

**Department of the Army  
Pamphlet 27-17**

**Military Justice Handbook**

**Procedural Guide For Article 32(b)  
Investigating Officer**

**HEADQUARTERS  
DEPARTMENT OF THE ARMY  
15 March 1985**

Military Justice Handbook

**Procedural Guide for Article 32(b) Investigating Officer**

**Applicability.** This pamphlet applies to the Active Army, the Army National Guard (ARNG), and the US Army Reserve (USAR).

**Impact on New Manning System.** This pamphlet does not contain information that affects the New Manning System.

**Interim changes.** Interim changes to this pamphlet are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

**Suggested improvements.** The proponent agency of this pamphlet is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and

Blank Forms) directly to The Judge Advocate General's School, Army, ATTN: JAGS-ADC, Charlottesville, VA 22903-1781.

**Distribution restriction.** This publication contains technical or operational information that is for official US Government use only. Distribution is limited to US Government agencies. Requests from outside the US Government for release of this publication under the Freedom of Information Act or the Foreign Military Sales Program must be made to HQDA (DAAG-PAP), ALEX VA 22331-0302.

The term "he" (and its derivatives) used in this text is generic and except where otherwise indicated should be applied to both male and female.

**Contents**

	Paragraph	Page		Paragraph	Page
<b>Chapter 1</b>					
<b>Introduction</b>			Procedures for taking testimony and examining evidence . . . . .	3-3	3-1
Purpose and Scope . . . . .	1-1	1-1			
General instructions . . . . .	1-2	1-1			
<b>Chapter 2</b>			<b>Chapter 4</b>		
<b>Preparing for the Investigation</b>			<b>Completion of the Investigating Officer's Report</b>		
General considerations . . . . .	2-1	2-1	General . . . . .	4-1	4-1
Sequence of preparation . . . . .	2-2	2-1	Considering the evidence and making a recommendation . . . . .	4-2	4-1
Informing the accused of the investigation and the right to counsel . . . . .	2-3	2-3	Forwarding the reports . . . . .	4-3	4-1
Consultation with counsel for the accused . . . . .	2-4	2-3	<b>Appendixes</b>		
Securing the attendance of witnesses . . . . .	2-5	2-4	<b>A. Preliminary Advice to Accused . . . . .</b>		A-1
<b>Chapter 3</b>			<b>B. Notification to Accused . . . . .</b>		B-1
<b>The Formal Investigation</b>			<b>C. Arrangement of Room for Investigation . . . . .</b>		C-1
General . . . . .	3-1	3-1	<b>D. Procedure for Opening Session . . . . .</b>		D-1
Procedure for opening session . . . . .	3-2	3-1	<b>E. Oaths . . . . .</b>		E-1
			<b>F. Examination of Witnesses . . . . .</b>		F-1
			<b>G. Examination of Evidence . . . . .</b>		G-1
			<b>H. Report of Investigation . . . . .</b>		H-1

\*This pamphlet supersedes DA Pam 27-17, 15 May 1980.

## Chapter 1 Introduction

### 1-1. Purpose and scope.

This guide is published for use by officers who have been appointed as investigating officers under Article 32(b) of the Uniform Code of Military Justice (UCMJ). This guide should be used in conjunction with the Investigating Officer's Report (DD Form 457) and the applicable Rules for Courts-Martial (R.C.M.) in the Manual for Courts-Martial, United States, 1984 [hereafter referred to as MCM, 1984]. The investigating officer's functions are:

- (1) To make a *thorough and impartial* investigation into the truth of the allegations;
- (2) To consider the correctness and the form of the charges; and
- (3) To make recommendations as to the disposition of the charges in the interest of justice and discipline.

### 1-2. General instructions

*a. Duties of investigating officer.* Just as the assignment of an officer to be a court-martial member takes precedence over other military duties, your assignment as an Article 32(b) investigating officer must take priority over other duties. As an officer detailed to conduct an important investigation, you will actually be performing a *judicial* function. In preparation for a complete examination of the case presented to you, your initial responsibility is to become thoroughly familiar with the contents of this guide, R.C.M. 405, and Article 32, UCMJ. Your two most important and legally vital responsibilities are:

- (1) Thoroughly investigate all charges and specifications alleged in the charge sheet(s),
- (2) Complete this investigation impartially.

*b. Legal advice for investigating officer.* Upon your initial appointment, and throughout the investigation, you will have occasion to seek legal advice from the office of the judge advocate serving the command of the officer directing the investigation. It is imperative that this advice come from a judge advocate who has no direct interest in the outcome of the proceedings. Normally, such a judge advocate officer will be designated, in writing or otherwise, to assist you in your role as investigating officer. The conclusions to be drawn from the evidence in the case and the recommendations concerning the disposition of the case are matters solely within your judgment and are your responsibility. The law requires these matters be determined by you without reliance upon the opinions or recommendations of any other person. You must scrupulously avoid inquiries of or discussions with the judge advocate officers who might be perceived as lacking impartiality in the case. Such discussions often are perceived as giving the appearance of partiality toward either side regardless of the motivation or real interest of the investigating officer. Restricting your preliminary discussion of the case to the designated legal advisor will ensure the integrity of your judicial role and maintain the impartiality demanded by law.

*c. Legal representation for the accused.* The accused may be represented during the investigation proceedings by a civilian lawyer provided at no expense to the United States, by military counsel of the accused's selection if reasonably available, or by military counsel certified under Article 27b and detailed for that purpose by competent authority. Counsel representing the accused will be allowed to present evidence on behalf of the accused, cross-examine witnesses for the Government, and otherwise perform the normal functions of counsel. Whenever counsel is requested by the accused, the taking of evidence will be conducted in the presence of that counsel unless expressly excused by the accused. See paragraph 2-3 for a complete explanation of the accused's right to counsel.

*d. Legal counsel for the Government.* Although not required by law, counsel may

also be detailed to represent the Government. Such counsel is not the legal advisor of the investigating officer but instead represents a party to the investigation. Accordingly, you may *not* seek legal advice from counsel representing the Government. Counsel for the Government may present evidence, cross-examine witnesses, and argue for a disposition of the matter appropriate to the interest of the Government. You should recognize that arguments made by counsel for either side are not evidence and should carry no additional weight *merely* because of the side making the argument.

*e. Advice concerning substantive matters.* You should inform counsel for the accused and counsel for the Government, if detailed, of all matters discussed with your legal advisor in your initial briefing. If you later seek additional advice from your legal advisor, you must give prior notice to counsel for the accused and to counsel for the Government, if any, and you must provide these parties with an opportunity to respond to the advice you received. If practical you may give counsel for both sides advance notice of your intent to seek legal advice and may give them an opportunity to be present. As a general rule, you should keep a record of the dates of consultation with your legal advisor, the matters discussed, when parties were notified of such discussions, whether counsel for the parties were present at such discussions, and any response by counsel to your legal advisor's advice.

## Chapter 2

### Preparing for the Investigation

#### 2-1. General considerations

The file will normally include five copies of the charge sheet; civilian or military police reports; statements of witnesses or summaries thereof; documentary evidence, such as extract copies of SIDPERS documents in cases involving unauthorized absence; and the record of previous convictions, if any. If these documents are not in the file, you should request them immediately from the appropriate agencies. The file may also include a letter of instruction from the officer who appointed you and directions to report to the office of the local judge advocate for a briefing by the judge advocate legal advisor designated to assist you.

The Article 32 investigation is a judicial proceeding and plays a necessary role in military due process of law. The investigation is subject to subsequent review at the trial, if there is a trial, or on appeal. The ultimate outcome of the case may well depend upon whether you properly performed your duties in making certain that the accused was fully informed of and afforded all applicable rights in connection with the investigation.

It is important to conduct the investigation expeditiously. Usually, the officer appointing the investigating officer will set a date for completion of the report. If you cannot comply with that date, report this fact in writing to the authority who directed the investigation and explain the cause of the delay in detail. Such delay on your part could result in a gross injustice to the accused and in dismissal of the charges. On the other hand, you must take the time necessary for a thorough investigation. Requests for delay by the accused should normally be in writing and attached to the report of investigation. Any reasonable request for delay by the accused should be granted. You should complete a chronology sheet documenting the dates of all your actions in conducting the investigation, and the reasons for any delays in the investigation, and you should attach the chronology sheet to your report (see R.C.M. 405(j)(2)(F)).

#### 2-2. Sequence of preparation

After receipt of the case file, you should read Article 32, UCMJ, R.C.M. 405, and this guide, then study the file and take action in the sequence indicated below.

*a. Consult with the judge advocate legal advisor.* You should report to the designated legal advisor for an initial briefing on your duties. You may consult with this judge advocate officer as often as necessary during the course of your investigation for advice and assistance. Keep in mind that although you may feel that the judge advocate designated as trial counsel to represent the Government is more familiar with your case than the legal advisor, your impartial role requires avoiding any discussions with legal personnel performing adversarial roles in the case. As explained in paragraph 1-2*b*, you should inform counsel for the accused and counsel for the Government of all substantive matters discussed with the legal advisor, give them advance notice of such discussions when practicable, and keep a record of all such discussions.

*b. Examine the file.*

(1) Examine the charge sheet and all accompanying papers.

(2) Ascertain whether the charges were sworn before a commissioned officer who is authorized to administer oaths (Article 136, UCMJ, R.C.M. 307). If they were not, confer with the accuser to determine whether he or she desires to swear to the charges. You should not, however, administer the oath for this purpose. If the accuser does not want to swear to the charges, or if it is impracticable to do so without unnecessary delay, you should consult with the officer who appointed you for guidance in the matter and should proceed with the investigation only if directed.

*c. Determine whether there are any reasons which would prevent you from con-*

*ducting a fair and impartial investigation.* If there are any reasons which would prevent you from conducting a fair and impartial investigation, you should notify the officer who appointed you of this fact. Prior knowledge about the case should not disqualify you from acting as the investigating officer, so long as you have not drawn conclusions about the guilt of the accused and have not assisted in perfecting a case against the accused.

*d. Determine the applicable law.*

(1) You should be familiar with the elements (essential facts) of the offense(s) charged. You should read the discussion of the offense or offenses in MCM, 1984, Part IV. In addition you should consult DA Pam 27-9 (Military Judges' Benchbook). If the offense is charged as a violation of Article 134, UCMJ, and no discussion of the *specific* elements appears in the Manual or DA Pam 27-9, the elements of the offense can be identified by separating the specification into its essential, component allegations. Each of these allegations is an element of the offense. For example, if the offense charged is carrying a concealed weapon, the offense will be charged in substantially the following language:

In that Private John Doe, U.S. Army, Company A, \_\_\_\_\_, did, at Fort \_\_\_\_\_, an installation under exclusive military control, on or about 12 September 19\_\_\_\_, unlawfully carry on or about his/her person a concealed weapon, to wit: a \_\_\_\_\_.

The elements of this offense are:

- (a) At the time and place alleged the accused carried the specified weapon on or about his/her person;
- (b) That the carrying was unlawful;
- (c) That the weapon was a dangerous weapon;
- (d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) You should insure that each specification actually alleges an offense (see R.D.M. 307(c)) and that each offense is charged as a violation of the proper Article of the UCMJ. If you conclude that the wording of a specification departs so materially from an applicable form specification (see Punitive Articles in MCM, 1984, Part III) that no offense is alleged or the specification is ambiguous, you should return the file to the officer who appointed you, stating your reasons for returning it.

(3) If the accused is charged with a failure to obey a regulation or written order and a copy of the directive is not in the file, you should obtain copies of the directive for the report and familiarize yourself with its provisions.

*e. Determine what evidence to examine.* You must determine what evidence, including documents or physical objects, should be examined and whether such evidence is reasonably available for production at the formal investigation (see R.C.M. 405(g)). You may, in some circumstances, decide to consider alternatives to examining the actual physical evidence, such as testimony describing it or photographs depicting it (see R.C.M. 405(g)(5)). You should review R.C.M. 405(g), particularly subsections (1), (2), and (5), to determine when evidence is reasonably available and when alternatives to the original items of evidence may be considered. If there are copies of documents in the file which you decide to consider because the originals are not reasonably available, you should insure that those copies are properly authenticated (see R.C.M. 405(g)). You should assign identifying numbers to all documentary evidence and any physical objects in order that they may be accurately referred to when you complete the investigating officer's report (see chap 4 and app H). If familiarity with the scene of the alleged offense would assist you in gaining a more accurate picture of the case, you may visit the scene. If you do visit the scene, you should inform all parties in advance when practicable and give them an opportunity to accompany you; otherwise, inform them afterward that you have visited the scene.

*f. Determine what witnesses to call.* In preparing for the formal investigation, you may communicate by telephone or otherwise with prospective witnesses to determine the extent of their knowledge concerning the case, whether you will interview them as witnesses, whether they are in possession of relevant documentary evidence or physical objects which should be produced at the investigation, or whether they are aware of other witnesses or evidence that should be examined during the investigation. As investigating officer you *must not*, however, consider such informal communications as evidence in the case or use them in making your recommendations in the case.

Once you decide which witnesses to call in your formal investigation, you must determine whether each witness is reasonably available. That determination requires you to balance the significance of the expected testimony and personal appearance of the witness against the difficulty, expense, delay, and effect on military operations of obtaining the witness' presence at the investigation (see R.C.M. 405(g)(1)). Regarding military witnesses, if you determine that a witness is reasonably available, the witness' immediate commander may make a contrary determination and decline to make the witness available (see R.C.M. 405(g)(2)). If this occurs you should obtain the commander's reasons for the determination of nonavailability and include this information in your report. You should review R.C.M. 405(g), particularly subsections (1)–(4), before deciding what witnesses to call and when alternatives to live testimony by witnesses may be considered.

*g. Arranging for place for investigation.* You should contact the officer who appointed you to secure a place for conducting the investigation and such clerical assistance as can be provided.

### **2-3. Informing the accused of the investigation and the right to counsel**

You should arrange (through the accused's commanding officer, if the accused is not in pretrial confinement, or the confinement officer, if the accused is in pretrial confinement) to meet with the accused for the purpose of giving him preliminary advice and information concerning the investigation (see app A). The accused *may* also be notified of the investigation and the right to counsel in writing. If the accused is already represented by counsel, the written notice, if any, should be sent to the counsel. Otherwise, you should personally deliver the notice to the accused, read its contents, explain it, and answer any questions. If the accused can reach a decision concerning representation by counsel at that time, or if the accused desires to request specific witnesses for the investigation, his or her answer should be obtained in the form of an indorsement to the letter. A sample notification and indorsement is contained in app B. At this first meeting with the accused, you should introduce yourself, explain that you have been detailed as investigating officer, and explain the purposes of the investigation, in accordance with appendix A. *Any attempt by the accused to discuss the facts of the case with you at this time should be discouraged.*

### **2-4. Consultation with counsel for the accused**

*a. General.* If the accused requests representation by counsel, the request must be promptly reported to the officer who ordered the investigation. You should request that officer to notify you as soon as possible as to the identity and address or military organization of counsel who is to represent the accused. When you receive this information, contact the accused's counsel for the purpose of delivering a complete copy of the file. At this time advise counsel of the proposed date, time, and place of the investigation and allow counsel reasonable time for preparation of the case. If counsel requests additional time for preparation, such request should be in writing and directed to you, the investigating officer. You should grant reasonable requests for delay.

*b. Availability of witnesses for the accused.* You must carefully consider defense requests for production of essential witnesses to testify at the pretrial investigation. The typical issue for your decision is the "availability" or "unavailability" of a wit-

ness who is not located at the site of the hearing. Typically, the defense either wishes to call the requested witness to support its own defense, or to cross-examine a potential prosecution witness who is not expected to appear for the hearing. Any witness whose testimony is relevant to the investigation and not cumulative should normally be produced if reasonably available. As explained in paragraph 2-2f, your determination of reasonable availability requires you to balance the significance of a witness' expected testimony against other factors, including the difficulty of obtaining the witness' presence and the effect on military operations of doing so. If the defense counsel has no objection, you may consider various alternatives to live testimony by available witnesses, such as sworn statements (see R.C.M. 405(g)(4)(A)). If a witness is not reasonably available, you may consider various alternatives to testimony, such as sworn written statements, statements under oath taken by telephone, or depositions, even though the defense objects (see R.C.M. 405(g)(4)(B)). If the defense objects to a determination that witness is not reasonably available, you must include the reasons for your determination in the report of investigation (see R.C.M. 405(g)(2)(D)).

You should attempt to secure from counsel for the accused a list of any witnesses desired by the accused sufficiently in advance of the formal investigation to allow time for securing their attendance. This will help insure orderly and expeditious procedure in the opening session. If the accused desires to have witnesses called or to have certain documents or records obtained, you should arrange, if possible, to have the witnesses present and the documents or records produced at this first session. If this is not possible, then arrangements should be made for their appearance and production at the time and place set for the next session of the investigation.

In the event you are unable to arrange for the attendance of civilian witnesses or the production of certain documents requested by the accused by the date originally planned to call the next session of the investigation, you should set a date for further hearing to permit the attendance of the witnesses and the production of the documents. You need not delay proceeding with the initial session of the investigation until you have arranged for the production of *all* the witnesses or other evidence requested by the accused. Sound discretion on your part is essential. For example, if all witnesses requested by the accused are readily available but certain requested documentary evidence will not be available until several days later, there may be no objection to proceeding with the investigation. Keep in mind that the thoroughness of the investigation is not dependent upon having all of the evidence available at the same time, but only upon the ultimate examination of all of the witnesses and evidence in a manner which is as orderly as possible. If, however, you must temporarily postpone the investigation in order to arrange for the attendance of witnesses, you should inform the accused and the potential witnesses of the date and place set for future proceedings and arrange for their attendance.

## **2-5. Securing the attendance of witnesses**

*a. Military witnesses and Government employee witnesses.* Military witnesses may be ordered to appear at the investigation. If there is a question as to the availability of a witness, you make the initial decision whether the witness is reasonably available. If you decide that the witness is reasonably available, request the witness' immediate commander to make the witness available. If that commander decides that the witness is not reasonably available and cannot be persuaded to reconsider that decision, you must abide by the decision and consider alternatives to live testimony by the witness. The supervisors of civilian employees of the Government should be requested to arrange for their attendance.

*b. Civilian witnesses not employed by the Government.* Generally, non-Government civilian witnesses may not be compelled by the investigating officer to attend the pretrial investigation and testify. With advance approval by the general court-martial convening authority, however, you may arrange for the issuance of invitational travel orders authorizing a mileage advance for transportation to the hearing

of an essential non-Government civilian witness who is willing to appear voluntarily (see AR 27-10, para 2-39, and AR 37-106, chap 13, sec III). In the alternative, you may arrange transportation for yourself, the accused, and counsel, if any, to a place convenient to the civilian witness. In cases where you determine that the testimony of a reluctant civilian witness is essential and necessary for a proper disposition of the case, you should request the appropriate staff judge advocate to assist in obtaining the witness' attendance.

*c. Arranging for documentary evidence.* You should make every effort to insure that witnesses in possession of essential documentary and real evidence are present at the investigation. Examine but do not take real evidence into your possession, as such a procedure might produce additional problems regarding admissibility of such evidence at a later trial.

## Chapter 3

### The Formal Investigation

#### 3-1. General

Whenever practicable, the hearing room should be arranged so that the witness chair faces both yourself and the accused (see app C). The formal taking of evidence in the investigation and the actual interrogation of witnesses and examination of real evidence will be held at a time and place designated by you. You should have before you a copy of DD Form 457 (Investigating Officer's Report form) (app H). Using that form as a check list, commencing with Item 8, in conjunction with the provisions of this guide, is recommended.

#### 3-2. Procedure for opening session

Appendix D sets forth the suggested procedure in a typical opening session with the accused and his counsel after appropriate introductions are made. These procedures may be varied to meet special circumstances.

#### 3-3. Procedures for taking testimony and examining evidence

*a. Record of testimony.* Generally, the testimony of the witnesses given at the investigation is recorded by having them sign and swear to the truth of the substance of their statements after the testimony has been reduced to writing by the investigating officer. If, however, obtaining witnesses' signatures on statements or summaries of testimony will cause undue delay, they need not be signed by the witness, but they will be authenticated by you. These statements should be recorded on DA Form 2823, given exhibit numbers, and noted in Item 9b, DD Form 457. In certain cases, the officer who appointed you may desire to have the entire proceedings reported verbatim by a sworn reporter. In such cases, the verbatim report of the testimony of witnesses given on oath or affirmation need not be signed by the witnesses. Verbatim statements should also be given exhibit numbers and entered in Item 9b, DD Form 457.

You are not required to tape record testimony taken during your investigation. It is common, however, for the person acting as reporter during the investigation to record testimony to aid in the preparation of the summary of testimony. If such recordings of testimony are made, or substantially verbatim notes of testimony are taken, you should insure that they are preserved until final disposition of the case occurs, either by trial or conclusive withdrawal and dismissal of the charges.

Ordinarily it is not necessary to give Article 31 warnings to witnesses who are not accused or suspected of a crime; however, if during the taking of testimony it appears that a military witness might be suspected of committing any offense, stop and advise as to rights under Article 31 and rights to lawyer counsel.

*b. Refusal to testify.* If a witness who is a member of the military refuses to make a sworn statement and it does not appear that the statement is incriminating, or otherwise privileged, allow the witness to consult with a judge advocate concerning the witness' rights and duty to testify. If the witness persists in refusing to testify you may give an order to do so. Failure to comply with this order could result in disciplinary action. If a witness has previously made a sworn written statement and now refuses to testify, you should show the witness the previous statement and inquire into the reasons for which he or she now refuses to make a sworn statement regarding the same subject matter. If you determine (with the assistance of your legal advisor, if necessary) that the witness has a privilege not to testify, or if you have determined that there is no privilege and ordered the witness to testify but he or she persists in refusing to do so, you may consider the witness to be unavailable and consider the prior sworn statement (see R.C.M. 405(g)(1)(A) and Military Rule of Evidence 804(a)(1)-(2)). If the witness refuses to make a sworn statement and did not previously make a sworn statement, you are *not* permitted to consider any unsworn state-

ment. If it appears that any witness who is apparently essential to the trial is subject to early discharge, transfer, temporary duty, or other personnel action which might prevent his or her availability at a later trial, you should so note in Items 13 and 18, DD Form 457. If the change of status is within a period of 30 days, the staff judge advocate should be notified to determine if a deposition should be taken.

*c. Spectators.* The authority who directed the investigation may provide that the investigation be closed to the public. You may also decide not to permit spectators, including members of the news media, to attend all or part of the proceedings. In this connection, you must follow the guidelines established in AR 340-17, chapter 5, which governs the release of certain information to the public concerning disciplinary actions prior to trial. In addition, prospective witnesses in the case should not be permitted to hear or examine the testimony or statements of other witnesses. Witnesses should remain available outside the hearing room and should be called one at a time to testify. Witnesses should be instructed not to discuss their testimony with other witnesses. See MCM, 1984, appendix 8, page A8-13, for a sample advisement to witnesses.

*d. Oaths.* The procedure for administering the oath to a witness is set forth in appendix E.

*e. Examination of witnesses.* A procedure for examining witnesses is set forth in appendix F.

*f. Examination of evidence.* The procedure for examining evidence is set forth in appendix G.

*g. Inquiry into mental responsibility or capacity.* If in your opinion grounds exist for inquiring into the mental condition of the accused to determine whether the accused was mentally responsible at the time of the acts charged or has sufficient mental capacity to understand the nature of the Article 32 investigation and to conduct or cooperate intelligently in his or her defense, you should notify the officer who directed the investigation who will take appropriate action (R.C.M. 706). In addition, you should complete Items 11 and 18, DD Form 457, as appropriate.

*h. Defense objections.* If the defense objects to any of your decisions on procedures or otherwise objects to alleged defects in the investigation, you are not required to rule on the objection. You may, however, take corrective action in response to an objection if you believe such action is appropriate. If an objection raises a substantial question about the propriety of your conducting the investigation (such as challenging your impartiality), you should consult with your legal advisor and inform the commander who directed the investigation before deciding whether any corrective action is needed. You may require a party to file any objection in writing. You must note a party's objection in your report (items 12 and 18) if requested to do so (see R.C.M. 405(h)(2)).

*i. Closing the investigation.* After you receive all the evidence and the accused and counsel have indicated that they have no further evidence to offer, inform the accused that you do not contemplate calling any more witnesses or receiving other evidence unless the accused or counsel have other evidence to present or argument to make. If the accused or counsel has no further evidence to offer, you should declare the taking of evidence closed.

The accused or counsel should be afforded the opportunity to make a statement of what they consider an appropriate recommendation concerning the disposition of the charges in the case. You should consider any comments made in that connection in deciding what disposition you will recommend to the officer who directed the investigation. You should explain to the accused and counsel that your recommendation in the case is advisory only and is in no way binding upon the officer who directed the investigation or upon any superior authorities.

## **Chapter 4**

### **Completion of the Investigating Officer's Report**

#### **4-1. General**

You should have before you during the investigation a copy of DD form 457, Investigating Officer's Report. The DD Form 457 used during the investigation and other notes may be used as working papers in preparing the report to the officer who directed the investigation. If the investigation is not to be completed verbatim, you must put the substance of each witness' testimony in writing and, unless it would unduly delay completion of your report, you should ask the witness to sign and swear to the statement.

#### **4-2. Considering the evidence and making a recommendation**

In many cases, you may be able to make your recommendation as soon as the investigation closes. If so, record it in Item 17 or 18 of the working copy of the Investigating Officer's Report and then have the report typed in final form. If you are unable to make a decision immediately, you may have the testimony transcribed and review it before coming to a conclusion.

#### **4-3. Forwarding the report**

You should secure all papers furnished to you, together with all evidence produced at the investigation to the Investigating Officer's Report (DD Form 457) and, if at all practicable, hand-carry the entire file to the headquarters of the officer who directed the investigation.

Each document in the file should be in five copies. The furnishing of a copy of the investigation to the accused is not a part of your responsibilities.

If the accused or counsel requests a copy of the report, you should explain that you will transmit the request to the officer who directed the investigation. You should make a notation of the request in the "remarks" section (Item 21) of your report.

## Appendix A

### Preliminary Advice to Accused

The following procedure provides guidance for an introductory session with the accused in an Article 32 investigation.

I.O. (to accused: "I am (Major) (\_\_\_\_\_) \_\_\_\_\_. By order of \_\_\_\_\_, I have been appointed investigating officer under Article 32(b) of the Uniform Code of Military Justice to investigate (a) certain charge(s) against you. The charge(s) allege(s) in general, (the offense(s) of \_\_\_\_\_) (that you did \_\_\_\_\_). The name of the accuser is \_\_\_\_\_. The names of the witnesses thus far known to me are \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

"I am now going to advise you of your rights in this investigation. You have the right to be present throughout the taking of evidence so long as your conduct is not disruptive. You will have the right at the proper time: To cross-examine all available witnesses against you; to present anything you might desire in your own behalf, either in defense or mitigation; to have a lawyer represent you at the investigation; to have me examine available witnesses requested by you; to make a statement in any form at the proper time or to remain silent or to refuse to make any statement regarding any offense of which you are accused or suspected or concerning which you are being investigated. In addition you are advised that any statement made by you might be used as evidence against you in a trial by court-martial. Do you understand?

"As investigating officer, it is my duty to investigate thoroughly and impartially all the matters set forth in the charge(s) and specification(s) against you. This investigation shall include inquiries as to the truth of the matter set forth in the charge(s), form of the charge(s), and the disposition which should be made of the case in the interest of justice and discipline. It is my duty to evaluate and weigh impartially all of the evidence. I will examine the available witnesses against you as well as any available witnesses requested by you. You and your counsel will be given full opportunity to cross-examine witnesses against you if they are available, and to present anything you may desire in your own behalf, either in defense or mitigation or extenuation. I can recommend that the charge(s) against you be referred for trial to a general court-martial or to a different type of court-martial or that the charge(s) be dismissed or disposed of other than by trial by court-martial. It is not my purpose during this investigation to act as prosecutor but only as an impartial fact finder. Do you understand?

"Before I begin the formal investigation and examination of any of the witnesses in this case, I must inform you that you have the right to be represented at all times during this investigation by legally qualified counsel. This means that you have the right to be represented by a civilian lawyer of your choice, but at no expense to the United States, by military counsel of your own selection if that counsel is reasonably available, or by counsel detailed to represent you during the investigation by the officer exercising general court-martial jurisdiction over the command. There is no cost to you for military counsel. Do you wish to be represented by counsel and, if so, state the kind of counsel you want to represent you."

*Note.* If the accused is hesitant about whether to ask for lawyer counsel, the investigating officer should encourage the accused to obtain legally qualified counsel. If the accused requests counsel other than a lawyer, you must advise that such non-lawyer counsel cannot serve as defense counsel before a general court-martial or a special court-martial which can adjudge a bad-conduct discharge.

# Appendix B Notification to the Accused

## DEPARTMENT OF THE ARMY

\_\_\_\_\_  
(Office Symbol) (Date)

SUBJECT: Article 32b Investigation

Private (E-1) John J. Doe  
Post Stockade  
Fort Blank, Missouri

1. On \_\_\_\_\_ at \_\_\_\_\_ hours in Building \_\_\_\_\_, Room \_\_\_\_\_, I will conduct an investigation pursuant to Article 32b, UCMJ, to investigate the facts and circumstances concerning (a) charge(s) preferred against you by \_\_\_\_\_. The charge(s) (is)(are) \_\_\_\_\_ and \_\_\_\_\_, in violation of Article(s) \_\_\_\_\_ (and \_\_\_\_\_), UCMJ.

2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during this investigation by legally qualified counsel. Such counsel may be a civilian lawyer of your choice, provided at no expense to the United States, a qualified military lawyer of your selection, if reasonably available, or a qualified military counsel detailed by the officer exercising general court-martial jurisdiction over the command. There is no cost to you for military counsel. You also have the right to waive representation by counsel. Send me your decision by (date) \_\_\_\_\_.

3. The names of witnesses as known to me, who will be asked to testify at the hearing are:

- a.
- b.
- c.
- d.
- e.

Additionally, it is my intention to examine and consider the following evidence:

- a.
- b.
- c.

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send me names and addresses of such witnesses by \_\_\_\_\_. If, at a later time, you want additional witnesses, inform me of their names and addresses.

5. You may contact me by writing to:

\_\_\_\_\_  
MAJ, INF  
Investigating Officer  
Business Address

\_\_\_\_\_  
MAJ, IN  
Investigating Officer

SUBJECT: Article 32(b) Investigation

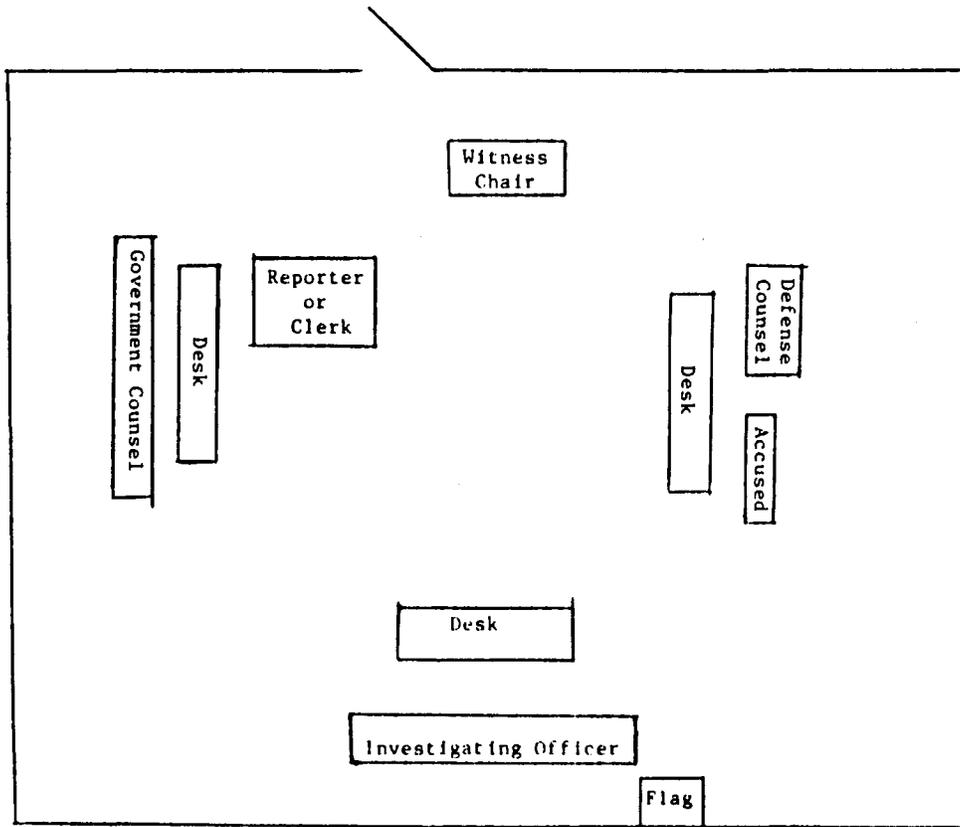
\_\_\_\_ ( ) 1st Ind  
PVT (E-1) John J. Doe, \_\_\_\_\_, \_\_\_\_\_ (date)  
TO: Major \_\_\_\_\_, Investigating Officer \_\_\_\_\_,

1. Receipt of basic communication is acknowledged.
2. I want to be represented by (civilian counsel, who is (Name) \_\_\_\_\_ of (Address) \_\_\_\_\_) ((Rank) \_\_\_\_\_ (Name) \_\_\_\_\_, if he is reasonably available) (legally qualified military counsel detailed by the officer exercising general court-martial jurisdiction over the command) (I do not want to be represented by counsel.)
3. I want the following witnesses and/or evidence present at the hearing:
  - a.
  - b.
  - c.
  - d.

\_\_\_\_\_  
John J. Doe  
PVT, \_\_\_\_\_, \_\_\_\_\_  
Accused

## Appendix C Arrangement of Room for Investigation

*Note:* The Article 32 investigation should be conducted in a formal and dignified manner. While the investigation is not a trial and the strict rules of procedure and evidence applicable in trials by courts-martial do not apply to the investigation, you will find that the investigation will be far more successful if informality is kept to a minimum. For this reason, you should attempt to hold the investigation under conditions of relative quiet and without interruption. When the investigation is conducted in a place where people are walking about holding general conversation, the accused and observers are likely to get the impression that the investigation is a casual affair, rather than the serious judicial function intended by the Congress and the United States Court of Military Appeals. You should attempt to arrange the furniture in the room where the investigation is to be held substantially in the following manner.



## Appendix D

### Procedure for Opening Session of the Formal Investigation

I.O. (to accused-counsel): This is a formal investigation into (a) certain charge(s) against \_\_\_\_\_ ordered pursuant to Article 32(b), UCMJ, by \_\_\_\_\_. On \_\_\_\_\_, 19\_\_\_\_, I informed you of your right to be represented by civilian counsel at no expense to the United States, military counsel of your own selection if reasonably available, or military lawyer counsel detailed by \_\_\_\_\_. You informed me that you (did not desire to be represented by counsel) (that you desired to be represented by (Mr. Thomas White of Bowie, Maryland) (Captain \_\_\_\_\_, Trial Defense Service, Headquarters, 20th Infantry Division) (detailed military counsel).

Let the record show that (\_\_\_\_\_ was available and is here present with you) (Mr. White is present here with you) (Captain was detailed by \_\_\_\_\_ and is here with you).

(Mr. White, I will ask you to step forward and enter your appearance by filling out Item 7a on the official Investigating Officer's Report) (DD Form 457)).

I.O. (to accused-counsel): I want to remind you that my sole function as the Article 32 investigating officer in this case is to determine thoroughly and impartially all of the relevant facts of this case, to weigh and evaluate those facts and determine the truth of the matters stated in the charge(s). I shall also consider the form of the charge(s) and make a recommendation concerning the disposition of the charge(s) which (has)(have) been preferred against you. I will not read to you the charge(s) which I have been directed to investigate. (At this point, the defense may waive reading of the charge(s).) (It)(They)(is)(are) as follows:

Charge (I): Violation of the Uniform Code of Military Justice, Article \_\_\_\_\_.

Specification (1): In that \_\_\_\_\_.

Specification (2): In that \_\_\_\_\_.

(Charge (II): (Additional Charge): Violation of the Uniform Code of Military Justice, Article \_\_\_\_\_.)

(Specification (1): In that \_\_\_\_\_.)

(\_\_\_\_\_)

I will now show you the charge(s) and specification(s).

I advise you that you do not have to make any statement regarding the offense(s) of which you are accused and that any statement you do make may be used as evidence against you in a trial by court-martial. You have the right to remain silent concerning the offense(s) with which you are charged. You may, however, make a statement either sworn or unsworn and present anything you may desire, either in defense, extenuation or mitigation. If you do make a statement, whatever you say will be considered and weighed as evidence by me just as is the testimony of other witnesses.

You have previously been given a copy of the investigation file which has thus far been compiled in your case. It contains the (sworn) (and) (unsworn) statements of (Captain) \_\_\_\_\_ (Sergeant) \_\_\_\_\_, (Private First Class) \_\_\_\_\_. It also contains [here state the other relevant documents contained in the file]. It is my intention to call as witnesses in this investigation (Captain) \_\_\_\_\_, (Sergeant) \_\_\_\_\_, and (Mister) \_\_\_\_\_. After these witnesses have testified in response to my questions, you or your counsel will have the right to cross-examine them. You also have the right to call available witnesses for my examination and to produce other evidence in your behalf. I have arranged for the appearance of those witnesses previously requested to you. If you desire additional witnesses, I will help

to arrange for their appearance or for the production of any available evidence relating to your case.

[I do not intend to call as a witness (Private First Class) \_\_\_\_\_, (because it has been determined that he is unavailable) (or) (because his commander has determined that he is not available). I therefore intend to consider his sworn statement in my recommendations as it is contained in the file.]

*Note.* If the statement of a witness the investigating officer intends to consider is unsworn and the investigating officer does not intend to call that witness, the accused should be advised substantially as follows:

I.O. (to accused-counsel): Since the statement of (Private First Class) \_\_\_\_\_ is unsworn, I am not permitted to consider it unless you consent. Do you consent to my consideration of (Private First Class) \_\_\_\_\_'s unsworn statement, even though I do not intend to call him as a witness?

(COUNSEL)(ACCUSED): \_\_\_\_\_.

*Note:* If the accused answers in the negative, you may not consider the unsworn statement in making your recommendation. You are at liberty to attempt to obtain a sworn statement from the witness in question, however. If you choose to do so you must be sure to advise the accused of the decision. If the accused consents to the unsworn statement, you should mark it as an exhibit and enter it in Item 13, DD Form 457, with an appropriate explanation in Item 21. You may then consider the statement in arriving at your recommendations.

I.O. (to accused-counsel): Before proceeding further I now ask you whether you have any questions concerning your right to remain silent concerning the offense(s) of which you are accused, your right to make a statement either sworn or unsworn if you want to, the use that can be made of any statement you do make, your right to cross-examine witnesses against you, or your right to present anything you may desire in your own behalf, and to have me examine available witnesses requested by you either in defense, mitigation or extenuation.

(COUNSEL)(ACCUSED): \_\_\_\_\_.

*Note.* At this point, answer any questions which the accused may have with respect to rights or as to procedural or other matters concerning the investigation. You should not proceed further until convinced that the accused understands those rights. If the accused is represented by counsel, however, the latter will generally indicate that he or she has explained these matters to the accused and that they are understood.

I.O. (to accused-counsel): Do you want me to call any witnesses to testify in your defense or to testify in mitigation or extenuation on your behalf? Do you want me to call any other witness regarding this case so that you may cross-examine them? If so, give me their names and organizations or addresses. If you are aware of any military records which you want me to consider and which you have been unable to obtain, give me a list of these documents.

(COUNSEL)(ACCUSED): \_\_\_\_\_.

## Appendix E Oaths

*Note.* The word "oath" as used in this appendix includes the word "affirmation." All oaths and affirmations should be made in the presence of the accused. Generally, only witnesses need be sworn at an Article 32 investigation. There is no requirement that you as the investigating officer or counsel be sworn. Interpreters must also be sworn before beginning their duties. The oath may be administered by you in the following manner: You should raise your right hand and have the person being sworn stand in front and raise his or her right hand. You should then read or recite the appropriate oath and the witness should respond appropriately.

### Oath for Witnesses

I.O. You swear that the evidence you shall give in the case now being investigated shall be the truth, the whole truth, and nothing but the truth. So help you God.

### Affirmation

I.O. You affirm that the evidence you shall give in the case now being investigated shall be the truth, the whole truth, and nothing but the truth.

*Note.* The "Affirmation" is used when administering the oath to persons who have conscientious scruples against taking an oath or to persons who do not believe in the existence of a Supreme Being (R.C.M. 807). Persons who recognize special forms or rites as obligatory, and persons who do not believe in a Supreme Being may be sworn in their own manner or according to the ceremonies of the religion they profess and declare to be binding.

### Oath for Interpreter

I.O. You swear that you will faithfully perform the duties of interpreter in the matter now in hearing. So help you God.

*Note.* When testimony is given through an interpreter, the interpreter must first be sworn (R.C.M. 807). *The interpreter must translate questions and answers in verbatim form.*

## Appendix F Examination of Witnesses

### Introductory questions to witnesses

(Swear witness) See appendix E.

I.O.: State your full name (grade, organization, and armed force) (occupation and residence address).

WITNESS: \_\_\_\_\_.

I.O.: Do you know the accused in this case?

WITNESS: (I do)(I do not).

*Note.* If the identification of the accused is not an essential part of the expected testimony of the witness, this question may be omitted. If the witness identifies the accused, the witness should normally be asked to state the accused's name and organization if known. If the identity of the accused is particularly relevant in a case, and the identity of the accused as the perpetrator of the offense depends upon the ability of the witness to identify the accused, the accused's counsel may request that the witness be required to identify the accused from a nonsuggestive lineup of persons similar in appearance to the accused. This request should be granted whenever possible. Otherwise the ability of the witness to identify the accused as the offender may be based on the fact that the accused is the only person whose conduct is being investigated. In any event in this situation, you should inquire into the basis for the witness' identification of the accused.

### Government Witness

You determine the order of questioning of all witnesses and you may conduct the first questioning.

*Note:* If Government counsel is present, he or she may first examine Government witnesses, followed by cross-examination by the accused or defense counsel, then followed by questioning by you if further clarification is necessary.

I.O.: (to witness after introductory questions): Did you see the accused on the morning of 4 September 1979?

WITNESS: Yes, sir, I did.

I.O.: Where were you when you saw him?

WITNESS: I was in the dayroom of Company \_\_\_\_\_, \_\_\_\_\_, Fort \_\_\_\_\_.

I.O.: About what time was this?

WITNESS: It was approximately 0930 hours, sir.

I.O.: Was anyone present at the time?

WITNESS: Sergeant John Smith was there then, sir.

I.O.: What was the accused doing when you saw him at that time?

WITNESS: When I came into the dayroom sir, I saw Sergeant Smith and the accused facing each other and (witness continues with details of the incident).

\* \* \* \* \*

### Cross-Examination of Government Witness

*Note.* When you have completed an examination of a witness, you should advise the accused and counsel, if the accused is represented by counsel, substantially as follows:

I.O. (to accused-counsel): You may now cross-examine this witness concerning any of his or her testimony, any knowledge possessed of the offense(s), or concerning the witness' worthiness of belief. (Since you are not represented by counsel, I will do this for you, if you wish, if you will inform me in a general way of the matters about which you want me to question the witness.) Do you wish to cross-examine this witness?

(COUNSEL)(ACCUSED): I (do)(do not) (request that you ask him whether he. . .).

Note. If the accused or counsel desired the witness to be cross-examined proceed substantially as follows:

(COUNSEL)(ACCUSED)(I.O.)(to the witness): Did you hear the subject of the argument between the accused and Sergeant Smith?

WITNESS: No, sir, they were arguing at the time I came into the dayroom, and I didn't hear what was said before I got there.

(COUNSEL)(ACCUSED)(I.O.): Did you see any gestures made during the argument by Sergeant Smith?

WITNESS: I'm not exactly sure what you mean, but (witness continues to describe details of the incident).

I.O. (to accused-counsel): Do you have any further questions you want this witness to answer?

(COUNSEL) (ACCUSED): No, sir.

I.O.: The witness is excused.

\* \* \* \* \*

Calling Defense Witnesses

I.O. (to accused-counsel): I have now called all witnesses I contemplate calling and have revealed to you all evidence I intend to consider in the preliminary portions of this investigation. As I have previously advised you, you may now present any evidence you desire. Do you have any witnesses to testify in your defense or in extenuation and mitigation? If so, I will call them at this time.

(COUNSEL) (ACCUSED): \_\_\_\_\_

Note. If witnesses are to be called to testify on the accused's behalf, you should advise the accused substantially as follows:

I.O. (to accused-counsel): You may question each of the witnesses who are to testify for you (or, since you are not represented by counsel, I will question them, if you prefer, if you will tell me generally what you want to question them about.)

(COUNSEL) (ACCUSED): \_\_\_\_\_

Note. If the accused is represented by counsel, you should assume that counsel will conduct the examination of the witness and present evidence in a planned procedure. If the accused has elected not to have counsel at the investigation, you should permit the accused to examine or cross-examine witnesses personally if desired. The procedure for administering the oath (App E) and for introductory questioning of the witness set forth above should be followed for defense witnesses. After the accused or counsel has completed examination of the defense witness or you have done so, you may cross-examine the witness.

Calling Additional Witnesses

Note. When all witnesses who were initially called have testified, you should determine whether other witnesses should be called in the interests of justice, fairness, and a complete investigation. In addition, inquire of the accused substantially as shown below:

I.O. (to accused-counsel): (I do not intend to call any additional witnesses.) (I intend to call \_\_\_\_\_ and \_\_\_\_\_ as additional witnesses.) (I am going to recall \_\_\_\_\_ for further questioning.) Are there any witnesses you desire to recall or are there any additional witnesses who have not been called whom you wish to testify?

(COUNSEL) (ACCUSED): \_\_\_\_\_

Explanation of Accused's Rights as a Witness

Note. After all the witnesses have testified and the accused or his counsel indicate that they have no further evidence to present, you should inquire of accused and counsel, if the accused has not previously made a statement, substantially as follows:

**15 March 1985**

**DA Pam 27-17**

**I.O. (to accused): Earlier in this investigation, I advised you of your rights to make a statement or to remain silent. Do you want me to repeat this advice? Do you desire to make a statement in any form?**

## Appendix G Examination of Evidence

### Real Evidence (Physical Objects)

I.O. (to witness): I have here a knife which I have designated as Exhibit No. \_\_\_\_.

*Note.* The accused and counsel should be permitted to examine the exhibit at this point.

I.O. (to witness): Do you recognize this knife?

WITNESS: I do.

I.O. How do you recognize it?

WITNESS: I recognize it by (witness describes how he recognizes the knife).

I.O. When did you first see this knife?

WITNESS: I got my first look at the knife when I found it under the accused's bunk.

I.O. (to accused-counsel after questioning the witness further as to the circumstances under which the knife was found, and after cross-examination, if any, of the witness): Do you have any objection to my considering this exhibit as evidence?

(COUNSEL) (ACCUSED): (Yes, sir (stating reasons)) (No, sir).

### Documentary Evidence Authenticated Official Record

I.O. (to accused-counsel): I have here a SIDPERS document of Company \_\_\_\_\_, \_\_\_\_\_, for 31 July 1979 and for 31 September 1979, which I have designated Exhibit No. \_\_\_\_\_. It appears to be certified as a true copy by \_\_\_\_\_. I now hand you this exhibit for your examination.

I.O. (to accused-counsel after permitting him to examine the document): Do you have any objection to my considering this exhibit as evidence?

(COUNSEL) (ACCUSED): (Yes, sir (stating reasons)) (No, sir).

## Appendix H Report of Investigation

INVESTIGATING OFFICER'S REPORT <i>(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)</i>						
1a. FROM: <i>(Name of Investigating Officer - Last, First, MI)</i>  Adamson, Adam A.	b. GRADE Major O-4	c. ORGANIZATION 1st Bn, 61st Inf Bde	d. DATE OF REPORT 1 Sep 84			
2a. TO: <i>(Name of Officer who directed the investigation - Last, First, MI)</i>  Harrison, Harry H.	b. TITLE Commanding Officer		c. ORGANIZATION 1st Bn, 61st Inf, Fort Cutts, Texas			
3a. NAME OF ACCUSED <i>(Last, First, MI)</i> Benson, Ben B.	b. GRADE PVT E-1	c. SSN 111-11-1111	d. ORGANIZATION Co A, 2nd Bn, 61st Inf	e. DATE OF CHARGES 24 Aug 84		
<i>(Check appropriate answer)</i>						
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)					YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)					<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)					<input checked="" type="checkbox"/>	<input type="checkbox"/>
7a. NAME OF DEFENSE COUNSEL <i>(Last, First, MI)</i> Carlson, Carl. C.	b. GRADE CPT O-3	8a. NAME OF ASSISTANT DEFENSE COUNSEL <i>(If any)</i>		b. GRADE		
c. ORGANIZATION <i>(If appropriate)</i> TDS w/duty Fort Cutts, Texas		c. ORGANIZATION <i>(If appropriate)</i>				
d. ADDRESS <i>(If appropriate)</i>		d. ADDRESS <i>(If appropriate)</i>				
9. <i>(To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)</i>						
a. PLACE			b. DATE			
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.						
c. SIGNATURE OF ACCUSED						
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>					YES	NO
a. THE CHARGE(S) UNDER INVESTIGATION					<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. THE IDENTITY OF THE ACCUSER					<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31					<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. THE PURPOSE OF THE INVESTIGATION					<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE					<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT					<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. THE RIGHT TO CROSS-EXAMINE WITNESSES					<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED					<input checked="" type="checkbox"/>	<input type="checkbox"/>
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION					<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING					<input checked="" type="checkbox"/>	<input type="checkbox"/>
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>					<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL						
NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."						

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
Dodson, Dodd. D.	CPT O-3	Co A, 2nd Bn, 61st Inf	X	
Evanson, Evan E.	SSG E-6	Co A, 2nd Bn, 61st Inf	X	
Fordson, Ford F.	SGT E-5	400th MP Co	X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.				
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.			YES	NO
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
Statement of Gregg Greggson (Fingerprint CID Lab Report analysis)	CID, Bldg 10, Fort Cutts, Texas		X	
	CID, Bldg 10, Fort Cutts, Texas		X	
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(h).)			X	
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
Examples of other matters which may be discussed here:				
1. Discussion of evidence, credibility of witnesses, and sufficiency of proof.				
2. Recommendations to dismiss or change any specification.				
3. Statement of any anticipated offenses or of any anticipated difficulties in proving any specification on which trial is recommended.				
4. Defense-requested objections (item 15),				
5. Any other matter which should be known to the convening authority or subsequent reviewing authorities.				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
Adam A. Adamson		Major O-4	1st Bn, 61st Inf	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
Adam A. Adamson			1 September 1984	

15 March 1985

DA Pam 27-17

---

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR.  
*General, United States Army*  
*Chief of Staff*

Official:

DONALD J. DELANDRO  
*Brigadier General, United States Army*  
*The Adjutant General*

---

Distribution: Active Army, ARNG, USAR: To be distributed in accordance with DA Form 12-9A, Requirements for Legal Services—A.