

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

139

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

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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. 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.

The term "he" (and its derivatives) used in this pamphlet is generic, and except where otherwise indicated by the context, should be considered as applying to both male and female.

- (4) This pamphlet is applicable to the Army National Guard and the US Army Reserve.

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 such 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 involves becoming thoroughly familiar with the contents of this guide, paragraph 34, MCM, and Article 32, UCMJ. Your two most important and legally vital responsibilities are:

- (1) Complete impartiality (in both appearance and actuality) and,
- (2) Thorough investigation of all charges and specifications alleged in the charge sheet(s).

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 have been designated, in writing or otherwise, to assist you in your role as investigating officer. However, 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 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 "contact" officer 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 27(b) 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 adviser of the investigating officer, but rather 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.

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 officer who appointed you. The file may also include a letter of instruction from the officer who appointed you or directions to report to the office of the local judge advocate for a briefing by the judge advocate "contact" officer 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 can not 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 a dismissal of the charges. On the other hand, you 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 case file, you should read Article 32, UCMJ, paragraph 34, MCM, and this guide, then study the file and take action in the sequence indicated below.

a. Consult With the Judge Advocate "Contact" Officer. You should report to the designated "contact" officer for an initial briefing on your duties. You may consult this judge advocate as often as necessary, during the course of your investigation, for procedural advice and assistance. Keep in mind that, although you may feel that the judge advocate designated as trial counsel to represent the Government may be more familiar with your case than the "contact" officer, your impartial role requires avoiding any discussions with legal personnel performing adversarial roles in the case.

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 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 Conducting 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.

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 chapter XXVIII, MCM, particularly the paragraphs entitled "Proof." In addition you 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 marijuana, 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 4 September 19___, wrongfully sell marijuana.

The elements of this offense are:

(a) At the time and place alleged the accused sold marijuana.

(b) That the sale was wrongful.

(c) 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) You should ensure 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 you conclude 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, 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.

(4) You must determine whether documentary evidence in the file, such as copies of SIDPERS documents and copies of records of previous convictions, is properly authenticated (para 143b, MCM). You should assign identifying numbers to all documentary evidence and any physical objects in order that they may be accurately referred to when you make out the investigating officer's report (see chap. 4).

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

e. 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 in making your recommendations in the case.

f. 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 His 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 or her 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 at that time, his or her answer should be obtained in the form of an indorsement to the letter. A sample notification and indorsement is contained in appendix B. At this first meeting with the accused, you should introduce yourself, explain that you have been detailed as investigating officer, this and explain the purposes of his 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 to be represented by counsel, this 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 will grant reasonable requests.

b. Availability of Witnesses for the Accused. You as investigating officer, 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 such a witness who is not located at the site of the hearing. Typically, the defense either wishes to call the requested witness in support of its own case, or to cross-examine a potential prosecution witness who is not expect to appear for the hearing. As the physical absence of an essential witness is not the sole criteria in determining "availability" you must apply the legal standard which seeks to balance the two competing interests. *The significance of the witness' testimony must be weighed against the relative difficulty and expense of obtaining the witness' presence at the investigation.* Examples of factors which may render the requested witness "unavailable," in justification of a denial for produc-

tion, include extraordinary circumstances and other military exigencies over and above the simple fact of absence from the site of the hearing. Being mindful of the discovery nature of the Article 32(b) investigation, alternative remedies affording discovery would include the possibility of deposing the witness under the provisions of Article 49(d)(1), UCMJ, or examining the witness informally by correspondence. **KEEP IN MIND:** *The accused's legal rights concerning production of essential witnesses, at the pretrial investigation, weigh in favor of producing the requested witness, upon a showing that the witness is essential and absent any affirmative showing, by the Government, of extraordinary circumstances or other military exigencies precluding production.*

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 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, 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 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). However, subject to approval by the general court-martial convening authority, you may arrange for the issuance of invitational travel orders authorizing mileage advance for transportation to the hearing of an essential non-Government civilian witness who is willing to appear voluntarily (see

para 2-39, AR 27-10, and sec III, chap. 13, AR 37-106). 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 your determination 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 ensure 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 as 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 interview room should be arranged so that the witness chair faces both yourself and the accused (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). 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 D 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' signatures on statements of summaries of testimony will cause undue delay, they need not be signed by the witness but they will be authenticated by yourself. 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 you 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 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, 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. After having determined as far as possible the reasons for which the witness refuses to make an additional statement, you should indicate to the accused and counsel that you are still going to consider the previously *sworn* statement.

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* 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 or her availability at a later trial, you 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. 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 340-19, 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 page A8-17, appendix 8b, MCM, for a warning guide.

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 (para 121, MCM). In addition, you should complete all items under Item 10, DD Form 457, as appropriate.

h. 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 presents evidence in extenuation or mitigation, it should be noted in Item 12, DD Form 457. 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 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, 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 unless there is more than one accused. 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 18) of your 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 (para 34f, MCM). In appropriate cases this can eliminate much needless paperwork.

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 certain charges against you. The charges allege, in general, (the offense(s) of ___) (that you did ___). The name of the accuser is ___. The name of the witnesses thus far known to me are ___, ___, ___.

"I am now going to advise you of your rights in this investigation. 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 charges, form of charges, 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 gen-

Identity of I.O.

Charges referred for investigation

Informing accused of charges

Cautioning the accused

Duties of I.O.

Accused's rights to counsel

eral 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 nonlawyer 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 32(b) Investigation

Private (E-1) John J. Doe

Post Stockade

Fort Blank, Missouri 63899

1. On _____ at _____ hours in Building _____, Room _____, I will conduct an investigation pursuant to Article 32(b), 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, 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, IN
Investigating Officer
(Address)

MAJ, IN
Investigating Officer

SUBJECT: Article 32(b) Investigation

___() 1st Ind

PVT (E1) John J. Doe,_____, _____ (date)

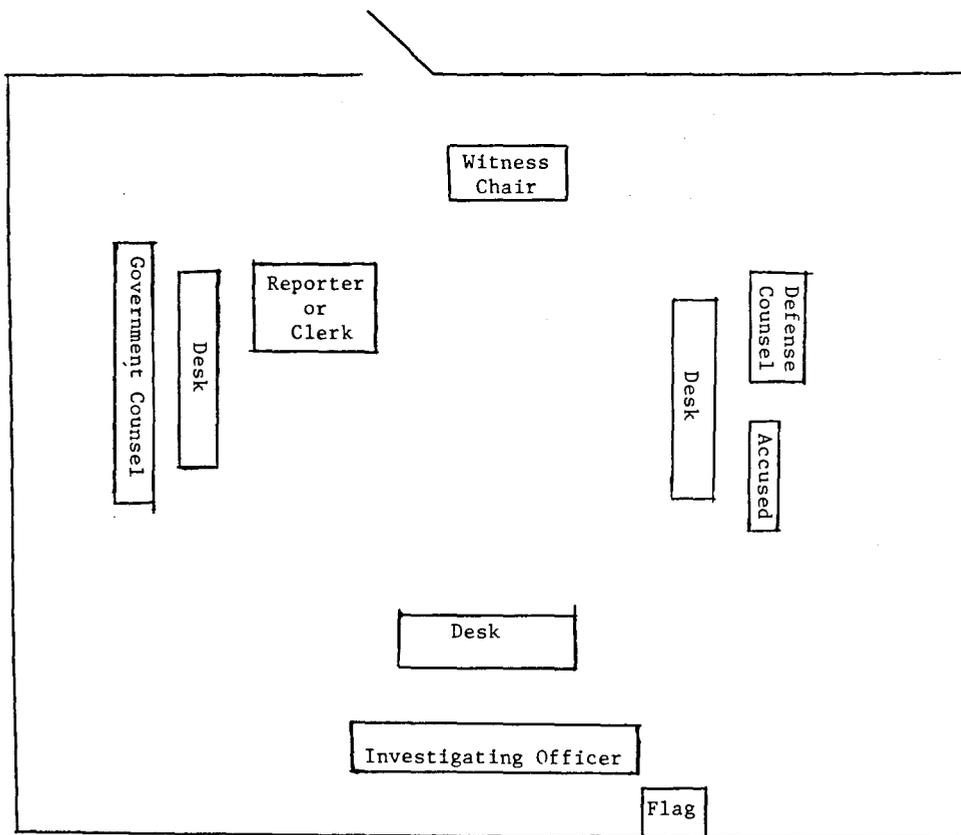
TO: Major _____, Investigating Officer, _____,

1. Receipt of basic communication is acknowledged.
2. (I want to be represented by (civilian counsel, who is Mr. (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.

PVT (E1) John J. Doe
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 which it was intended to be 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 certain charges 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 _____ 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 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 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.

Examination of the file

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 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 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. However, you are at liberty to attempt to obtain a sworn statement from the witness in question. 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 5c, DD Form 457, with an appropriate explanation in Item 18. You may then consider the statement in arriving at your recommendation.

If the statement of a witness you intend to consider is sworn and you do not intend to call that 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 the witness if he is available and, if you wish, I will arrange an appearance for that purpose. Do you want me to call (Private First Class _____) as a witness?

(COUNSEL) (ACCUSED): _____.

Note. If the accused answers in the affirmative, you 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, you should mark the statement as an exhibit and enter it in Item 6a and may consider it in arriving at your 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 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" is 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 (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, the interpreter must first be sworn (para 112, MCM). *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, the you should inquire into the basis for the witness' identification of the accused.

GOVERNMENT WITNESS

Note. If Government counsel is present, he or she may first examine Government witnesses, followed by a 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 day room 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

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 con-

cerning 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 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, 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 about what you want to question them.)

(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 make inquiry of accused and 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 counsel should be recorded (Item 9, DA Form 457).

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 exhibition 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 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> MAJ Bruce B. Blair, HHB, 1st Bn 77th FA, Ft Hood, TX		DATE OF REPORT 9 Aug 1979
TO: <i>(Title and organization of officer who directed report to be made)</i> Commander, 1st Bn 77th FA, 1st Cav Div, Ft Hood, TX		
GRADE AND NAME OF ACCUSED Staff Sergeant Jack X. Zake	SSAN 546-77-7270	ORGANIZATION Btry B, 1st Bn 77th FA 1st Cav Div, Ft Hood, TX
		DATE OF CHARGES 1 Aug 1979
<i>(Check appropriate answer)</i>		
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. <i>(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 ink items 1 through 4, except 4i, and will ask the accused to sign item 4c.)</i>		YES NO <input checked="" type="checkbox"/> <input type="checkbox"/>
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:		<input checked="" type="checkbox"/>
a. OF THE NATURE OF THE OFFENSE(S) CHARGED AGAINST HIM.		<input checked="" type="checkbox"/>
b. OF THE NAME OF THE ACCUSER.		<input checked="" type="checkbox"/>
c. OF THE NAMES OF THE WITNESSES AGAINST HIM SO FAR AS KNOWN BY ME.		<input checked="" type="checkbox"/>
d. THAT THE CHARGES WERE ABOUT TO BE INVESTIGATED BY ME.		<input checked="" type="checkbox"/>
e. THAT HE HAS A RIGHT TO CONSULT WITH AND TO OBTAIN, AND TO HAVE PRESENT DURING THIS INVESTIGATION, A LAWYER, EITHER		<input checked="" type="checkbox"/>
(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.		
f. OF HIS RIGHT TO CROSS-EXAMINE ALL AVAILABLE WITNESSES AGAINST HIM		<input checked="" type="checkbox"/>
g. OF HIS RIGHT TO PRESENT ANYTHING HE MIGHT DESIRE IN HIS OWN BEHALF, EITHER IN DEFENSE OR MITIGATION		<input checked="" type="checkbox"/>
h. OF HIS RIGHT TO HAVE THE INVESTIGATING OFFICER EXAMINE AVAILABLE WITNESSES REQUESTED BY HIM		<input checked="" type="checkbox"/>
i. OF HIS RIGHT TO MAKE A STATEMENT IN ANY FORM		<input checked="" type="checkbox"/>
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.		<input checked="" type="checkbox"/>
k. THAT ANY STATEMENT MADE BY HIM MIGHT BE USED AS EVIDENCE AGAINST HIM IN A TRIAL BY COURT-MARTIAL		<input checked="" type="checkbox"/>
3. a. THE ACCUSED REQUESTED MILITARY COUNSEL BY NAME		<input checked="" type="checkbox"/>
b. NAME AND GRADE OF SUCH COUNSEL CPT Will K. Reardon, JAGC	ORGANIZATION OSJA, Hq 1st Cav Div	
c. MILITARY COUNSEL REQUESTED BY NAME WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b) UNIFORM CODE OF MILITARY JUSTICE		<input checked="" type="checkbox"/>
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. <i>(If not available, explain in item 18, having reference to paragraph 34c, MCM, 1969 (Rev.))</i>		<input checked="" type="checkbox"/>
f. THE ACCUSED STATED HE WOULD BE REPRESENTED BY CIVILIAN COUNSEL		<input checked="" type="checkbox"/>
g. NAME AND ADDRESS OF SUCH COUNSEL <i>(Include ZIP Code)</i>	MEMBER OF THE BAR OF	
h. <i>(This item to be used by accused's civilian counsel only)</i>		
<i>(Place and date)</i>		
I hereby enter my appearance for the above-named accused and represent that I am a member of the bar of		
<i>(Signature of Counsel)</i>		
4. a. THE ACCUSED REQUESTED THAT COUNSEL BE PROVIDED BY THE GENERAL COURT-MARTIAL AUTHORITY TO REPRESENT HIM		<input checked="" type="checkbox"/>
b. NAME AND GRADE OF SUCH COUNSEL	ORGANIZATION	
c. COUNSEL <i>(as in b above)</i> WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b) UNIFORM CODE OF MILITARY JUSTICE		NA
d. IF ANSWER TO PRECEDING ITEM (4c) IS "NO", ACCUSED SPECIFICALLY WAIVED COUNSEL WITH SUCH QUALIFICATIONS		NA
e. <i>(To be signed by accused if answer to 3a and 4a, or 3c, or 4c was "NO". If accused fails to sign, investigating officer will explain circumstances in detail in item 18)</i>		
<i>(Date)</i>		
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).		
<i>(Signature of Accused)</i>		
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, "5c"). 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 Lee V. Meyer	HQB, 1st Bn 77th FA, 1st Cav Div	2		
CPT Dale Z. Victor	15th AG Company, 1st Cav Div	3		
Miss Lucy Garrett	1000 Eye St., Killeen, TX 76541	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. Felix H. Bane	14 Main St., Killeen, TX 76541	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)			X	
Undated letter from Ms. Russell to Ms. Garrett (see Remarks)		6		
Weapons register prepared at the direction of CPT Gilmer		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 wristwatch - both returned to CPT Rinor to be locked in the safe of 15th AG Company, 1st Cav 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
9. THE ACCUSED AFTER HAVING BEEN INFORMED OF HIS RIGHT TO MAKE A STATEMENT OR REMAIN SILENT:			
a. HE DID NOT DESIRE TO MAKE A STATEMENT		X	
b. MADE A STATEMENT APPENDED HERETO (Exhibit _____).		NA	
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.)		NA	
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.)		NA	
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 _____)			X
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>0</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>11</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".)			See Rmks
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.		X	

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 1979. The delay in completing my investigation was occasioned as follows: I informed the requested defense counsel, Captain Reardon, late in the afternoon of 2 August 1979 that he had been made available and that I would conduct the investigation beginning at 1300 hours 3 August 1979. Captain Reardon requested that I delay the investigation until 1000 hours 8 August 1979 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 6 August 1979 because of his other assigned duties. I granted the defense counsel's request (Exhibit 12).

Ref. item 7b. AR 711-140, 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 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 report the unsworn statement of Ms. Lillian Russell, 1001 Jay Street, Killeen, Texas (Exhibit 10). Before considering this statement, I explained to the accused that I could not consider this statement without his consent. The accused through 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	SIGNATURE
BRUCE B. BLAIR, MAJ, HHB, 1st Bn 77th FA 1st Cav Div, Ft Hood, TX	<i>Bruce B. Blair</i>

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