

The Well-Intentioned, Zero-Defect Officer Corps



Maj. Robert E. Murdough, U.S. Army

Capt. Jones stares at the email, trying to will her pulse to slow. She knew the moment would come eventually, but that does not make it easier.

This serves as notification that we have initiated an HQDA [Headquarters, Department

of the Army] flag against this officer. DA [Department of the Army] Form 268 is attached. A Promotion Review Board has been initiated. Further guidance will follow.¹

Four years ago, during her second company command, she received a general officer memorandum of

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REPORT TO SUSPEND FAVORABLE PERSONNEL ACTIONS (Flag)

For use of this form, see AR 600-8-2; the proponent agency is DCS, G-1.

| SECTION I - ADMINISTRATIVE DATA | | |
|--|----------------------------|--|
| 1. NAME (Last, First, MI) Jones, Raquel W. | 2. SSN 561-93-7444 | 3. RANK Captain |
| 4. <input checked="" type="checkbox"/> On active duty <input type="checkbox"/> Not on active duty <input type="checkbox"/> On ADT | 5. ETS/ESA/MRD 20220526 | |
| 6. UNIT ASSIGNED AND ARMY COMMAND HHC, 4th Brigade Combat Team FORSCOM | | 7. STATION (Geographical location) Fort Whimble, CA |
| 8. HR OFFICE CONTROLLING FLAGGING ACTION AND TELEPHONE NUMBER S-1, 4th Brigade Combat Team 3566789870 | | |
| 9. THIS ACTION IS TO: <input checked="" type="checkbox"/> Initiate a Flag (Sections II and IV only) <input type="checkbox"/> Remove a Flag (Sections III and IV only) | | |
| SECTION II - INITIATE A FLAG | | |
| 10. <input checked="" type="checkbox"/> A FLAG IS INITIATED, EFFECTIVE 20201031 FOR THE FOLLOWING REASON: | | |
| NON-TRANSFERABLE | | |
| <input type="checkbox"/> Adverse Action (A) | | |
| <input type="checkbox"/> Involuntary Separation - field initiated (B) | | |
| <input type="checkbox"/> Removal from Selection List - field initiated (C) | | |
| TRANSFERABLE | | |
| <input type="checkbox"/> APFT Failure (J) | | |
| <input type="checkbox"/> Army Body Composition Program (K) | | |
| <input type="checkbox"/> Punishment Phase (H) | | |

reprimand (GOMOR) for “failure to treat subordinates with dignity and respect” after she lost her temper with an underperforming soldier. Eighteen months later, she successfully applied to move the GOMOR to the restricted portion of her Army Military Human Resources Record (AMHRR). She subsequently received three “excels” and “most qualified” evaluation reports. But when her promotion board file opened, the reprimand raised a red flag at Human Resources Command (HRC). Now Jones will spend the next twelve months revisiting and appealing this reprimand, unable to move to her next assignment in a permanent change of station with her family, with her career once again in jeopardy over something that happened nearly half a decade prior.

Generally, if an officer receives “derogatory information” (colloquially referred to as “bad paper”) in his or her AMHRR, the officer can expect that HRC will eventually initiate elimination proceedings, which will require him or her to show cause for his or her continued retention on active duty.² Examples of such derogatory information include referred officer evaluation reports, records of nonjudicial punishment under Uniform Code of Military Justice Article 15, and GOMORs.³ Nearly every commander understands that filing derogatory information in an officer’s AMHRR vice a local personnel record will significantly constrain that officer’s career

and present him or her with a steep challenge to overcome. The Army selects commanders carefully, in part due to the considerable authority associated with command that requires careful discretion, consideration, and judgment. Yet, the Army aggressively undercuts this command prerogative *and* the possibility of redemption with the proliferation of additional requirements, records, and reviews.

Multiple well-intentioned Army policies combine to create a

leadership climate as detrimental as it is underappreciated. Army command policy is rife with vague, hortatory expectations that carry material consequences despite its inherently subjective application. The proliferation and overuse of centralized records systems perpetuate and enlarge these consequences. These regulations combine to produce a compliance-focused environment that favors a zero-defect, risk averse officer corps in ways that are contrary to the Army’s interests.⁴

Broad, Subjective, and Retrospective Policies Do Not Lend Themselves to Clear, Consistently Enforceable Standards

Army Regulation (AR) 600-20, *Army Command Policy*, includes broad policies concerning equal opportunity (EO), sexual harassment, and other discriminatory harassment.⁵ Subjective and sometimes retrospective prescriptions characterize each of the policies. For example, conduct can be sexual harassment if it “has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment [emphasis added by author].”⁶ The Harassment Prevention and Response Program sternly prohibits hazing, bullying, discriminatory harassment, and online misconduct, but also makes punishable “other misconduct” even if it “may not meet the definitions ... for hazing and bullying, yet may violate the dignity and respect of others.”⁷ These policies are by themselves well intentioned and fundamentally benign; treating others fairly is a necessary and uncontroversial component of leadership. Yet, a leader who contravenes any of these policies in the slightest way can face devastating consequences regardless of the severity of his or her infraction.

Problems originate with investigation and enforcement. Commanders must investigate formal complaints under the provisions of AR 15-6, *Procedures for Administrative Investigations and Boards of Officers*.⁸ Typically, a single investigating officer (IO) conducts an administrative investigation.⁹ To determine whether the allegation is substantiated, the finding must be “supported by a greater weight of evidence than supports a contrary conclusion,” also known as the “preponderance of evidence” standard.¹⁰

In practice, a single IO must navigate the myriad of adjectives and conjunctions in the various policies to determine whether or not a person’s behavior, even if unintentionally, “violated dignity and respect” or “had

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the effect of creating an offensive working environment.” The harassment prevention and response policy presents a particular challenge because it specifically prohibits hazing, bullying, and discriminatory conduct, further defining each of those terms. It then also purports to make punishable “other misconduct” that does not meet any of those definitions yet might still “violate the dignity

commander is prevented from using counseling and training to rehabilitate the officer without throwing his or her career into jeopardy. Yet these mandatory consequences only occur if there is an investigation. If the complainant files an informal complaint, the command may be able to resolve the complaint without the need to resort to an investigation.¹⁵ A formal complaint for an

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and respect of others.”¹¹ This expansion indicates that there is at least some category of “other misconduct” behavior that might be a punitive regulatory violation. The regulation makes no attempt to clarify where the division lies. In the end, the IO is compelled to label the allegation “substantiated” or not based largely on his or her subjective assessment of the case.¹²

Mandatory Adverse Actions Deprive Commanders of their Ability to Assess, Lead, and Develop

Shoehorning broad, qualified, and retrospective standards into a binary substantiated/unsubstantiated framework is problematic enough but largely harmless. The real harm lies in the manner in which the Army uses the results of administrative investigations. Per Army policy, administrative measures such as counseling, corrective training and instruction, and administrative reprimands “are primarily tools for teaching proper standards of conduct and performance and do not constitute punishment.”¹³ A commander can use mistakes and failures as opportunities to grow and develop; she or he could also choose to impose consequences that, while serious, do not effectively terminate a soldier’s service. This discretionary authority is an integral part of command.

However, any “substantiated EO complaint” or “any substantiated finding substantiated findings of sexual harassment” mandates adverse comments on the subject’s officer evaluation report.¹⁴ Thus, regardless of how minor the behavior or how unintentional its effect, the

identical incident will produce an investigation report and an entry into a central system of records, with all of the cascading effects that follow.¹⁶ In other words, the complainant’s selected forum, rather than the substance of the complaint, dictates whether the commander may resolve the issue at the lowest practicable level (the Army’s preference) without triggering Army-level processes, including the mandatory adverse evaluation comments mentioned above.

The Expanding Use of Centralized Systems of Record Completes the Zero-Defect System

In 2017, the inspector general (IG) of the Army realized a similar discrepancy existed with regard to inspector general complaints. If a soldier brought his or her complaint to the chain of command, the command could resolve it appropriately. If the soldier brought the same complaint to the local IG, substantiated allegations would be recorded in the Inspector General Action Request System.¹⁷ Thus, though the command did not believe the incident warranted creation of a centrally stored record, the IG system would still create one that could have a deleterious effect on an officer’s career for years. The inspector general realized that this created a disparate effect based solely on the complainant’s choice of forum.¹⁸ Therefore, Army Directive (AD) 2018-1, *Inspector General Investigations*, ended the practice of labeling IG complaints as “substantiated” or “unsubstantiated” following a command investigation.¹⁹

This directive revising the IG policy runs contrary to the current trend toward overusing centralized record systems. Before 2020, the Army did not require commands to enter informal complaints into a central database.²⁰ But the most recent revision of AR 600-20 now requires all informal harassment complaints be logged in the Military Equal Opportunity (MEO) database for fifteen years.²¹ The Army continues to proliferate centralized systems of records, even beyond the policies of AR 600-20 to include virtually any allegation substantiated by the “more likely than not” standard typical of adverse administrative actions. Substantiated IG complaints are one example of records that can impact an officer’s career through the opaque practice of “post-board screening.”

Per AD 2016-26, *Screening Requirements for Adverse and Reportable Information for Promotion and Federal Recognition to Colonel and Below*, all officers recommended for promotion are subject to a review of records maintained by the Criminal Investigation Division, IG records, and the restricted portion of the AMHRR.²² The Military Equal Opportunity database is not yet part of that list, yet it is highly plausible the Army would begin reviewing these records as well. Adverse information in any of these systems can trigger a promotion review board, which in turn can lead to the elimination process.²³

As a consequence of AD 2016-26, any “founded” Criminal Investigation Division investigation can trigger a promotion review, regardless of whether the subject is



later exonerated, or authorities take no further action. The standard for a “founded” investigation is probable cause, an even lower standard than preponderance of evidence, and this determination is virtually impossible to rebut or appeal.²⁴ Moreover, AD 2016-26 erases the protections of the restricted portion of the AMHRR. Officers who receive a GOMOR or a record of nonjudicial punishment filed in their AMHRR may have the record moved to the restricted portion of their AMHRR if they later demonstrate that the document has “served [its] intended purpose.”²⁵ By using information from the restricted portion as a basis to deny promotion, the Army vitiates officers’ successful rehabilitation, which is a specific purpose of administrative reprimands and nonjudicial punishment.

Exacerbating the problem, in 2015 the Army created the Adverse Information Pilot Program to identify “credible information of an adverse nature documented in command directed investigations or inquiries related to field-grade officers [and to] centrally maintain summaries of this information.”²⁶ Thus, the Army created another centralized system of records for *any* adverse finding of an investigation, specifically when the local commander’s action does not otherwise create a permanent record (e.g., a simple counseling statement). Originally, this system was to be used only when considering officers to be promoted to general officer ranks. But in 2019, Congress required the secretary of defense to furnish “any credible information of an



adverse nature, to include any substantiated adverse finding or conclusion from an officially documented investigation or inquiry” to all selection boards considering officers for promotion to any rank above captain.²⁷ Congress added another requirement in 2021; even if a promotion selection board recommends an officer for promotion despite his or her adverse information, that officer must now be subject to another, Congressionally-required “special selection review board.”²⁸ No matter how minor, every adverse finding in any form of inquiry or investigation is now likely to be career-ending.

Concomitantly, AR 600-8-2, *Suspension of Favorable Personnel Actions*, adds further professional and personal harm. An officer under investigation, pending adjudication of a reprimand or nonjudicial punishment, awaiting a promotion review board, or subject to the elimination process is “flagged.” Flagging prevents, among other things, promotion and reassignment for the duration of the pending action.²⁹ In some cases, this takes months—for example, upon receiving a referred case, a promotion review board has 120 days to convene and then 180 days to notify the officer of the result.³⁰

These systems and policies create a severe aggregate effect. An officer who makes an unintentionally offensive comment can find himself or herself the subject of an adverse investigation, an unfavorable referred evaluation, and multiple review boards over the course of several years. Processes build upon each other, all originating with the complainant’s choice of forum and a subjective interpretation of certain adjectives within AR 600-20, even if that officer’s commander (or for that matter the complainant) does not believe the incident should be career ending. Years after successfully overcoming a misstep, an officer expecting to relocate to a new assignment can find himself or herself suddenly subject to an obscure, months-long review process, upending arrangements for housing, schooling, and spouse employment. Even a favorable outcome leaves irreparable personal and professional damage. The Army remains largely indifferent to these combined collateral effects of independently well-intentioned policies.

Besides the ruinous impacts to individuals, these practices injure the Army itself. When the slightest lapse

in behavior can irrevocably mar an officer’s career, a climate of compliance forms wherein leaders care foremost about avoiding anything that might be perceived as improper rather than accomplishing the mission and improving their organization.³¹ When the very possibility of an investigation is intimidating, leaders may hesitate to lead out of fear that disgruntled soldiers will weaponize one of the various complaint systems against them. This perception of a zero-defect climate depletes initiative, builds resentment, and fosters risk aversion in ways the Army has not adequately examined.³²

Furthermore, the proliferation of centrally managed systems of records undercuts commanders’ authority. In the right situations, the best commanders treat failures as learning opportunities; this can apply to ethical and moral behavior as well as tactical and technical performance. The Army trusts senior commanders to steward the profession and should allow them the flexibility to determine the appropriate sanction for malfeasance without repeatedly second-guessing that determination for years.³³ Conversely, some commanders may realize they effectively have no corrective options short of shattering an officer’s career and, therefore, adjust the findings of investigations to avoid having to take such an action.³⁴ Commanders may also eschew investigations altogether, which inhibits an accurate ascertainment of the facts. These decisions tacitly condone the potential misbehavior, creating a separate problem.

Conclusion: Adjust the Climate by Adjusting the Policies

Adjusting the zero-defect climate need not give cover to leaders who treat subordinates harshly under the guise of “getting the job done.” Nor should it mean that the Army must accept crass behavior. But, the Army can improve the culture without excommunicating every officer who falls short of the highest aspirational standards. The integration of current regulations creates a zero-defect climate where the most significant expectation of officers is “don’t get in trouble.” This fosters mediocrity, not excellence. Eliminating mandatory adverse evaluations, curtailing post-board screening, and restoring the protections of the restricted portion of the AMHRR would be simple yet significant steps toward balancing the culture of the Army. More broadly, the Army should reverse the trend toward using centralized systems of records for purposes for which they

Previous page: Graphic elements courtesy of GarryKillian/Freepik, www.freepik.com and www.all-silhouettes.com. Composite graphic by Arin Burgess, Army University Press.

were not intended. Doing so will enhance commanders' authority and by extension the strength of their

commands. It will also produce a more proactive, resilient, and committed officer corps. ■

Notes

1. This scenario is fictitious; however, the example is generally based on the author's experience as a military attorney representing Army officers who faced the situations described throughout this article.

2. Army Regulation (AR) 600-8-24, *Officer Transfers and Discharges* (Washington, DC: U.S. Government Publishing Office [GPO], 2020), para. 4-2.

3. AR 600-37, *Unfavorable Information* (Washington, DC: U.S. GPO, 2020), para. 3-5. Although many officials can issue an administrative reprimand, only a general officer can direct a reprimand be filed in the Army Military Human Resources Record.

4. This article focuses on officers; however, the issues described herein present analogous problems for senior noncommissioned officers.

5. AR 600-20, *Army Command Policy* (Washington, DC: U.S. GPO, 2020). Chapter 6 outlines the Army Equal Opportunity Program, chapter 7 addresses sexual harassment, and paragraph 4-19 establishes policy on treatment of persons, including hazing and bullying.

6. *Ibid.*, para. 7-7.a.(1)(c). The regulation does not further define "unreasonable interference," or what constitutes an "intimidating, hostile, or offensive working environment."

7. *Ibid.*, para. 4-19.a.(4).

8. *Ibid.*, para. 6-6.b.(4)(b) and 7-8.n.(9). Commanders may choose to investigate the allegations personally. Commanders must report criminal allegations to military law enforcement.

9. AR 15-6, *Procedures for Administrative Investigations and Boards of Officers* (Washington, DC: U.S. GPO, 2016). Depending on their complexity, some investigations may employ assistant investigating officers.

10. *Ibid.*, para. 3-10.b.

11. AR 600-20, *Army Command Policy*, para. 4-19.a.(1)-(4).

12. *Ibid.*

13. AR 27-10, *Military Justice* (Washington, DC: U.S. GPO, 2016).

14. AR 623-3, *Evaluation Reporting System* (Washington, DC: U.S. GPO, 2019), para. 3-26.b.

15. AR 600-20, *Army Command Policy*, para. 6-6.b.(2).

16. *Ibid.*, para. 6-6.g.

17. AR 20-1, *Inspector General Activities and Procedures* (Washington, DC: U.S. Government Printing Office, 2010 [obsolete]), superseded by AR 20-1, *Inspector General Activities and Procedures* (Washington, DC: U.S. GPO, 23 March 2020).

18. Leslie C. Smith and Christopher Gilpin, "Address to the Command and General Staff Officer's Course Class of 2020" (Army Command and General Staff School, Fort Leavenworth, KS, 22 October 2019).

19. Army Directive (AD) 2018-1, *Inspector General Investigations* (Washington, DC: Secretary of the Army, 2018). For most complaints, the inspector general's preference is to refer the allegation to the command for investigation and resolution, rather than directly investigate. Inspectors general will still record

allegations as "substantiated" or "unsubstantiated" if an inspector general directly investigates the complaint.

20. AR 600-20, *Army Command Policy* (Washington, DC: U.S. Government Printing Office, 2014 [obsolete]), para. C-1.a.

21. AR 600-20, *Army Command Policy*, para. 6-6.b.(2)(h).

22. AR 600-8-29, *Officer Promotions* (Washington, DC: U.S. GPO, 2020), para. 2-6.b.

23. AD 2016-26, *Screening Requirements for Adverse and Reportable Information for Promotion and Federal Recognition to Colonel and Below* (Washington, DC: Secretary of the Army, 2016). For policy governing promotion review boards, see AR 600-8-29, *Officer Promotions*, chap. 7.

24. AR 190-45, *Law Enforcement Reporting* (Washington, DC: U.S. GPO, 2016), 105. "Determination that an offense is founded is a law enforcement decision based on probable cause supported by corroborating evidence and is not dependent on final adjudication."

25. AR 600-37, *Unfavorable Information*, para. 6-3.a.(5).

26. John M. McHugh, Memorandum for Principal Officials of Headquarters, Department of the Army, "Pilot Program for Providing Adverse Information for Brigadier General and Major General Promotion Selection Boards," 21 July 2015.

27. Public Law 116-92, National Defense Authorization Act for Fiscal Year 2020, § 502 (Dec. 20, 2019), codified at Title 10, U.S. Code, § 615(a)(3).

28. Public Law 116-283, National Defense Authorization Act for Fiscal Year 2021, § 505 (Jan. 1, 2021), codified at Title 10, U.S. Code, § 628a.

29. AR 600-8-2, *Suspension of Favorable Personnel Actions (Flag)* (Washington, DC: U.S. GPO, 2016).

30. AR 600-8-29, *Officer Promotions*, para. 8-4 and 8-9.

31. Jennifer G. H. Cox, "Proposing a New Strategy for Army Ethics Training," *Military Law Review* 224, no. 2 (2016): 561.

32. Army Doctrine Reference Publication 6-22, *Army Leadership* (Washington, DC: U.S. Government Printing Office, 2012 [obsolete]), para. 6-6, cited in Cox, "Proposing a New Strategy for Army Ethics Training," 568nn201-2, accessed 21 October 2020, https://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/224-issue2-2016.pdf. "Overemphasis on compliance decreases individual motivation and inclination to creatively tackle problems, and may impair the operational adaptability of the individual and the overall morale of the unit."

33. The disposition authority for officer and senior noncommissioned officer misconduct resides at the general officer command level in practically every Army organization and installation. General officers carefully selected for positions as commanding generals, with decades of education, training, and experience, should be more than capable of selecting a disposition for a particular case that serves the best interests of the Army.

34. AR 15-6, *Procedures for Administrative Investigations and Boards of Officers*, permits commanders to disapprove of or modify findings of administrative investigations, with certain limits.