



## Complex Investigations

1. **Purpose.** To provide guidance for Convening Authorities, Staff Judge Advocates, and Investigating Officers on considerations prior to appointment of and conduct of large-scale, high visibility, and complex command investigations.

2. **Ref:** (a) JAGINST 5800.7F  
(b) JAD Practice Advisory 1-18

3. **Encl:** (1) Conducting a Complex Investigation: A Guide for Legal Advisors

3. **Background.** Major incidents or mishaps present unique challenges associated with gathering complex facts and analyzing those facts into an easily digestible report. These events may involve multiple units, death of military and/or civilian personnel, significant loss or damage to government equipment and/or civilian property, and generate media, public, and/or Congressional scrutiny. At times we underestimate the breath and scope of the task, fail to identify and address conflicts of interest or the appearance of a conflict of interest within the command, and are guilty of under resourcing the investigating officer/investigation. In order to provide accurate and relevant facts, opinions, and recommendations to the convening authority for decision, we must endeavor to avoid these pitfalls. When the convening authority is provided with an inaccurate sight picture of problems and issues that caused or precipitated an event it leads to less than optimal solutions to address problems and issues and a loss of trust and confidence of our Marines and the public. This practice advisory is not intended to replace reference (a) and is not directive. It does, however, provide important amplifying guidance to all parties involved in the investigation process to consider before appointment of an investigation through post investigation.

#### 4. For Use and Consideration.

- Enclosure (1)<sup>1</sup> provides a list of considerations and tools that should be discussed and considered prior to convening and conducting a command investigation. It also provides considerations for post-report activities.
  - While the document is specifically directed at the legal advisor, it provides considerations for the convening authority and the investigating officer.
- Reference (b)<sup>2</sup> provides detailed guidance on the impact of safety investigations on military justice actions. Often many of these incidents and mishaps involve a concurrent safety investigation and must be considered when misconduct is suspected. When misconduct is suspected, coordination between the safety investigation and command investigation (to include NCIS/CID investigation) must be made.
- Understand that many of these incidents or mishaps will generate public interest. Additionally, if there is a loss of a service member, a redacted Line of Duty investigation must be provided to the next of kin.
  - Know your audience and do not include inflammatory language when it is not required or relevant to the incident or mishap.
  - During the course of the investigation, if other subject areas that should be investigated are discovered, determine its relevance to the incident or mishap? If it is not relevant to the incident or mishap, then a separate investigation should be convened instead of including it in the incident or mishap investigation.
- Ensure investigative independence.

<sup>1</sup> The guide was drafted by OJAG (Code 15) in the wake of deadly collisions involving the USS Fitzgerald and USS John S. McCain. While the guide is Navy focused, considerations outlined in the document are relevant for all complex investigations convened by the Marine Corps.

<sup>2</sup> <https://www.hqmc.marines.mil/Portals/135/Docs/Practice%20Advisories/Practice%20Advisory%201-18%20-%20Safety%20Investigations.pdf>

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- Appoint investigating officers outside of the chain of command from the incident or mishap unit reducing the likelihood of unlawful command influence and conflicts of interest.
  - Direct investigating officers to provide updates to the convening authority and legal advisor of any facts they may discover that suggest the convening authority may bear direct or indirect responsibility over the incident or mishap. The convening authority should refer the investigation outside of their command if they bear responsibility over the incident or mishap.
  - Appropriately resource the investigation.
    - Consider that many complex investigations require subject matter expertise. Appoint and direct investigating officers to seek counsel of subject matter experts.
    - In many investigations more than one individual is required due to the complexity information being reviewed and the volume of information collected and analyzed. Simply assigning one investigating officer based solely on manpower resource constraints presents a real danger of providing an incomplete and inaccurate report.
  - We have an obligation to get it right, and when we miss the mark due to resourcing, we risk losing credibility and the trust and confidence of our Marines and the American public.

5. **Point of Contact.** Direct any questions about this practice advisory to JCA, (703) 614-2510/DSN: 224-2510.