Can the Defense Conduct Its Own Investigation After the Government Investigation Is Finished

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Executive Summary

Many service members, families, and even some attorneys mistakenly believe that once the government completes its investigation, the opportunity to develop new evidence has ended. In reality, the conclusion of the government's investigation is often the beginning of the defense's independent search for the truth. This Authority Paper explains why an independent defense investigation remains valuable throughout every stage of a case, what can still be accomplished after the government has finished its work, and how continued fact development can help attorneys make informed strategic decisions on behalf of their clients. The search for the truth does not end simply because the government says its investigation is complete.

Why This Article Exists

Government investigators and defense investigators have different responsibilities, different objectives, and often ask different questions. A government investigation is designed to determine whether sufficient evidence exists to support administrative action or criminal charges. An independent defense investigation focuses on identifying additional facts, locating overlooked witnesses, preserving evidence, testing assumptions, and providing defense counsel with the most complete factual picture possible.

Even after charges have been preferred—or the government's investigation has officially closed—important evidence may still be discovered. Witnesses may provide additional information, digital evidence may reveal previously unknown facts, timelines may expose inconsistencies, and investigative assumptions may prove incomplete or incorrect. Many significant developments occur because someone was willing to ask one more question, review one more document, or follow one additional lead.

The Fundamental Difference

Government investigators perform an essential role, but the completion of their investigation does not mean every relevant fact has been identified. Their mission, priorities, available resources, and deadlines may differ from the defense's objectives. An independent defense investigation asks whether there is additional information that should be developed before legal decisions are made.

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From the Investigator's Desk

One lesson has remained constant throughout my career: the first investigative report rarely tells the entire story. As timelines are verified, witnesses are re-interviewed, and digital evidence is examined, the factual picture often becomes more complete.=

Investigator's Insight

From an investigative standpoint, statements made early in a case frequently become important evidence. Before making significant decisions about speaking with investigators, discuss the matter with your attorney so you understand the legal implications. This is practical investigative guidance—not legal advice.

What Can Still Be Investigated?

Even after charges are preferred or the government investigation is complete, a defense investigator may:

- Locate previously unidentified witnesses.
- Re-interview witnesses to clarify or expand earlier statements.
- Preserve digital evidence before it disappears.
- Review text messages, photographs, videos, emails, and social media.
- Analyze timelines for inconsistencies or omissions.
- Visit and document relevant locations.
- Review government reports for factual errors, omissions, or unanswered questions.
- Obtain records that may not have been collected previously.

Why Timing Still Matters

Although a defense investigation can begin later in a case, delays make fact development more difficult. Witnesses relocate, memories fade, digital evidence may be overwritten, and physical conditions change. Beginning as early as practical improves the opportunity to preserve relevant evidence.

Working With Defense Counsel

The attorney determines legal strategy. The investigator develops facts that help counsel evaluate options, test assumptions, and prepare the strongest possible defense. Throughout the case, the investigator keeps counsel informed of significant factual developments.

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Bottom Line

The conclusion of the government's investigation is not necessarily the conclusion of the search for facts. An independent defense investigation exists to determine whether additional reliable information can help the defense better understand the case and make informed legal decisions

Important Information

The information in this publication is educational and reflects the perspective of an independent defense investigator. It is not legal advice. Legal decisions should always be made in consultation with qualified legal counsel. Independent investigative services complement, but do not replace, the advice and representation of an attorney.

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