to understand the rules and legal concerns of AR 15-6 investigations and to develop an investigation plan.
 - b) It should clearly set forth the purpose of the investigation and the suspense for completing the investigation.
 - c) It should outline the specific facts that the IO needs to find based on the allegations (e.g., determine whether CPT Smith fraternized with PFC Jones) and require the IO to provide recommendations.

G. FINDINGS AND RECOMMENDATIONS.

1. Findings.

- a) Clear concise statement of fact readily deduced from evidence in the record, including negative findings. The findings should not exceed the scope of the appointment. The findings should refer to the evidence gathered in the investigation such as Statement of LTC ___, or Photograph 1 at TAB C.
 - b) Standard is preponderance of evidence: more likely than not; greater weight of evidence than supports a contrary conclusion. Weight not determined by the number of witnesses but by considering all evidence and factors such as demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, other indications of credibility.
 - c) The IO should work with his or her legal advisor to develop the findings based on the facts as found during the investigation and the commander's appointment memorandum.
2. Recommendations. The recommendations must be consistent with the findings. They can be negative, e.g., no further action taken. They must be supported by the record of investigation.

H. ACTION BY APPOINTING AUTHORITY.

- 1. Options.
 - a) Approve as is.
 - b) Disapprove, and/or return for additional investigation. May consider all relevant information, even information not considered by IO. The command may take action less favorable than that recommended.
 - c) Substitute Findings and Recommendations. Unless otherwise provided by another directive, appointing authority is not bound by findings or recommendations of the IO, but may substitute his or her own findings and recommendations.
- 2. Legal review before action by appointing authority. Legal reviews are required:

- a) In serious or complex cases, such as where the incident being investigated resulted in death or serious bodily injury; or
- b) Where findings and recommendations may result in adverse administrative action or will be relied upon by higher HQs.

I. USING INFORMAL AR 15-6 REPORTS OF INVESTIGATION TO SUPPORT ADVERSE ADMINISTRATIVE ACTION

1. A commander may not take adverse administrative action based on an informal AR 15-6 investigation until:
 - a) **Notice** is given to the subject of the investigation of the allegations. The subject is given a copy of the investigation subject to any redactions required.
 - b) The subject is given a **reasonable opportunity to rebut** the allegations.
 - c) The **Commander must consider the subject's rebuttal** to the investigation, if submitted in a timely manner, **before taking any adverse action**.
2. These safeguards may already exist if the adverse administrative action process itself provides them. However, when there are no such safeguards, following this process provides important practical and legal benefits. The federal courts have routinely upheld adverse administrative actions based on an AR 15-6 investigation against military members as long as the subject received notice, a chance to rebut the allegations, and command consideration of the rebuttal prior to the adverse action taking place.

J. RELEASE OF AR 15-6 INVESTIGATIVE REPORTS AND MATERIALS.

AR 15-6 documents hold no special, automatic status under either the Privacy Act or the Freedom of Information Act. The individual parts of a report of investigation must be analyzed under both laws to determine suitability for release. No part of a report should be released (unless specifically authorized by law or regulation) without the approval of the appointing authority.

V. INSPECTOR GENERAL INVESTIGATIONS. AR 20-1, Inspector General Activities and Procedures, 29 Mar 02.

A. TWO TYPES OF IG INVESTIGATIVE MECHANISMS.

1. Investigative inquiries. Informal fact-finding process to gather information needed to resolve allegations or issues when investigative techniques are appropriate but circumstances do not merit an IG investigation. Inquiries conducted into “improprieties.” If inquiry develops evidence to substantiate misconduct, inquiry ends---matter may be referred to CID, or commander may appoint AR 15-6 investigation, or, in rare instances, it may become an IG investigation. Only substantiated inquiries need to have a written legal review.
2. Investigations. Fact-finding examination by detailed IG into allegations, issues, or adverse conditions to provide the directing authority a sound basis for decisions and actions. Normally addresses allegations of wrongdoing by an individual. IG must obtain written directive by appointing authority. Written legal review required. Verbal notification required of the commander/supervisor of nature of allegations against the subject/suspect, and verbal notification of the results to commander/supervisor. Should not contain recommendations for adverse action against suspect/subject.
3. IGs should not normally investigate when substantiation of allegations are likely to establish criminal misconduct or likely to result in adverse action against individual.

B. Benefits. Trained, thorough investigators; keeps matter in-house, at least to start with; useful when there is no skilled, sufficiently senior AR 15-6 IO available. **Disadvantages:** restrictions on releasing reports of investigation; cannot use evidence for adverse action without TIG authorization; may be necessary to duplicate IG work with AR 15-6 to obtain usable evidence.

C. Release of IG Records.

1. IG records are available within DA for those having need for the record “in the official performance of their duties.” AR 20-1, para. 3-6.

2. IG investigations and inquiries may be reviewed by HQDA command and promotion boards.
3. Records of unsubstantiated IG complaints will normally be retained for three years after the case is closed (longer in some circumstances in cases against senior officials).

D. Special reporting and investigating requirements.

1. Allegations against field grade officers and senior NCOs. IGs must report to TIG any Inspector General Action Request (IGAR) containing an allegation against a MSG, SGM, and CSM, or any officer in the grade of MAJ through COL within 2 working days after receipt, if the allegation resulted in the initiation of an IG investigation or investigative inquiry or a command-directed action such as an AR 15-6 investigation, commander's inquiry, or referral to USACIDC.
 - a) AR 600-8-29, Officer Promotions, establishes a requirement for a review of IG records in conjunction with senior officer promotion boards. Paragraph 1-15 provides for post-board screening of officers selected for promotion to colonel. A board reviews any adverse information in files, including DAIG files, and the derogatory information may be presented to a promotion review board to reevaluate the recommendation for promotion.
 - b) Other IG records reviews are conducted at the direction of senior Army leaders. DAIG Assistance Division is the proponent for post selection board review of IG records for other than General Officers and members of the SES. The intent of these requirements is to ensure the selection of the best leaders and commanders, to consider information not available to the original board, and to protect the rights of individuals.
2. Allegations against GO, BG selectee, SES or equivalent.
 - a) All must be reported to DAIG. Investigation by DAIG or (rarely) DODIG.

- b) All allegations, whether eventually substantiated or unsubstantiated, are maintained in database, for use during background checks.
 - c) A General Officer may receive a Memorandum of Reprimand based upon a DAIG Investigation (ROI). The reprimand must be authorized by the SA, US of A, CSA, VCSA, or TIG. AR 20-1, para. 3-3.
3. Adverse comments: If unfavorable information is obtained which may result in an adverse comment in the ROI and the individual is not informed of unfavorable information during investigation, the IG must advise the individual of the substance of the investigation before it is completed and provide an opportunity to comment on unfavorable information.

VI. MILITARY WHISTLEBLOWER PROTECTION ACT. Title 10, U.S. Code, sec. 1034; DoDD 7050.6, Military Whistleblower Protection, 23 Jun 00; AR 20-1, Inspector General Activities and Procedures, 29 Mar 02; and AR 600-20, Army Command Policy, 13 May 02).

A. No person may:

- 1. Restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.
- 2. Take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing a protected communication (described in subparagraph B, below), made to a member of Congress, an IG, a member of a DoD audit, inspection, investigation, or law enforcement organization, an Equal Opportunity Office, or to the service member's chain of command or supervisor.

B. A "protected communication" is a communication in which a soldier complains of, or discloses information that the soldier reasonably believes constitutes evidence of, any of the following:

1. A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination; or
 2. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety.
- C. Authority to Investigate and Act on Complaints of Reprisal.
1. TIG has limited the authority to MACOM and higher level IGs to investigate allegations of individuals taking or threatening to take unfavorable personnel actions or withholding or threatening to withhold favorable personnel action as reprisal against a member of the Armed Forces for making or preparing a protected communications. (AR 20-1, paragraph 8-9c(1))
 2. If a soldier makes a reprisal allegation, the IG must contact DAIG Assistance Division within 2 days. Based on the coordination with DAIG, the DAIG will formally advise IG, DoD of the complaint.
 3. The IG, DoD is the final approval authority for cases involving allegations of whistleblower reprisal.

VII. ACCIDENT INVESTIGATIONS. AR 385-40, Accident Reporting and Records, 1 Nov 94.

- A. SAFETY INVESTIGATIONS. There are two types of safety investigation reports: limited use reports and general use reports.
1. Limited Use Safety Accident Investigation Reports. These are close-hold, internal communications of DA whose SOLE purpose is prevention of subsequent DA accidents.
 - a) They are required for all flight and fratricide/friendly fire accidents. They also may be used for accidents involving other complex weapon systems, equipment, or military-unique items, and military unique equipment/operations/exercises when the determination of causal factors is vital to the national defense with approval of Cdr, USASC.

- b) These reports cannot be used as evidence or to obtain evidence for disciplinary action, in determining the misconduct or line-of-duty status of any person, before any evaluation board, or to determine liability in administrative claims for or against the government.
 - c) Witnesses may be given the option of making their statement under a promise of confidentiality if they are unwilling to make a complete statement without such a promise and the investigation board believes it is necessary to obtain a statement from a witness.
2. General Use Safety Accident Investigation Reports. These reports are prepared to record data concerning all recordable DA accidents not covered by the limited use safety accident investigations. These reports are intended for accident prevention purposes also and cannot be used for administrative or disciplinary actions. In these cases, promises of confidentiality cannot be made that information will be treated as exempt from mandatory disclosure in response to a request under the FOIA.

B. COLLATERAL ACCIDENT INVESTIGATION. AR 385-40, para. 1-8.

1. This type of investigation is prepared:
- a) For all Class A accidents (Army accident in which the resulting total cost of property damage is \$1 M or more; an Army aircraft or missile is destroyed, missing, or abandoned; or an injury and/or occupational illness results in a fatality or permanent total disability);
 - b) As directed by the SJA under the claims regulation;
 - c) On accidents where there is a potential claim or litigation for or against the government or government contractor; or
 - d) On accidents with a high degree of public interest or anticipated disciplinary or adverse administrative action.
2. These investigations are used to obtain and preserve all available evidence for use in litigation, claims, disciplinary action, or adverse administrative action. Such investigations often parallel the safety investigation.

- a) Investigators must work with their legal advisor on obtaining facts, e.g., names of witnesses (but not witness statements), and physical evidence from the safety investigation team.
 - b) Only factual information may be made available to the collateral investigation; Safety Board experts are prohibited from giving their opinions of what caused the accident to collateral investigators
 - c) No requirement to follow AR 15-6 procedures, but a good idea.
3. It is improper to use statements and expert opinions developed through the safety investigation in the collateral investigation.

VIII. FAMILY PRESENTATIONS IN FATAL TRAINING/OPERATIONAL ACCIDENTS.

- A. Congressional Requirement. Pub. L. 102-484, div. A, title X, § 1072, Oct. 23, 1992, 106 Stat. 2508 (10 U.S.C. § 113, note).
- 1. Requires the Service Secretaries to ensure that fatality reports and records pertaining to members of the Armed Forces who die in the line of duty are made available to family members.
 - 2. Within a reasonable period of time after the family members are notified of the death, but not more than 30 days after the date of notification, the Secretary must:
 - a) In any case under investigation, inform the family members of the names of the agencies conducting the investigation and of the existence of any reports by such agencies that have been or will be issued; and
 - b) Furnish, if the family members desire, a copy of any completed investigative report to the extent such reports may be furnished consistent with the Privacy Act and the Freedom of Information Act.

B. ARMY IMPLIMENTATION. ar 600-34, Fatal Training/Operational Accident Presentations to the Next of Kin, 2 January 2003.

1. Key definitions.

- a) *Fatal training accidents* include those accidents associated with non-combat military exercises or training activities that are designed to develop a soldier's physical ability or to maintain or increase individual/collective combat and/or peacekeeping skills.
- b) *Fatal operational accidents* are those deaths associated with active duty military exercises or activities occurring in a designated war zone or toward designated missions related to current war operations or Military Operations Other Than War, contributing directly or indirectly to the death.
- c) *Primary Next of Kin.* The legal next of kin. That person of any age most closely related to the individual according to the line of succession. Seniority, as determined by age, will control when the persons are of equal relationship.
- d) *Family member.*
 - (1) Spouse.
 - (2) Unmarried child of a sponsor, including an adopted child, step child, foster child, ward, who either: (1) has not passed his/her 21st birthday; (2) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is (or was at the time of the member's or former member's death) in fact dependent on the sponsor for over one-half of his/her support; (3) has not passed his/her 23rd birthday, is enrolled in a full-time course of study in an institution of higher learning and is in fact dependent on the sponsor for over one-half of his/her support.
 - (3) A parent or parent-in-law of a sponsor who is in fact dependent on the sponsor for one-half of his/her support and residing in the sponsor's household.

2. Presentations are required for:
 - a) All fatal training/operational accidents investigated under AR 15-6, AR 385-40, and AR 600-34.
 - b) Special interest cases or cases in which there is probable high public interest, as determined by TAG;
 - c) All suspected cases of Friendly Fire; and
 - d) In general, fatal accidents that are hostile, but do not occur as a result of engagement with the enemy.
 - (1) *Hostile deaths* are defined as a death caused by terrorist activity or “in action.”
 - (2) *In action* characterizes death as having been the direct result of hostile action, sustained in combat or related thereto, or sustained going to or returning from a combat mission provided that the occurrence was directly related to hostile action.
3. Updates to PNOK. If the appointing/approval authority grants an extension of the 30-day requirement to complete the collateral investigation, the approval authority is responsible for the release of status information from the investigation to the PNOK.
 - a) The approving authority’s legal office must review each update to ensure that it contains no admission of liability, waiver of any defense, offer of compensation or any statement that might jeopardize the Army’s litigation posture.
 - b) The update is then given to the Casualty and Memorial Affairs Operation Center (CMAOC) who will instruct the Casualty Affairs Officer (CAO) on its delivery to the PNOK.
4. Preparing the presentation to the PNOK.

- a) Once the investigation is complete, TAG contacts the collateral investigation appointing/approval authority to coordinate appointment of the briefer who is “most often the deceased soldier’s colonel or brigade level commander.”

- b) Within 24-hours of completion of the investigation, the CAO must inform the PNOK that the Army is prepared to discuss the results of the investigation with the family. Presentations are offered to adult PNOK (18 years of age or older); for PNOK under 18, the adult custodian must decide the PNOK’s ability to receive a face-to-face briefing.
 - (1) In single-family presentation cases, the CMAOC coordinates the written statement of offer (SOO) to provide a presentation through the CAO for delivery to the PNOK.

 - (2) Accident presentations requiring the offer of multiple family presentations will be official offered via a formal letter of offer (LOO) mailed to the PNOK within 24 hours following the collateral investigation report.
 - (a) The CAO then follows up with the PNOK to arrange for the presentation date and forward the preferred dates (primary and secondary) to the CMAOC.

 - (b) The CMOAC must develop a proposed presentation schedule for all PNOK, accommodating family preferences to every extent possible.

 - (3) The SOO/LOO must:
 - (a) Inform the PNOK that the collateral investigation is complete.

 - (b) Provide a timeframe for the presentation (usually between 21-25 days from the date the collateral investigation was approved). The goal for multiple briefings is to schedule them within a 3-day window.

- (c) Identify the briefer, and provide the name of the CAO with instructions for accepting or declining and scheduling the presentation.

c) Briefing Team.

- (1) At a minimum, the briefing team must consist of the briefer, the family's CAO, and a chaplain from the mishap unit.

- (2) The briefer must consider including the SJA or legal advisor or PAO representative when it is apparent that a family has invited, or may invite, the local media or a family legal representative will attend the presentation.

- (a) The CAO must work with the PNOK to obtain a list of people the PNOK intends to invite to the presentation to enable the presentation team to determine the family's intent to invite media or legal representation.

- (b) NOTE: The Army is prohibited from putting conditions or limitations upon those whom the family wishes to invite to the presentation.

- (3) The briefer must also consider including an interpreter if the PNOK or other attending family members do not understand English.

d) Duties and responsibilities prior to the briefing.

- (1) The briefer must prepare and conduct training sessions and rehearsals for the presentation team.

- (2) The briefer must obtain a summarized copy of the autopsy report and provide it to the briefer for delivery to the PNOK at the time of the presentation.

- (a) If the PNOK does not wish to receive an autopsy report, it won't be left with the PNOK.
 - (b) Otherwise, the briefer must explain that the autopsy does not contain graphics but is very detailed and is provided in a sealed envelope. The briefer must also recommend that when they are ready to review the report, they do so in the presence of a medical person able to explain the terminology.
 - (c) There is no intent for the autopsy report to be opened or discussed during the presentation.
- (3) The CAO must provide a written summary of the current health and well being of the family, describing their emotional, mental, and physical health; the family's relationship with friends and other significant support groups; the current living arrangements; and any outstanding issues the family has with benefits and entitlements.
- (4) The CAO must conduct a reconnaissance of the area where the presentation will be conducted and recommend a hotel in the vicinity for the presentation team.
- (a) The CAO must also make hotel and transportation arrangements for the briefing team.
 - (b) Family members are generally responsible for arranging their own transportation to the briefing location. The policy prohibits the briefing team from traveling with the PNOK family members in a privately owned vehicle.

5. Conducting the Family Presentation.

- a) The briefer's primary responsibility is to meet personally with the PNOK and deliver a thorough open explanation of the releasable facts and circumstances surrounding the accident. At a minimum, the briefer must provide the following.

- (1) An explanation of the unit's mission which highlights the soldier's significant contributions to the mission and the Army;
 - (2) An accurate account of the facts and circumstances leading up to the accident, the sequence of events that caused the accident, and a very clear explanation of primary and contributing factors causing the accident as determined by the collateral investigation.
 - (3) Actions taken at the unit level to correct any deficiencies.
- b) The most favored choice for the presentation is the PNOK's home.
- c) Style of presentation.
- (1) Dialogue with no notes but with maps and diagrams of training areas. This works best for a briefer who is intimately familiar with the accident and investigation.
 - (2) Bullet briefing charts. These work well as they tend to help the briefer stay focused. Charts must be reviewed and approved in advance by the SJA.
 - (3) Simple notes and an executive summary. Written materials must be reviewed and approved by the SJA and copies should be left with the PNOK if requested.
- d) If a family presentation must proceed with a legal representative present, but without Army legal advice, the briefer must inform the PNOK that the presentation is strictly intended to provide information to the family. If the attorney has a list of questions for the family to ask, the briefer must offer to take the questions back to the servicing SJA to obtain complete answers. The SJA may then follow up directly with the PNOK.
6. Completion of Family Presentation. Within two weeks of the presentation, the briefer must submit an AAR through the appointing authority and MACOM to the TAG.

7. SJA Requirements.

- a) The OSJA is required to review the presentation to ensure that it contains no admission of liability, waiver of any defense, offer of compensation, or any other statement that might jeopardize the Army's litigation posture. This may include review of briefing charts, notes, and executive summaries.
- b) The SJA or legal advisor must provide a non-redacted copy of the collateral investigation report to CMAOC.
- c) The regulation is not intended to provide the PNOK with information not otherwise releasable under the Privacy Act or the Freedom of Information Act.
 - (1) The SJA must redact the collateral investigation report and prepare the required number of copies. At a minimum, the briefer, each team member, and each PNOK will be given a redacted copy.
 - (2) The SJA also must prepare a letter to accompany the redacted version of the report delivered to the family and will explaining, in general terms, the reasons for the redactions.

8. Release of the Collateral Investigation. The collateral investigation will be released in the following order:

- a) PNOK and other family members designated by the PNOK;
- b) Members of Congress, upon request; and
- c) Members of the public and media.

IX. EVALUATION REPORTS. AR 623-105, Officer Evaluation Reporting System, paragraph 6-3 (1 Apr 98); AR 623-205, Noncommissioned Officer Evaluation Reporting System, paragraph 6-3 (15 May 02).

- A. A commander is required to look into an OER/NCOER given by a subordinate or member of a subordinate command when it comes to the commander's attention that the report may be illegal, unjust, or otherwise violate regulation. The commander's inquiry is confined to matters relating to the clarity of the report, its facts, compliance with regulation, and conduct of rated soldier and members of rating chain.

- B. The inquiry is by the commander in the chain of command above the designated rating officials involved in the allegations. NCOER: commander (major or above). May appoint an officer senior to designated rating officials involved in allegations to make inquiry.
 - 1. As formal or informal as commander thinks appropriate to include telephone and personal discussions. Not an AR 15-6 investigation generally.

 - 2. Primary purpose is to provide a greater degree of command involvement in preventing injustices and errors before they become a matter of permanent record. May also occur after report is accepted at DA but not intended to substitute for appeal.

- C. A commander does not have the authority to direct that the evaluation be changed and may not use command influence to alter the rating officials evaluations. The commander may, however, provide results of a commander's inquiry to the rating chain.

X. ARTICLE 138 COMPLAINTS. Art. 138, UCMJ; AR 27-10, Military Justice, chapter 20 (6 Sep 02).

- 1. A complaint submitted by a soldier for any discretionary act or omission by a commanding officer, under color of Federal military authority, that adversely affects the complainant personally, and that is:
 - a) A violation of law or regulation;

- b) Beyond the legitimate authority of that commanding officer;
 - c) Arbitrary, capricious, or an abuse of discretion; or
 - d) Materially unfair.
2. Before submitting a complaint under Article 138, a soldier must make a written request for redress of the wrong to the commanding officer the soldier believes has wronged him or her. The commanding officer must respond, in writing, within 15 days; if not possible, the commander must provide an interim response indicating the estimated date of a final response.
3. A soldier must submit an Article 138 complaint to the soldier's immediate superior commissioned officer within 90 days of the date of complainant's discovery of the alleged wrong, excluding any period during which the request for redress was in the hands of the respondent.
4. The commanding officer must forward the complaint to the general court-martial convening authority (GCMCA). If the complaint is appropriate for redress under Article 138, the GCMCA must examine into the complaint. The examination may be delegated and, if so, the investigation will be conducted under AR 15-6. Generally, an action is inappropriate subject for resolution under Article 138 procedures when:
- a) Review is provided by the UCMJ or the action is otherwise reviewable by a court;
 - b) It is taken pursuant to the recommendation of a board authorized by Army regulation to which the complainant was afforded substantial rights of a respondent; or
 - c) Army regulations specifically authorize an administrative appeal.
5. Once completed, the GCMCA must forward the complaint to HQDA (TAJAG), who will review the complaint on behalf of the SA.

XI. CONCLUSION.