



# INSPECTOR GENERAL

*United States Marine Corps*



★ HONOR ★ COURAGE ★ COMMITMENT ★

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## **LEGAL SUFFICIENCY AND THE ROLE OF COUNSEL/SJA**

# *ENABLING LEARNING OBJECTIVES*

## 1. Authorities

## 2. Legal Support

- IG Relationships With the Lawyers
- When should you Consult Your Attorney?
- Which Lawyer Should You Call?
- Legal Sufficiency and Reviews

## 3. Records Release

- Privacy Act and FOIA



# *Authorities*

- DoDI 7050.01: DOD Hotline Program
- SECNAVINST 5430.57G: Mission and Functions of the Naval Inspector General
- SECNAVINST 5370.5B: DON Hotline Program
- MCO 5430.1A: Marine Corps Inspector General Program
- MCO 5370.8: Marine Corps Hotline Program

**\*\* Secretarial authority governs IG products, not JAGMAN authorities.\*\***



# Authorities (cont.)

- Per MCO 5370.8, CIGs are an alternative to the chain of command, an extension of the IGMC who reports directly to SECNAV.
  - Secretarial authority
  - IG products must be complete
    - Emergent allegations must be investigated - no latitude to leave anything unaddressed
- DoDI, SECNAVINST, and MCO detail requirements for proficient and independent command hotline program
  - Receives/addresses **all** complaints
  - IGs have unfettered access to documents and personnel (SECNAVINST 5430.57G & MCO 5430.1)



# Consult Your Attorney!

- Counsel/SJA support to CIGs, and CL supports IGMC.
- Early legal engagement is critical.
  - Authorities, investigative plan, scoping foreseeable command actions in one product
  - Frame/approve allegations
- Engagement at completion is required.
  - Provide Legal Concurrence on ALL **IG Inquiries** that do not result in **IG-formulated allegations** and an investigation
    - **HCR required** for any case DoD IG referred for info IF resulted in a substantiation (DoDI 7050.01—Oct 2017)
  - Provide Legal Sufficiency Review (LSR) on ALL **IG investigations**



# Who Should I Call??



# *Authorized areas of legal practice in DON*

## SJA Practice Areas

- Military Justice
- Civil and Administrative Law
- Operational Law
- Legal Assistance
- Ethics Counselor\*
- FOIA and PA\*
- Law pertaining to Cyberspace\*
- Intelligence and National Security Law\*

\* Shared Responsibility

Ref: SECNAVINST 5430.27D

## Counsel Practice Areas

- Acquisition Law
- Business and Commercial Law
- Civilian Personnel and Labor Law
- Ethics Counselor\*
- Environmental Law
- Fiscal Law
- FOIA and PA\*
- Intellectual Property Law
- Intelligence and National Security Law\*
- Law pertaining to Cyberspace\*
- Real and Personal Property Law
- Litigation related to the above

Ref: SECNAVINST 5430.7R and  
SECNAVINST 5430.25E



# *Communication between SJA and CIIG is Critical*

- Consult your SJA after you have reviewed the complaint
  - Authorities
  - Investigative plan
  - Scoping foreseeable command actions
- Consult your SJA to assist with framing/approving allegations
- Consult your SJA after the inquiry/investigation is complete
  - Legal Concurrence
  - Legal Sufficiency Review





# Legal Sufficiency Analysis - CHECKLIST

- ✓ Properly framed allegations using language of the standard
- ✓ Logical & complete findings of fact
- ✓ Proper analysis applying standard (and its elements) to facts
- ✓ Each allegation has its own analysis (1 standard/allegation)
- ✓ Conclusion supported by facts and analysis
- ✓ To be substantiated, an allegation must be legally sufficient by a **preponderance of the evidence**



“No legal objection” does NOT mean legally sufficient.

If not legally sufficient, MUST return to CIG for improvements. Cannot “fix” in LSR.



# *Hotline Completion Report – Endorsement*

- CIGs must review ALL HCRs prior to the Command endorsement.
- Directing Authority
  - Must sign and state concurrence or non-concurrence
  - May direct additional action
  - If non-concur, contact IGMC and if still non-concur
    - Directing Authority must write addendum
    - Must clearly explain rationale
    - Maintained with original HCR



# Records Release

- **Release of IG records**
  - DoDI 7050.01 (Oct 2017) and confidentiality:
    - *“All hotline personnel have a duty to protect from unauthorized disclosure the personal identity of and information provided by individuals participating in a hotline process. Hotline personnel have a duty to maintain confidentiality as they execute DoD Hotline duties and responsibilities.”*
    - Exceptions listed in Paragraph 4.2: consent, emergency, or otherwise unavoidable disclosure, or disclosing to another IG Act covered entity who has a duty to maintain confidentiality.
  - PA and FOIA: redactions → Appropriately redacted IAW FOIA and PA
  - DoD 5400.11-R - Official Need to Know (DoD)
    - May be disclosed to DoD employee or official provided:
      - Has a need for the record in the performance of his/her assigned duties
      - Articulate in sufficient detail why the records are required
      - Intended use generally relates to purpose
      - Only those records that are minimally required to accomplish the intended use
        - May not be entitled to full and unrestricted access
          - Adverse actions and level of redaction
- **Release Authority**
  - Directing Authority



# Questions?

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