

**MILITARY JUSTICE HANDBOOK**

**PROCEDURAL GUIDE FOR ARTICLE 32(b)**

**INVESTIGATING OFFICER**



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HEADQUARTERS, DEPARTMENT OF THE ARMY

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**MILITARY JUSTICE HANDBOOK**  
**PROCEDURAL GUIDE FOR ARTICLE 32(b)**  
**INVESTIGATING OFFICER**

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# SECTION I

## INTRODUCTION

### 1-1. Purpose and Scope

This guide is published for the use of officers who have been appointed as investigating officers under Article 32(b) of the Uniform Code of Military Justice. They should use this guide in conjunction with The Investigating Officer's Report (DD Form 457) and the Manual for Courts-Martial 1969 (Revised edition) [hereafter designated as MCM]. 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.*

Assignment of an officer as an Article 32(b) Investigating Officer should take precedence over other military duties. An officer detailed to perform these duties must be familiar with the entire contents of this guide, Article 32, UCMJ, and paragraph 34, MCM. In preparing for and in conducting the investigation, the investigating officer must bear in mind that he is performing a judicial function. He must be impartial in appearance and in actuality.

#### *b. Legal Advice for Investigating Officer.*

At the beginning of the investigation, and at all other times when the investigating officer requires legal advice, he should seek that advice from the judge advocate officer serving the command of the officer who directed the investigation. However, the conclusions to be drawn from the evidence in the case and his recommendations concerning the disposition of the case are matters solely within his judgment and responsibility and are to be determined without reliance upon the opinions or recommendations of any other person.

#### *c. Legal Representation for the Accused.*

The accused may be represented during the investigation proceedings by a civilian lawyer provided by him or on his behalf at no expense to the United States, by military counsel, lawyer or non-lawyer, of his own selection if reasonably available, or by military counsel certified under Article 27b detailed for that purpose by competent authority. The accused's preference for non-lawyer counsel should be discouraged. 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 the accused expressly excuses him. See paragraph 5 for a complete explanation of the accused's right to counsel.

#### *d. Legal Counsel for the Government.*

Counsel may also be detailed to represent the Government. Such counsel is not the legal adviser of the investigating officer, but represents a party to the investigation. Accordingly, the investigating officer shall not seek legal advice from him. Counsel for the Government may present evidence, cross-examine witnesses, and argue for such disposition of the matter as he considers appropriate. The Investigating Officer 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.

## SECTION II

### 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 morning reports in cases involving unauthorized absence; and the record of previous convictions, if any. If these documents are not in the file, the Investigating Officer should request them immediately from the officer who appointed him. The file may also include a letter of instruction from the officer who appointed the investigating officer or directions to report to the office of the local judge advocate for a briefing.

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 the investigating officer properly performed his duties in making certain that the accused was fully informed of and afforded all his 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 the investigating officer can not comply with that date, he will report this fact in writing to the authority who directed the investigation and explain the cause of the delay in detail. Such delay on the part of the investigating officer could result in a gross injustice to the accused and in a dismissal of the charges. On the other hand, the investigating officer must take the necessary time 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.

#### 2-2. Sequence of Preparation

After receipt of the file, the investigating officer should read Article 32, UCMJ, paragraph 34, MCM, and this guide, study the file and take action in the sequence indicated below.

##### *a. Consult with a Judge Advocate.*

The investigating officer should report to the judge advocate office serving the officer who directed the investigation for an initial briefing on his duties. He should consult that office at other times as needed for legal advice or assistance.

##### *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, para 29e, MCM). If they were not, confer with the accuser to determine whether he desires to swear to the charges. The investigating officer 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 for him to do so without unnecessary delay, the investigating officer should consult with the officer who appointed him for guidance in the matter and should proceed with the investigation only if directed.

##### *c. Determine Whether There Are Any Reasons Which Would Prevent the Investigating Officer From Conducting a Fair and Impartial Investigation.*

If there are any reasons which would prevent the investigating officer from conducting a fair and impartial investigation, he should notify the officer who appointed him of this fact.

##### *d. Determine the Applicable Law.*

(1) The investigating officer should be familiar with the elements (essential facts) of the

offense(s) charged. He should read the discussion of the offense or offenses in chapter XXVIII, MCM, particularly the paragraphs entitled "Proof." In addition he should consult DA Pam 27-9, (Military Judges' Guide). If the offense is charged as a violation of Article 134 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 wrongful sale of heroin, the offense will be charged in substantially the following language:

In that Private John Doe, U.S. Army, Company A, \_\_\_\_\_ did, at Fort \_\_\_\_\_, on or about 4 September 19\_\_\_\_, wrongfully sell a habit forming narcotic drug, to wit: heroin.

The elements of this offense are:

- (a) At the time and place alleged the accused sold heroin.
- (b) That heroin is a habit forming narcotic drug.
- (c) That the sale was wrongful.
- (d) That the conduct of the accused was prejudicial to good order and discipline in the Armed Forces or was of a nature to bring discredit upon the Armed Forces.

(2) The investigating officer should insure that each specification actually alleges an offense (see para 28, MCM) and that each offense is charged as a violation of the proper Article of the Code. If he concludes that the wording of a specification departs so materially from an applicable form specification (App 6c, MCM,) that no offense is alleged or the specification is ambiguous, he should return the file to the officer who appointed him, stating his 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, the investigating officer should obtain copies of the directive for the report and familiarize himself with its provisions.

(4) The investigating officer must determine whether documentary evidence in the file, such as extract copies of morning reports and copies of records of previous convictions, is properly authenticated (para 143 b, MCM). He should assign identifying numbers to all documentary evidence and any physical objects in order that they may be accurately referred to when he makes out the investigating officer's report. (See section IV.)

(5) If familiarity with the scene of the alleged offense would assist him in gaining a more accurate picture of the case, he should visit the scene.

*e. Determine What Witnesses to Call.*

In preparing for the formal investigation, the investigating officer may communicate by telephone or otherwise with prospective witnesses to determine the extent of their knowledge concerning the case, whether he 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. The investigating officer *must not*, however, consider such informal communications as evidence in the case or in making his recommendations in the case.

*f. Arranging for Place for Investigation.*

The investigating officer should contact the officer who appointed him, 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 His Right To Counsel**

The investigating officer should arrange (through the accused's commanding officer, if the accused is not in pretrial confinement, or the confinement officer, if he is in pretrial confinement) to meet with the accused for the purpose of giving him preliminary advice and infor-

mation concerning the investigation (See Appendix I). The accused *may* also be notified of the investigation and his right to counsel in writing. If the accused is already represented by counsel, a copy of a written notice, if any, should be sent to the counsel whenever possible the investigating officer should personally deliver the notice to the accused, read its contents, explain it and answer any questions. If the accused can reach a decision at that time, his answer should be obtained in the form of an indorsement to the letter. A sample notification and indorsement is contained in appendix II. At this first meeting with the accused, the investigating officer should introduce himself and explain that he has been detailed as investigating officer and explain the purposes of his investigation in accordance with appendix I. *Any attempt by the accused to discuss the facts of the case with the investigating officer at this time should be discouraged.*

## **2-4. Consultation with Counsel for the Accused**

### *a. General.*

If the accused requests that he be represented by counsel, his request must be promptly reported to the officer who ordered the investigation. The investigating officer should request that officer to notify him as soon as possible as to the identity and address or military organization of counsel who is to represent the accused. When the investigating officer receives this information, he should contact the accused's counsel for the purpose of delivering a complete copy of the file to him. At this time the investigating officer should advise counsel of his 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 the investigating officer. Investigating officers will grant reasonable requests.

### *b. Witnesses for the Accused.*

The investigating officer 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, the investigating officer 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 the investigating officer is unable to arrange for the attendance of civilian witnesses or the production of certain documents requested by the accused by the date he originally planned to call the next session of the investigation, he should set a date for further hearing to permit the attendance of the witnesses and the production of the documents. The investigating officer need not delay proceeding with the initial session of the investigation until he has arranged for the production of *all* the witnesses or other evidence requested by the accused. Sound discretion on his part is essential. For example, if all of the 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. It must be kept 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, the investigating officer must temporarily postpone the investigation in order to arrange for the attendance of witnesses, he should inform the accused and the potential witnesses of the date and place he has set for future proceedings and arrange for their attendance.

## **2-5. Securing the Attendance of Witness**

### *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 such witnesses, application should be made to the immediate commanding officer of the requested witness (para 34d, MCM). 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 (para, 34d, MCM). The investigating officer should arrange where practical for transportation to the hearing of any civilian witnesses who are willing to appear voluntarily. In the alternative, the investigating officer may arrange transportation for himself, the accused, and counsel, if any, to a place convenient to the civilian witness. In those cases where the investigating officer determines that the testimony of a reluctant civilian witness is substantial, material, and necessary for a proper disposition of the case, he should immediately ask the staff judge advocate to assist in obtaining the witness' attendance.

*c. Arranging for Documentary Evidence.*

The investigating officer should make every effort to insure that witnesses in possession of essential documentary and real evidence are present at the investigation. He should examine but not take real evidence into his possession as such a procedure might produce additional problems regarding admissibility of such evidence at a later trial.

# SECTION III

## THE FORMAL INVESTIGATION

### 3-1. General

Whenever practicable, the interview room should be arranged so that the witness chair faces both the investigating officer and the accused (app III). 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 the investigating officer. The investigating officer should have before him a copy of DD Form 457, (Investigating Officer's Report Form) (app VIII). Use of that form as a check list commencing with Item 4f, in conjunction with the provisions of this guide, is recommended.

### 3-2. Procedure for Opening Session

Appendix IV sets forth the suggested procedure in a typical opening session with the accused and his counsel after appropriate introductions are made. Variations in these procedures may be made 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 on statements of summaries of testimony will cause undue delay, they need not be signed by the witness but they will be authenticated by the investigating officer. These statements should be recorded on DA Form 2823, given exhibit numbers and noted in Item 5c, DD Form 457. In certain cases, the officer who appointed the investigating officer may desire to have the entire proceedings reported verbatim by a sworn reporter. In such case 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 5c, DD Form 457.

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 to the investigating officer that a military witness might be suspected of committing any offense, the investigating officer should stop him and advise him of his rights under Article 31 and his right 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 will incriminate him, he should be allowed to consult with a judge advocate concerning his rights and duty to testify. If he persists in refusing to testify he may be given 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, the investigating officer should show the witness his previous statement and inquire into the reasons for which he now refuses to make a sworn statement regarding the same subject matter. After having determined as far as possible the reasons for which the witness refuses to make an additional statement, the investigating officer should indicate to the accused and counsel that he is still going to consider the previously *sworn* statement. If the witness refuses to make a sworn statement and he not previously made a sworn statement, the investigating officer is *not* permitted to consider any unsworn statement. 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 availability at a later trial, the investigating officer should so note in Item 11, 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. The investigating officer may also decide not to permit spectators, including members of the news media, to attend all or part of the proceedings. In this connection, the investigating officer must follow the guidelines established in AR 345-60, which prohibit 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 appendix 8b, MCM. 1969 (Rev.), paragraph A8-17 for a warning guide.)

*d. Oaths.*

The procedure for administering the oath to a witness is set forth in appendix V.

*e. Examination of Witnesses.*

A procedure for examining witnesses is set forth in appendix VI.

*f. Examination of Evidence.*

The procedure for examining evidence is set forth in appendix VII.

*g. Inquiry into Mental Responsibility or Capacity (para 120, MCM).*

If the investigating officer considers that grounds exist for inquiring into the mental condition of the accused to determine whether he was mentally responsible at the time of the acts charged or has sufficient mental capacity to understand the nature of the Article 32 investigation, he should notify the officer who directed the investigation who will take appropriate action (para 121, MCM). In addition, the investigating officer should complete all items under Item 10, DD Form 457, as appropriate.

*h. Closing the Investigation.*

When the investigating officer receives all the evidence and the accused and his counsel have indicated that they have no further evidence to offer, he should inform the accused that he does not contemplate calling any more witnesses or receiving other evidence unless the accused or his counsel have other evidence to present, or argument to make. If the accused or his counsel present evidence in explanation or mitigation it should be noted in Item 12, DD Form 457. If the accused or his counsel has no further evidence to offer, the investigating officer should declare the taking of evidence closed.

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

# SECTION IV

## COMPLETION OF THE INVESTIGATING OFFICER'S REPORT

### 4-1. General

As indicated in paragraph 6, the investigating officer should have before him 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, he should put the substance of each witness' testimony in writing and ask the witness to sign and swear to the statement.

### 4-2. Considering the Evidence and Making a Recommendation

In many cases, the investigating officer may be able to make his recommendation as soon as the investigation closes. If so, he should 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 the investigating officer is unable to make a decision immediately, he may desire to have the testimony transcribed and to review it before coming to a conclusion.

### 4-3. Forwarding the Report

The investigating officer should secure all papers furnished to him 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 unless there is more than one accused. The furnishing of a copy of the investigation to the accused is not a part of the investigating officer's responsibilities.

If the accused or his counsel requests a copy of the report, the investigating officer should explain that he will transmit the request to the officer who directed the investigation. The investigating officer should make a notation of the request in the "remarks" section (Item 18) of his report.

### 4-4. Informal Report

Where it clearly appears that the charges will not be referred to a general court-martial, an informal report may be made in lieu of a formal report (34f, MCM, 1969 (Rev.)). In appropriate cases this can eliminate much needless paper work.



sel, the investigating officer should encourage him to ask for legally qualified counsel. If the accused requests counsel other than a lawyer, he must be advised that such non-lawyer counsel cannot represent him before a general court-martial or a special court-martial which can adjudge a bad conduct discharge.

APPENDIX II

NOTIFICATION TO THE ACCUSED  
DEPARTMENT OF THE ARMY

Headquarters

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(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 charges 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, or a non-legally qualified military counsel, if reasonably available, or by qualified military counsel detailed by competent authority. There is no cost to you for military counsel. You also have the right to waive representation by counsel. Send me  
(date)

your decision by \_\_\_\_\_.

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.

(telephone number)

5. You may contact me during duty hours at \_\_\_\_\_

MAJ, INF  
Investigating Officer

\_\_\_\_\_ ( ) 1st Ind

PVT (E-1) John J. Doe, \_\_\_\_\_, \_\_\_\_\_

TO: Major \_\_\_\_\_, Investigating Officer, \_\_\_\_\_,  
\_\_\_\_\_ (date)

1. Receipt of basic communication is acknowledged.

2. I want to be represented by (civilian counsel, who is Mr. \_\_\_\_\_  
\_\_\_\_\_ (Name)

of \_\_\_\_\_) (\_\_\_\_\_  
(Address) (Rank) (Name)

if he is reasonably available) (legally qualified military counsel detailed by competent authority) (I do not want to be represented by counsel.)

3. I want the following witnesses and/or evidence present at the hearing:

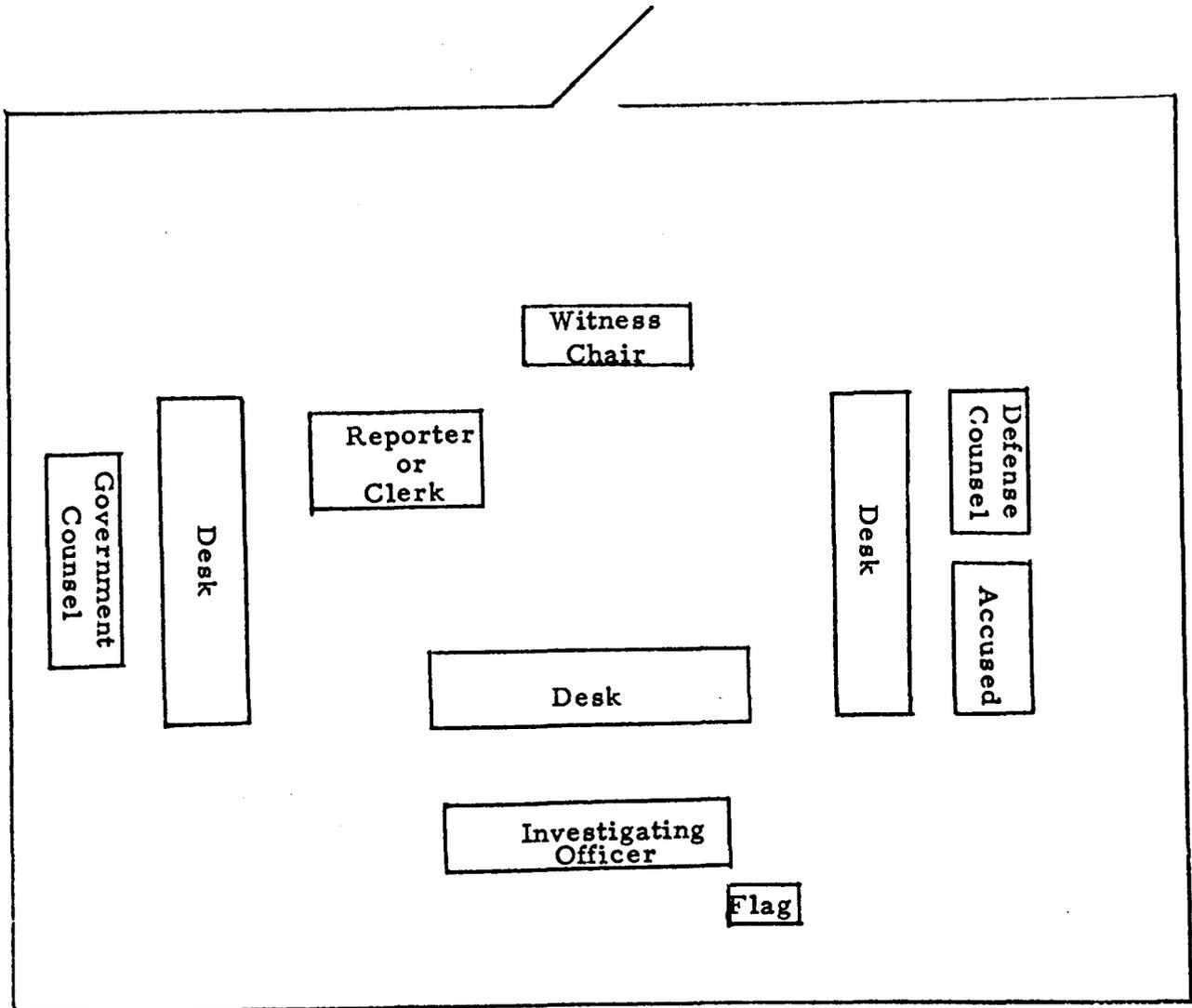
- a.
- b.
- c.
- d.

\_\_\_\_\_  
PVT (E-1), Accused

# APPENDIX III

## 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, the investigating officer will find that the investigation will be far more successful if informality is kept to a minimum. For this reason, the investigating officer 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 which it was intended to be by the Congress and the United States Court of Military Appeals. The investigating officer should attempt to arrange the furniture in the room where the investigation is to be held substantially in the following manner.



## APPENDIX IV

### PROCEDURE FOR OPENING SESSION OF THE FORMAL INVESTIGATION

I.O. (to accused—counsel): This is a formal investigation into certain charges against \_\_\_\_\_ ordered pursuant to Article 32(b), UCMJ, by \_\_\_\_\_.

On \_\_\_\_\_, 197\_\_\_\_, I informed you of your right to be represented by civilian counsel at no expense to the Government, military counsel (lawyer or not legally qualified) of your own selection, and a 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 \_\_\_\_\_ Staff Judge Advocate Section, 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 3 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 charges. I shall also consider the form of the charges and make a recommendation concerning the disposition of the charges which have been preferred against you. I will now read to you the charges which I have been directed to investigate. They 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 Jus-  
tice, 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 offenses 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)

Examination of  
the file.

\_\_\_\_\_. After these witnesses have testified in response to my questions, you and 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 by 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) \_\_\_\_\_, but intend rather 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 him as a witness, he should advise the accused 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*): \_\_\_\_\_.

If the accused answers in the negative, the investigating officer may not consider the unsworn statement in making his recommendation. However, he is at liberty to attempt to obtain a sworn statement from the witness in question. If the investigating officer chooses to do so he must be sure to advise the accused of the decision. If the accused consents to the unsworn statement, the investigating officer should mark it as an exhibit and enter it in Item 5c, DD Form 457, with an appropriate explanation in Item 18. He may then consider the statement in arriving at his recommendation.

If the statement of a witness the investigating officer intends to consider is sworn and he does not intend to call him as a witness, advise the accused substantially as follows:

*I.O.* (to accused—counsel): Even though I do not intend to call (Private First Class) \_\_\_\_\_, whose sworn statement I intend to consider in arriving at my recommendation, it is your right to have an opportunity to cross-examine him if he is available and, if you wish, I will arrange his presence for that purpose. Do you want me to call (Private First Class \_\_\_\_\_ as a witness?

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

If the accused answers in the affirmative, IO must arrange to have the requested witness, if available, present at the place and time set for the next session. If the accused answers in the negative and the witness is not available, the investigating officer should mark the statement as an exhibit and enter it in Item 6a and may consider it in arriving at his recommendation.

*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 offenses 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

Explanation  
regarding  
unsworn  
statements

your own behalf, and to have me examine available witnesses requested by you either in defense or mitigation.

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

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

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.

Ascertaining  
accused's  
desire to  
call witnesses

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

# APPENDIX V

## 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 the investigating officer or counsel be sworn. Interpreters must also be sworn before beginning their duties. The oath may be administered by the investigating officer in the following manner: The investigating officer should raise his right hand and have the person being sworn stand in front of him and raise his right hand. The investigating officer 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 (para. 112d, MCM). 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, he must first be sworn (para. 114, MCM). *The interpreter must translate questions and answers in verbatim form.*

# APPENDIX VI

## EXAMINATION OF WITNESSES

Introductory questions to witnesses

(Swear WITNESS) See appendix V.

*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 I.O. should normally ask him to state the accused's name and organization if he knows it. 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 non-suggestive 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, the I.O. should inquire into the basis for the witness' identification of the accused.

### GOVERNMENT WITNESS

*I.O.:* (to witness after introductory questions): Did you see the accused on the morning of 4 September 1970?

*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.:* Who else, if anyone, was present at the time?

*WITNESS:* Sergeant John Smith was there then, sir.

*I.O.:* What did the accused do, if anything, when you saw him at this 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

When the investigating officer has completed his examination of a witness, he should advise the accused and his 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 testimony, any knowledge he may have of the offense(s), or concerning his 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 desires 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 proceed to call them at this time.

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

Note. If witnesses are to be called to testify on the accused's behalf, the investigating officer 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 about what you want to question them.)

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

Note. If the accused is represented by counsel, the I.O. should assume that counsel will conduct the examination of the witness and present his evidence in a planned procedure. If the accused has elected not to have counsel at the investigation, the I.O. should permit the accused to cross-examine witnesses himself and to question his own witnesses if he desires. The procedure for administering the oath (app V) and for introductory questioning of the witness set forth above should be followed for defense witnesses. After the accused or his counsel has completed his examination of the defense witness or the I.O. has done so for him, the I.O. may cross-examine the witness or if counsel appears for the Government, he may cross-examine the witness.

### CALLING ADDITIONAL WITNESSES

When all witnesses who were initially called have testified, the investigating officer 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

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

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?

Note. The response by the accused or his counsel should be recorded (Item 9, DA Form 457).

## APPENDIX VII

### 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 an extract copy of the morning reports of Company \_\_\_\_\_, \_\_\_\_\_, for 31 July 1970 and for 31 September 1970, 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 VIII

## REPORT OF INVESTIGATION

INVESTIGATING OFFICER'S REPORT <i>(Of charges under the provisions of Article 32, Uniform Code of Military Justice, and paragraph 34, MCM, U.S., 1969 (Rev.))</i>		2d INDORSEMENT
FROM: <i>(Grade, name and organization of investigating officer)</i> Captain Samuel E. Prvor, B Co., 1st Bn, 71st Inf, 20th Inf Div, Ft. Blank, Mo.		DATE OF REPORT 5 August 1970
TO: <i>(Title and organization of officer who directed report to be made)</i> Commanding Officer, 1st Bn., 71st Inf, 20th Inf Div, Ft. Blank, Missouri		
GRADE AND NAME OF ACCUSED Staff Sergeant Robert I.S. Missing	SSAN 546 77 7270	ORGANIZATION HHC, 1st Bn, 71st Inf, 20th Inf Div, Ft. Blank, Mo
		DATE OF CHARGES 1 Aug 70
<i>(Check appropriate answer)</i>		
		YES NO
1. IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 32, UNIFORM CODE OF MILITARY JUSTICE, AND PARAGRAPH 34 MCM, 1969 (REV.), I HAVE INVESTIGATED THE CHARGES (Exhibit 1) APPENDED HERETO. (If, and as soon as, it is determined the accused elects not to be represented by counsel or by qualified counsel during the investigation, the investigating officer will complete in this item 1 through 4, except 4f, and will ask the accused to sign item 4c.)		X
2. AT THE OUTSET OF THE INVESTIGATION, I READ TO THE ACCUSED THE PROVISIONS OF ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE, AND ALSO ADVISED HIM:		X
a. OF THE NATURE OF THE OFFENSE(S) CHARGED AGAINST HIM.		X
b. OF THE NAME OF THE ACCUSER.		X
c. OF THE NAMES OF THE WITNESSES AGAINST HIM SO FAR AS KNOWN BY ME.		X
d. THAT THE CHARGES WERE ABOUT TO BE INVESTIGATED BY ME.		X
e. THAT HE HAS A RIGHT TO CONSULT WITH AND TO OBTAIN, AND TO HAVE PRESENT DURING THIS INVESTIGATION, A LAWYER, EITHER (1) A CIVILIAN LAWYER RETAINED AT HIS OWN EXPENSE, OR (2) MILITARY COUNSEL OF HIS OWN SELECTION, IF SUCH COUNSEL IS REASONABLY AVAILABLE, OR (3) A MILITARY LAWYER, CERTIFIED UNDER ARTICLE 27(b), PROVIDED WITHOUT COST BY THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION, PARAGRAPH 34c, MCM.		X
f. OF HIS RIGHT TO CROSS-EXAMINE ALL AVAILABLE WITNESSES AGAINST HIM		X
g. OF HIS RIGHT TO PRESENT ANYTHING HE MIGHT DESIRE IN HIS OWN BEHALF, EITHER IN DEFENSE OR MITIGATION		X
h. OF HIS RIGHT TO HAVE THE INVESTIGATING OFFICER EXAMINE AVAILABLE WITNESSES REQUESTED BY HIM		X
i. OF HIS RIGHT TO MAKE A STATEMENT IN ANY FORM		X
j. OF HIS RIGHT TO REMAIN SILENT OR TO REFUSE TO MAKE ANY STATEMENT REGARDING ANY OFFENSE OF WHICH HE WAS ACCUSED OR CONCERNING WHICH HE IS BEING INVESTIGATED.		X
k. THAT ANY STATEMENT MADE BY HIM MIGHT BE USED AS EVIDENCE AGAINST HIM IN A TRIAL BY COURT-MARTIAL		X
3. a. THE ACCUSED REQUESTED MILITARY COUNSEL BY NAME		X
b. NAME AND GRADE OF SUCH COUNSEL	ORGANIZATION	
Captain Thomas T. Howard, JAGC	SJA Sec, Hq 20th Inf Div	
c. MILITARY COUNSEL REQUESTED BY NAME WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b) UNIFORM CODE OF MILITARY JUSTICE		X
d. IF ANSWER TO PRECEDING ITEM WAS "NO", ACCUSED WAS INFORMED THAT SUCH UNQUALIFIED COUNSEL MAY NOT REPRESENT HIM AT ANY GENERAL COURT-MARTIAL		
e. MILITARY COUNSEL REQUESTED BY NAME WAS REASONABLY AVAILABLE. (If not available, explain in item 18, having reference to paragraph 34c, MCM, 1969 (Rev.))		X
f. THE ACCUSED STATED HE WOULD BE REPRESENTED BY CIVILIAN COUNSEL		X
g. NAME AND ADDRESS OF SUCH COUNSEL (Include ZIP Code)	MEMBER OF THE BAR OF	
h. (This item to be used by accused's civilian counsel only)  _____ (Place and date) I hereby enter my appearance for the above-named accused and represent that I am a member of the bar of _____  _____ (Signature of Counsel)		
4. a. THE ACCUSED REQUESTED THAT COUNSEL BE PROVIDED BY THE GENERAL COURT-MARTIAL AUTHORITY TO REPRESENT HIM		X
b. NAME AND GRADE OF SUCH COUNSEL	ORGANIZATION	
c. COUNSEL (as in b above) WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b) UNIFORM CODE OF MILITARY JUSTICE		
d. IF ANSWER TO PRECEDING ITEM (4c) IS "NO", ACCUSED SPECIFICALLY WAIVED COUNSEL WITH SUCH QUALIFICATIONS		
e. (To be signed by accused if answer to 3a and 4a, or 3c, or 4a was "NO". If accused fails to sign, investigating officer will explain circumstances in detail in item 18)  _____ (Date) I have been informed of my right to representation at the investigation by counsel qualified under Article 27(b), Uniform Code of Military Justice. I hereby waive my right to (such qualified counsel) (counsel).  _____ (Signature of Accused)		
NOTE: If additional space is required for any item, enter the additional material on a separate sheet. Be sure to identify such material with the proper numerical and, when appropriate, lettered heading (Example, "3c"). Securely attach any additional sheet to the form and add a note in the appropriate item of the form: "See additional sheet." Any matters considered pursuant to paragraph 34, MCM, 1969 (Rev.) which are not identifiable with some other heading in the form should be entered in item 18.		

(Check appropriate answer - continued)			YES	NO
f. COUNSEL FOR THE ACCUSED WAS PRESENT THROUGHOUT THE INVESTIGATION. (If the accused waives the right to have counsel present throughout all or a part of the investigation after having requested counsel, state the circumstances and the particular proceedings conducted in the absence of such counsel)			X	
5. a. IN THE PRESENCE OF THE ACCUSED I HAVE INTERROGATED ALL AVAILABLE WITNESSES UNDER OATH OR AFFIRMATION AND HAVE EXAMINED ALL DOCUMENTARY EVIDENCE ON BOTH SIDES.			X	
b. I HAVE REDUCED THE MATERIAL TESTIMONY GIVEN BY EACH SUCH WITNESS UNDER DIRECT AND CROSS-EXAMINATION TO A SWORN OR AFFIRMED WRITTEN STATEMENT EMBODYING THE SUBSTANCE OF THE TESTIMONY TAKEN ON BOTH SIDES.			X	
c. THE SWORN OR AFFIRMED WRITTEN STATEMENTS OF SUCH WITNESSES ARE APPENDED HERETO AS INDICATED:			X	
NAME AND GRADE OF WITNESSES WHO WERE PRESENT	ORGANIZATION OR ADDRESS (Include ZIP Code)	EXHIBIT NUMBER		
CPT Joel A. Gunpowder	HHC, 1st Bn, 71st Inf, 20th Inf Div	2		
CPT John W. Leader	HHC, 1st Bn, 71st Inf, 20th Inf Div	3		
Miss Birdie Doolittle	1000 Eye St., Smithville, Missouri	4		
6. a. THE SUBSTANCE OF THE EXPECTED TESTIMONY OF EACH OF THE FOLLOWING ABSENT WITNESSES WHOSE PRESENCE WAS NOT REQUESTED BY THE ACCUSED, OR WHO, HAVING BEEN REQUESTED, WERE NOT AVAILABLE, OR FOR WHOM THE REQUEST WAS WITHDRAWN, WAS OBTAINED FROM SUCH WITNESSES IN THE FORM OF A SWORN OR AFFIRMED WRITTEN STATEMENT, OR WAS STIPULATED TO BY THE ACCUSED IN WRITING. SUCH STATEMENTS OR STIPULATIONS ARE APPENDED HERETO AS INDICATED:			X	
NAME AND GRADE OF ABSENT WITNESSES	ORGANIZATION OR ADDRESS (Include ZIP Code)	EXHIBIT NUMBER		
Mr. Joe Pawn	14 Main St., Smithville, Missouri	5		
b. A COPY OF EACH SUCH WRITTEN STATEMENT HAS BEEN SHOWN TO THE ACCUSED.			X	
c. IF AN ABSENT WITNESS IS REQUESTED BY THE ACCUSED BUT IS NOT AVAILABLE, ENTER A PROPER EXPLANATION				
7. a. THE FOLLOWING DOCUMENTS HAVE BEEN EXAMINED, SHOWN TO THE ACCUSED, AND ARE APPENDED AS INDICATED (describe documents)			EXHIBIT NUMBER	
Undated letter from Miss Russell to Miss Doolittle (see Remarks)		6		
Weapons register prepared at the direction of Captain Gunpowder		7		
b. IF ANY DOCUMENTS MADE AVAILABLE TO THE INVESTIGATING OFFICER WERE NOT EXAMINED OR WERE EXAMINED BUT NOT SHOWN TO THE ACCUSED, OR WERE EXAMINED BUT ARE NOT APPENDED, STATE THE REASONS				
(See Remarks)				
8. a. THE FOLLOWING DESCRIBED REAL EVIDENCE WAS EXAMINED, SHOWN TO THE ACCUSED, AND IS NOW PRESERVED FOR SAFEKEEPING AS INDICATED:				
Caliber .45 pistol, Model M 1911A1, serial number 532084 and a Longine wrist-watch - both returned to Captain Leader to be locked in the safe of Headquarters and Headquarters Company, 1st Bn, 71st Inf, 20th Inf Div			X	
b. IF CERTAIN REAL EVIDENCE WHICH WAS EXAMINED WAS NOT SHOWN TO THE ACCUSED, STATE THE REASONS.				
N/A				

(Check appropriate answer - continued)		YES	NO
<b>9. THE ACCUSED AFTER HAVING BEEN INFORMED OF HIS RIGHT TO MAKE A STATEMENT OR REMAIN SILENT:</b>			
a. HE DID NOT DESIRE TO MAKE A STATEMENT		X	
b. MADE A STATEMENT APPENDED HERETO (Exhibit _____).			
c. THE CIRCUMSTANCES OF THE TAKING OF ANY CONFESSION OR ADMISSION OF ACCUSED WERE INQUIRED INTO BY ME AND SUCH CONFESSION OR ADMISSION APPEARS TO HAVE BEEN OBTAINED IN ACCORDANCE WITH ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE AND/OR THE 8TH AMENDMENT. (Where appropriate, attach statement of person taking confession or admission showing circumstances of taking.)			
d. THE ACCUSED, AFTER BEING ADVISED THAT HE DID NOT HAVE TO MAKE ANY STATEMENT WITH RESPECT TO IT, WAS SHOWN THE CONFESSION OR ADMISSION AND DID NOT CONTEST IT AS BEING NOT IN COMPLIANCE WITH ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE. (If the confession or admission was contested, attach accused's explanation of the circumstances.)			
10. a. THERE WERE REASONABLE GROUNDS FOR INQUIRING INTO THE MENTAL RESPONSIBILITY OF THE ACCUSED AT THE TIME OF THE ALLEGED OFFENSE (MCM, 120b)			X
b. THERE WERE REASONABLE GROUNDS FOR INQUIRING INTO THE MENTAL CAPACITY OF THE ACCUSED AT THE TIME OF THE INVESTIGATION (MCM, 120c)			X
c. IF GROUNDS FOR INQUIRY AS TO THE ACCUSED'S MENTAL CONDITION EXISTS, STATE REASONS THEREFOR AND ACTION TAKEN			
d. A REPORT OF A (BOARD OF MEDICAL OFFICERS) (PSYCHIATRIST) IS APPENDED (Exhibit _____)			
11. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL. (If any essential witness(es) will not be so available, list name, address, reason for nonavailability, and recommendation, if any, whether a deposition should be taken. List estimated date of separation and/or transfer, if pertinent and available)		X	
12. EXPLANATORY OR EXTENUATING CIRCUMSTANCES ARE SUBMITTED HERewith.			X
13. a. I HAVE INVESTIGATED AND FIND <u>2</u> PREVIOUS CONVICTION(S) OF OFFENSES COMMITTED WITHIN THE SIX YEARS NEXT PRECEDING THE COMMISSION OF AN OFFENSE WITH WHICH THE ACCUSED IS NOW CHARGED (MCM, 1969, (Rev.) per 75b(2))			
b. AN EXTRACT COPY OF THE ACCUSED'S MILITARY RECORDS OF PREVIOUS CONVICTIONS IS APPENDED (Exhibit <u>8</u> )		X	
14. IN ARRIVING AT MY CONCLUSIONS I HAVE CONSIDERED NOT ONLY THE NATURE OF THE OFFENSE(S) AND THE EVIDENCE IN THE CASE, BUT I HAVE LIKEWISE CONSIDERED THE AGE OF THE ACCUSED, HIS MILITARY SERVICE, AND THE ESTABLISHED POLICY THAT TRIAL BY GENERAL COURT-MARTIAL WILL BE RESORTED TO ONLY WHEN THE CHARGES CAN BE DISPOSED OF IN NO OTHER MANNER CONSISTENT WITH MILITARY DISCIPLINE.		X	
15. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM AND THE MATTERS CONTAINED THEREIN ARE TRUE, TO THE BEST OF MY KNOWLEDGE AND BELIEF. (If the answer is "NO" explain and indicate recommended action on additional sheet)		X	
16. ANY INCLOSURES RECEIVED BY ME WITH THE CHARGES AND NOT LISTED ABOVE AS AN EXHIBIT ARE SECURELY FASTENED TOGETHER AND APPENDED HERETO AS ONE EXHIBIT (Exhibit _____) If no such inclosures were received check "NO".		X	
17. (Check appropriate box ONLY if trial is recommended)			
TRIAL BY	<input checked="" type="checkbox"/> GENERAL	<input type="checkbox"/> SPECIAL	<input type="checkbox"/> SUMMARY
COURT-MARTIAL IS RECOMMENDED.			

18. REMARKS (If more space is required, attach additional sheets. Check  YES  NO if additional sheets are attached.)

This file was received by me at 1300 hours 2 August 1970. The delay in completing my investigation was occasioned as follows: I informed the requested defense counsel, Captain Howard, late in the afternoon of 2 August 1970 that he had been made available and that I would conduct the investigation beginning at 1300 hours 3 August 1970. Captain Howard requested that I delay the investigation until 1000 hours 4 August 1970 because he desired to talk to the civilian witnesses before the investigation. He further stated he would be unable to talk to these witnesses until the afternoon of 3 August 1970 because of his other assigned duties. I granted the defense counsel's request.

Ref. item 7b. AR 711-140, 20 March 1968, as changed shows that the stock number of a pistol, caliber .45, Model M 1911A1 is 1005-673-7965. The value of this stock number item is \$57.00. This publication was shown to the accused but is not appended hereto because it is too bulky.

All inclosures to the basic communication have been withdrawn and are now attached to this report as exhibits as indicated:

Incl 1 - Ex 1  
Incl 2 - part of Ex 9  
Incl 3 - Ex 8  
Incl 4 - part of Ex 9

I have considered as part of my investigation and am attaching to this report the unsworn statement of Miss Lillian Russell, 1001 Jay Street, Smithville, Missouri (Exhibit 10). Before considering this statement, I explained to the accused that I could not consider this statement without his consent. The accused though counsel stated that he wished me to consider this unsworn statement, even though Miss Russell was not called as a witness.

19. I HAVE NO PREVIOUS CONNECTION WITH THIS CASE OR ANY CLOSELY RELATED CASE. (If any connection is indicated, attach a full explanation.) I AM NOT AWARE OF ANY REASONS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (If any reasons appear to exist, attach a statement giving full details.)

TYPED NAME, GRADE, AND ORGANIZATION OF INVESTIGATING OFFICER

SAMUEL E. PRYOR, Captain, B Co. 1st Bn, 71st  
Inf, 20th Inf Div, Fort Blank, Missouri

SIGNATURE

*Samuel E Pryor*

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CREIGHTON W. ABRAMS,  
*General, United States Army,  
Chief of Staff.*

Official:

VERNE L. BOWERS,  
*Major General, United States Army,  
The Adjutant General.*

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