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Legal Services

Procedural Guide for Article 32(b) Investigating Officer

Headquarters
Department of the Army
Washington, DC
16 September 1990

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SUMMARY of CHANGE

DA PAM 27-17
Procedural Guide for Article 32(b) Investigating Officer

This revision contains new guidance in the areas of Government and defense requested delays (para 2-1), ex parte discussions between the investigating officer and witnesses (para 2-2f), and rights warnings to witnesses who are suspected of committing an offense (para 3-3).

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Procedural Guide for Article 32(b) Investigating Officer

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History. This UPDATE printing publishes a revision of this publication. Because the publication has been extensively revised, the changed portions have not been highlighted. This publication has been reorganized to make it compatible with the Army electronic publishing database. No content has been changed.

Summary. This pamphlet is intended to provide information and reference material. While it may suggest workable solutions to legal problems, it does not purport to promulgate Department of the Army policy. Comments concerning laws, regulations, cases, or other matters represent the opinions of individual specialists in military justice. Laws, regulations, and decisions published prior to 1 January 1990 generally have been considered and included in this text.

Applicability. This pamphlet applies during peacetime and mobilization to the Active Army, the Army National Guard in Federal service under title 10, United States Code, and the U.S. Army Reserve.

Proponent and exception authority. Not applicable.

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 Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent of this pamphlet is Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to The Judge Advocate General's School, Army, ATTN:JAGS–ADC, Charlottesville, VA 22903–1781.

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*This pamphlet supersedes DA Pam 27–17, 15 March 1985.

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Chapter 1
Introduction

1–1. Purpose

This guide is published for use by officers who have been appointed as investigating officers under article 32(b) of the Uniform Code of Military Justice (UCMJ). This guide should be used in conjunction with the DD Form 457(Investigating Officer's Report) and the applicable Rules for Courts-Martial(R.C.M.) in the Manual for Courts-Martial, United States, 1984 (hereafter referred to as MCM, 1984). The investigating officer's functions are: To make a*thorough and impartial*investigation into the truth of the allegations; to consider the correctness and the form of the charges; and to make recommendations as to the disposition of the charges in the interest of justice and discipline.

1–2. General instructions

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

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

c. Legal representation for the accused. The accused may be represented during the investigation by a civilian lawyer of the accused's choice 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)and detailed for that purpose by competent authority. Counsel representing the accused will be allowed to present evidence on behalf of the accused, cross-examine Government witnesses, argue for a disposition of the matter appropriate to the interests of the accused, and otherwise perform the normal functions of counsel. Whenever counsel is requested by the accused, the taking of evidence will be conducted in the presence of that counsel unless expressly excused by the accused. *See* paragraph 2–3 for a complete explanation of the accused's right to counsel.

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

e. Advice concerning substantive matters. You should inform counsel for the accused and counsel for the Government, if detailed, of all matters discussed with your legal advisor in your initial briefing. If you later seek additional advice from your legal advisor, you must give prior notice to counsel for the accused and to counsel for the Government, if any, and you must provide these parties with an opportunity to respond to the advice you received. If practical, you may give counsel for both sides advance notice of your intent to seek legal advice and may allow them an opportunity to be present; however, this is not required. As a general rule, you should keep arecord of the dates of consultation with your legal advisor, the matters discussed, when parties were notified of such discussions, whether counsel for the parties were present at such discussions, and any response by counsel to your legal advisor's advice.

Chapter 2
Preparing for the Investigation

2–1. General considerations

a. The case 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 Standard Installation/Division Personnel System (SIDPERS) documents in cases involving unauthorized absence; and the record of previous convictions, if any. If these documents are not in the file, you should request them immediately from the appropriate agencies. The file may also include a letter of instruction from the officer who appointed you and directions to report to the office of the local judge advocate for a briefing by the judge advocate legal advisor designated to assist you.

b. 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, and on appeal.The ultimate outcome of the case may well depend upon whether you properly perform your duties in making certain that the accused is fully informed of and afforded all applicable rights in connection with the investigation.

c. It is important to conduct the investigation expeditiously. Usually, the officer appointing the investigating officer will set a date for completion of the report. If you cannot comply with that date, promptly report this fact in writing to the authority who directed the investigation and explain the cause of the delay in detail. Such delay on your part could result in a gross injustice to the accused and in dismissal of the charges. On the other hand, you must take the time necessary for a thorough investigation.

d. Requests for delay by the accused/defense must be in writing and must be attached to the report of investigation. The Government should be allowed an opportunity to respond to the defense requested delay. You should ensure that there are no ambiguities in the request. Additionally, you should ensure that the accused and defense counsel understand that their requested delay will not be attributable to the Government. Any reasonable request for delay by the accused should be granted.

e. The Government representative may ask you to approve a delay in the investigation. The Government representative will also normally ask that you exclude the period of delay from Government speedy-trial accountability. You should require the Government representative to put the request for delay *and* reasons for the request in writing. When these requests are made, you should review R.C.M. 707 and consult with your legal advisor.Before ruling on the Government's request, you should hold a hearing at which the defense counsel and the Government representative can present evidence

and argument on the request. The Government must always establish that its request is for a "reasonable" period of delay. If you grant the delay, the defense counsel may ask the military judge to review your decision. For this reason, you must be sure that you gather sufficient evidence to support your decision and that you clearly explain your reasons for granting the delay. You may deny the Government's request or approve a shorter period of delay than that requested. In short, you must hear evidence and arguments from both sides, approve only reasonable delays, have an evidentiary basis for granting the delay, explain your reason(s) for the decision, and include this information in your report.

f. You should complete a chronology sheet documenting the dates of all your actions in conducting the investigation and the reasons for any delays in the investigation. You should attach this chronology sheet to your report. See R.C.M. 405(j)(2)(F).

2–2. Sequence of preparation

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

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

b. Examine the file.

(1) You should examine the charge sheet and all accompanying papers.

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

c. Determine whether there is any reason you cannot conduct a fair and impartial investigation. If there is any reason you cannot conduct a fair and impartial investigation, you should promptly notify the officer who appointed you of this fact. Prior knowledge about the case should not disqualify you from acting as the investigating officer, provided you have not drawn conclusions about the guilt or innocence of the accused and have not assisted in perfecting a case against the accused.

d. Determine the applicable law.

(1) You should be familiar with the elements (essential facts) of the offense(s) charged. You should read the discussion of the offense or offenses in MCM, 1984, Part IV. If the offense is charged as a violation of article 134, UCMJ, and no discussion of the specific elements appears in the MCM, 1984, or DA Pam 27–9, consult your legal advisor regarding the elements.

(2) You should ensure that each specification actually alleges an offense (*see* R.C.M. 307(c)) and that each offense is charged as a violation of the proper article of the UCMJ. If you conclude that the wording of a specification departs so materially from an applicable form specification(*see* MCM, 1984, Part IV) 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 failure to obey a regulation or written order and a copy of the directive is not in the file, you should obtain copies of the directive for the report and familiarize yourself with its provisions.

e. Determine what evidence to examine. You must determine what evidence, including documents or physical objects, should be examined and whether such evidence is reasonably available for production at the formal investigation. *See* R.C.M. 405(g). You may, in some circumstances, decide to consider alternatives to examining the actual physical evidence, for example, testimony describing it or photographs depicting it. *See* R.C.M. 405(g)(5). You should review R.C.M. 405(g), particularly subsections (1), (2), and (5), to determine when evidence is reasonably available and when alternatives to the original evidence may be considered. If there are copies of documents in the file which you decide to consider because the originals are not reasonably available, you should ensure that those copies are properly authenticated.*See*R.C.M. 405(g). You should assign identifying numbers to all documentary evidence and any physical objects so that they can be accurately referred to when you complete DD Form 457. (*See* chap 4.) If familiarity with the scene of the alleged offense would assist you in gaining a more accurate picture of the case, you may visit the scene. If you do visit the scene, you should inform all parties in advance when practicable and give them an opportunity to accompany you; otherwise, inform them afterward that you have visited the scene.

f. Determine what witnesses to call. Your review of the file should disclose the names of prospective witnesses. Once you decide which witnesses to call in your formal investigation, you must determine whether each witness is reasonably available. That determination requires you to balance the significance of the expected testimony and personal appearance of the witness against the difficulty, expense, delay, and effect on military operations of obtaining the witness's presence at the investigation. *See* R.C.M. 405(g)(1).You may communicate by telephone or otherwise with prospective witnesses to determine their availability. You should not discuss the facts of the case with prospective witnesses at this time. The law regards you as a judicial officer.You should hear the testimony of each witness *only during the formal proceeding* when the accused and counsel have an opportunity to hear the same testimony and cross-examine the witnesses. During your initial contact with witnesses, you may discuss *procedural* matters such as travel cost, lodging, and expected length of time the witness will be needed. Regarding military witnesses, if you determine that a witness is reasonably available, the witness's immediate commander may make a contrary determination and decline to make the witness available. *See* R.C.M. 405(g)(2). If this occurs, you should obtain the commander's reasons for the determination of nonavailability and include this information in your report. You should review R.C.M. 405(g), particularly subsections (1) through (4), before deciding what witnesses to call and when alternatives to live testimony by witnesses may be considered.

g. Arranging for place for investigation. You should contact the officer who appointed you to reserve a place for conducting the investigation and to request available clerical assistance.

2–3. Informing the accused of the investigation and the right to counsel

You should arrange (through the accused's commanding officer, if the accused is not in pretrial confinement, or the confinement officer, if the accused is in pretrial confinement) to meet with the accused for the purpose of providing preliminary advice and information concerning the investigation. *See* figure 2–1. The accused *may* also be notified of the investigation and the right to counsel in writing. If the accused is already represented by counsel, the written notice, if any, should be sent to the counsel. Otherwise, you should personally deliver the notice to the accused, read its contents, explain it, and answer any questions. If the accused can reach a decision concerning representation by counsel at that time, or if the accused desires to request specific witnesses for the investigation, his or her answer should be obtained in the form of an endorsement. Samples of notification and endorsement are contained in figures 2–2 and 2–3. At this first meeting with the accused, you should

introduce yourself, explain that you have been detailed as investigating officer, and explain the purposes of the investigation. (*See* figure 2–1.) *You must prohibit any attempt by the accused to discuss the facts of the case with you at this time.*

2–4. Consultation with counsel for the accused

a. General. If the accused requests representation by counsel, the request must be promptly reported to the officer who ordered the investigation.You should request that officer to notify you as soon as possible as to the identity and address or military organization of counsel who is to represent the accused. When you receive this information, contact the accused's counsel for the purpose of delivering a complete copy of the file. At this time, advise counsel of the proposed date, time, and place of the investigation and allow counsel reasonable time for preparation of the case. If counsel requests additional time for preparation, the request must be in writing and directed to you. You should grant reasonable requests for delay. *See* paragraph 2–1. Once the accused requests counsel, you should have no further contact with the accused outside the presence of defense counsel.

b. Availability of witnesses for the accused.

(1) You must carefully consider defense requests for production of essential witnesses to testify at the pretrial investigation. The typical issue for your decision is the "availability" or "unavailability" of a witness who is not located at the site of the hearing. Typically, the defense wishes to call the requested witness to support its own defense, but often the defense wants to cross-examine a potential prosecution witness who is not expected to appear for the hearing. Any witness whose testimony is relevant to the investigation and not cumulative should normally be produced if reasonably available. As explained in paragraph 2–2*f*, your determination of reasonable availability requires you to balance the significance of a witness's expected testimony against other factors, including the difficulty of obtaining the witness's presence and the effect on military operations. If the defense counsel has no objection, you may consider various alternatives to live testimony by available witnesses, such as sworn statements. *See* R.C.M.405(g)(4)(A). If a witness is not reasonably available, you may consider, over defense objection, various alternatives to testimony, such as sworn written statements, statements under oath taken by telephone (provided each party has an opportunity to question the witness), or depositions. *See* R.C.M.405(g)(4)(B). If the defense objects to a determination that a witness is not reasonably available, you must include the reasons for your determination in the report of investigation. *See* R.C.M. 405(g)(2)(D).

(2) You should secure from defense counsel a list of any witnesses the accused wants called sufficiently in advance of the formal investigation to allow time for securing their attendance. This will help ensure an 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.

(3) 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, you should set a date for a future 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 evidence requested by the accused. Sound discretion on your part is essential. For example, if all witnesses requested by the accused are readily available but certain requested documentary evidence will not be available until several days later, you may proceed with the investigation.Keep in mind that the thoroughness of the investigation is not dependent upon having all of the evidence available at the same time, but only upon the ultimate examination of all of the witnesses and evidence in a manner that is as orderly as possible. If, however, you must temporarily postpone the investigation in order to arrange for the attendance of witnesses, you should inform the accused and the potential witnesses of the date and place set for future proceedings and arrange for their attendance.

2–5. Securing the attendance of witnesses

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

b. Civilian witnesses not employed by the Government. Generally, non-Government civilian witnesses may not be compelled by the investigating officer to attend the pretrial investigation and testify. With advance approval by the general court-martial convening authority, however, you may arrange for the issuance of invitational travel orders authorizing a mileage advance for transportation to the hearing of an essential non-Government civilian witness who is willing to appear voluntarily. *See* AR 37–106, chapter 13, section III.In the alternative, you may arrange transportation for yourself, the accused, and counsel, if any, to a place convenient to the civilian witness. If you determine that the testimony of a reluctant civilian witness is essential and necessary for a proper disposition of the case, you should request the appropriate staff judge advocate to assist in obtaining the witness's 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 possession of real evidence. Your receipting for evidence might create admissibility problems at a later court-martial.

The following procedure provides guidance for an introductory session with the accused.

I.O. (to accused): I am (*rank and name*). By order of(*rank and name of appointing authority*), I have been appointed investigating officer under article 32(b) of the Uniform Code of Military Justice to investigate (a)certain charge(s) against you. The charge(s) allege(s) in general, the offense(s) of (*name of offense(s) and description(s) of conduct*). The name of the accuser is (*rank and name of accuser*). The names of the witnesses thus far known to me are (*name all known witnesses*).

I am now going to advise you of your rights in this investigation. You have the right to be present throughout the taking of evidence so long as your conduct is not disruptive. You will have the right at the proper time: to cross-examine all available witnesses against you; to present anything you might desire in your own behalf, either in defense, extenuation, 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, to remain silent, or to refuse to make any statement regarding any offense that you are accused or suspected of, or concerning that 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 thoroughly and impartially investigate the charges against you. This investigation shall include inquiries as to the truth of the matter set forth in the charge(s), form of the charge(s), and the disposition which should be made of the case in the interest of justice and discipline. It is my duty to impartially evaluate and weigh 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 extenuation or mitigation. 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 by the Trial Defense Service to represent you during the investigation. There is no cost to you for military counsel. Do you wish to be represented by counsel? If so, state the type of counsel you want to represent you.

Note. If the accused is hesitant about whether to ask for 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 the accused that such non-lawyer counsel cannot serve as defense counsel before a general court-martial or a special court-martial that can adjudge a bad-conduct discharge.

Figure 2-1. Preliminary advice to the accused

DEPARTMENT OF THE ARMY

(Organization name)

(Geographic location and zip code)

S: (*suspense date*)

(*office symbol*) (27) (*date*)

MEMORANDUM FOR (*name and address of accused*)

SUBJECT: Article 32(b) Investigation

1. On (*date*), at (*time*) in (*building number*),(*room number*), I will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning (a) charge(s) preferred against you by (*rank and name of person who preferred charge(s)*). The charge(s) is/are(*general nature of the charge(s)*), in violation of (*UCMJ article(s)*).

2. You have the right to be present during the entire investigation.Additionally, you have the right to be represented at all times during the investigation by legally qualified counsel. 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 Trial Defense Service. There is no cost to you for military counsel. You also have the right to waive representation by counsel.Send your decision to me by (*suspense date*).

3. The names of witnesses known to me, who will be asked to testify at the hearing are:
   a. (*Name of witness*).
   b. (*Name of witness*).
   c. (*Name of witness*).
   d. (*Name of witness*).
   e. (*Name of witness*).

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

   a. (*Describe evidence and its location*).
   b. (*Describe evidence and its location*).
   c. (*Describe evidence and its location*).

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by (*suspense date for witness notification*). If, at a later time, you identify additional witnesses, inform me of their names and addresses.

5. You may contact me by writing to: (*investigating officer's rank, name, and military address*).

(*Name*)
(*Rank, Branch*)
Investigating Officer

Figure 2-2. Notification to the accused

XXXX–XX (XXX–XX/*Date*) 1st End *Accused*/XX/AV XXX–XXXX

SUBJECT: Article 32(b), UCMJ Investigation

(*Name and address of accused*)

FOR (*Name and military address of investigating officer*)

1. Receipt of basic communication is acknowledged.

2. I want to be represented by (select one of the six options):

a. Civilian counsel, who is (*name and address*).

b. An individual military counsel, who is (*rank, name, and military address*), if he or she is reasonably available.

c. A legally qualified military counsel detailed by the Trial Defense Service.

d. A civilian counsel, who is (*name and address*), and individually requested military counsel, who is (*rank, name, and military address*).

e. Detailed military counsel and civilian counsel, who is(*name and address*).

f. I do not want to be represented by counsel.

3. I understand that the Government will not cover the cost of a civilian attorney, but military attorneys will be furnished at no cost to me.

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

a. (*Name and address of witness or description and location of evidence).*

b. (*Name and address of witness or description and location of evidence*).

(Include information on where they can be contacted.)

(*Accused*)
(*Rank*), U.S. Army

Figure 2-3. Response of the accused

Chapter 3
The Formal Investigation

3–1. General

Whenever practicable, the hearing room should be arranged so that the witness chair faces both yourself and the accused. *See* figure 3–1. 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 use a copy of DD Form 457 (fig 4–1) as a checklist in conjunction with the provisions of this guide when conducting the investigation.

3–2. Procedure for opening session

Figure 3–2 sets forth the suggested opening session procedure with the accused, the accused's counsel, and the Government representative. These procedures may be varied to meet special circumstances.

3–3. Procedures for taking testimony and examining evidence

a. Record of testimony.

(1) 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's signatures on statements of summaries of testimony will cause undue delay, they need not be signed by the witness, but they must be authenticated by you. These statements should be recorded on DA Form 2823 (Sworn Statement), given exhibit numbers, and noted on DD Form 457, item 12a. In certain cases, the officer who appointed you may desire to have the entire proceedings reported verbatim by a sworn reporter. In such cases, the verbatim report of the testimony of witnesses given on oath or affirmation need not be signed by the witnesses. Verbatim statements should also be given exhibit numbers and entered on DD Form 457, item 12a.

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

(3) 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 the witness of article 31 rights and the right to counsel.

(4) If during the taking of testimony it appears that a civilian witness might be suspected of committing any offense, stop and advise the witness of self-incrimination and counsel rights.

(5) You should use DA Form 3881 (Rights Warning Procedure/ Waiver Certificate) when advising military and civilian witnesses of these rights. If the witness initially waives these rights, you may proceed with questioning. If the witness remains silent or requests to speak to an attorney, stop all questioning and note this fact on DA Form 3881. You should not initiate further questioning of this witness until the witness has consulted with counsel and has consented to further questioning after readvisement of all rights (again use DA Form 3881). You should see your judge advocate legal advisor for assistance in determining if it is again permissible to question the witness.

b. Refusal to testify. If a witness who is a member of the military refuses to make a sworn statement and it does not appear that the statement is incriminating or otherwise privileged, allow the witness to consult with a judge advocate concerning the witness's rights and duty to testify. If the witness persists in refusing to testify, you may give an order to do so.Failure to comply with this order could result in disciplinary action. If a witness has previously made a sworn written statement and now refuses to testify, you should show the witness the previous statement and inquire into the reasons for which he or she now refuses to make a sworn statement regarding the same subject matter. If you determine (with the assistance of your legal advisor, if necessary) that the witness has a privilege not to testify, or if you have determined that there is no privilege and ordered the witness to testify but the witness persists in refusing to do so, you may consider the witness to be unavailable and consider the prior sworn statement. *See* R.C.M.405(g)(1)(A) and Mil. R. Evid. 804(a)(1) and (2). If it appears that any witness who is apparently essential to subsequent proceedings is subject to early discharge, transfer, temporary duty, or other personnel action that might prevent his or her availability at a later proceeding, you should note this fact on DD Form 457, items 16 and 21. 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. Normally, the hearing is open to the public, but either you or the authority who directed the investigation may provide that the hearing be closed to the public. You may also decide to restrict spectators, including members of the news media, to only certain parts of the proceedings.You must also follow the guidelines established in AR 340–17, chapter 5, regarding the release of certain information to the public. In addition, prospective witnesses in the case should not be permitted to hear or examine the testimony or statements of other witnesses. Witnesses should remain available outside the hearing room and should be called one at a time to testify. Witnesses should be instructed not to discuss their testimony with other witnesses. *See* MCM, 1984, appendix 8, page A8–13, for a sample witness advisement.

d. Oaths. The procedure for administering the oath to a witness is set forth in figure 3–3.

e. Examination of witnesses. A procedure for examining witnesses is set forth in figure 3–4.

f. Examination of evidence. The procedure for examining evidence is set forth in figure 3–5.

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 promptly notify the officer who appointed you. The appointing authority will take appropriate action. *See* R.C.M. 706. In addition, you should complete DD Form 457, item 14, as appropriate.

h. Defense objections. If the defense objects to any of your decisions on procedures or otherwise objects to alleged defects in the investigation, you are not required to rule on objections. You may, however, take corrective action in response to an objection if you believe such action is appropriate.If an objection raises a substantial question about the propriety of your conducting the investigation (such as challenging your impartiality), you should consult with your legal advisor and inform the commander who directed the investigation before deciding whether any corrective action is needed. You may require a party to file any objection in writing. You must note a party's objection in your report (items 15 and 21) if requested to do so. *See* R.C.M. 405(h)(2).

i. Closing the investigation.

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

(2) 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. You should also affordcounsel for the Government, if any, the opportunity to make a statement regarding an appropriate recommendation for disposition of the charges.

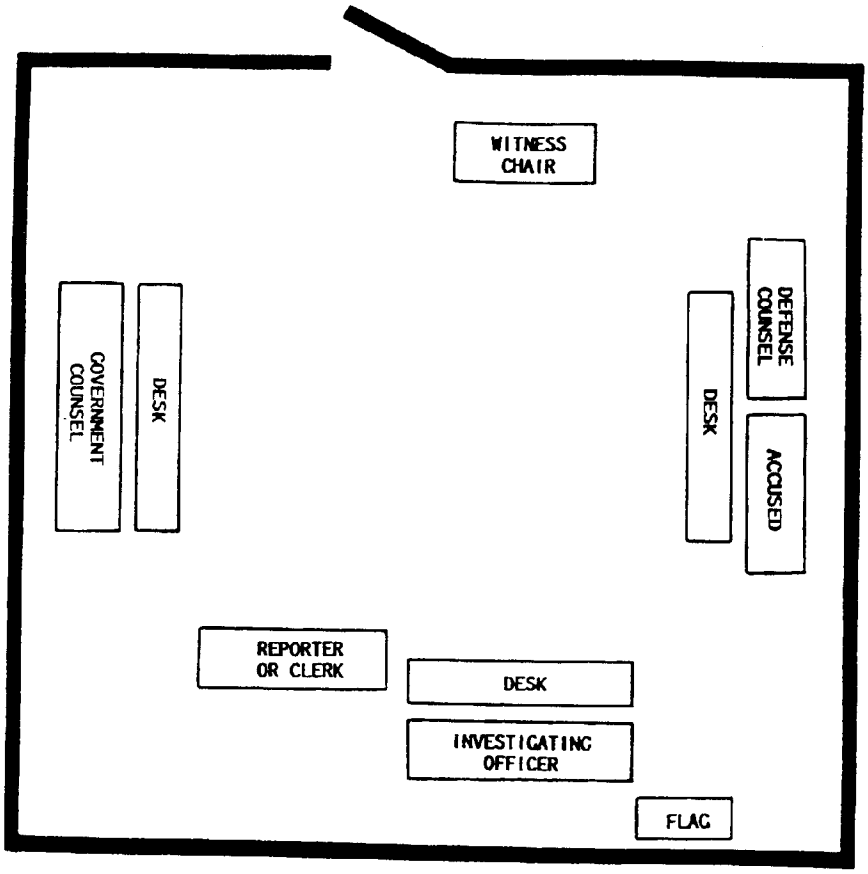

Figure 3–1. Arrangement of room for investigation

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 or holding general conversation, the accused and observers are likely to get the impression that the investigation is a casual affair, rather than the serious judicial function intended by 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 as shown above.

Figure 3-1. Arrangement of room for investigation

I.O. (To accused-counsel): This is a formal investigation into (a)certain charge(s) against *(rank and name of accused)* ordered pursuant to article 32(b), UCMJ, by *(rank and name of appointing authority)*. On *(date of notification)*, 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 counsel detailed by the Trial Defense Service. You informed me that you *(did not desire to be represented by counsel/desired to be represented by (name of civilian counsel)/desired to be represented by (rank and name of individually requested counsel)/desired to be represented by (rank and name of detailed military counsel))*.

Let the record show that *(name of civilian counsel/rank and name of individually requested military counsel who was available/rank and name of detailed counsel)* is here present with you.

(*(Name of civilian counsel)*, I ask you to step forward and enter your appearance by filling out item 7a on the official Investigating Officer's Report, DD Form 457).

I.O. (To accused-counsel): I want to remind you that my sole function as the article 32 investigating officer in this case is to determine thoroughly and impartially all of the relevant facts of this case, to weigh and evaluate those facts and determine the truth of the matters stated in the charge(s). I shall also consider the form of the charge(s) and make a recommendation concerning the disposition of the charge(s) that has/have been preferred against you. I will now read to you the charge(s), which I have been directed to investigate. (At this point, the defense may waive reading of the charge(s).) It/They is/are as follows:

Charge (I): Violation of the Uniform Code of Military Justice, *(article number)*.

Specification (1): *(the specification)*.

Specification (2): *(the specification)*.

(Charge (II):(Additional Charge): Violation of the Uniform Code of Military Justice, *(article number)*.

Specification (1): *(the specification)*.

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

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

You have previously been given a copy of the investigation file that has been compiled in your case. It contains *(list all documents contained in the case file that will be considered)*. It is my intention to call as witnesses in this investigation *(list all witnesses who will be called to testify at the investigation)*. 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 *(name of witness)* (because it has been determined that the witness is unavailable or because the witness's commander has determined this). I therefore intend to consider the sworn statement of the witness in my recommendations as it is contained in the file.)

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

(Counsel-Accused): *(Yes/no)*.

Note. At this point, answer any questions that 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 these 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?

(Counsel-Accused): *(Yes/no)*.

I.O. (To accused-counsel): Do you want me to call any other witness(es) in this case for cross-examination? If so, provide name(s) and organization(s) or address(es). If you are aware of any military records that you want me to consider and that you have been unable to obtain, provide a list of these documents.

(Counsel-Accused): *(Yes/no)*.

Figure 3-2. Procedure for opening session of the formal investigation

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

Oath for Witnesses

I.O. Do 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. Do 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. *See* R.C.M. 807. Persons who recognize special forms or rites as obligatory, and persons who do not believe in a supreme being may be sworn in their own manner or according to the ceremonies of the religion they profess and declare to be binding.

Oath for Interpreter

I.O. Do you (swear) (affirm) that in the case now being investigated you will interpret truly the testimony you are called upon to interpret (, so help you God).

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

Figure 3-3. Oaths

Introductory questions to witnesses

(Swear witness) *See* figure 3–3.

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

WITNESS: *(Complete response).*

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

WITNESS: *(Yes/no).*

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

Government Witness

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

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

I.O.: (to witness after introductory questions): *(Questions the witness about the facts of the case).*

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

WITNESS: I was in the dayroom of my company.

I.O.: About what time was this?

WITNESS: It was approximately 0930, sir.

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

WITNESS: Sergeant John Smith was there, sir.

I.O.: What was the accused doing at 0930?

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 or Government counsel have completed an examination of a witness, you should advise the accused and counsel (if the accused is represented by counsel)substantially as follows:

I.O. (To accused-counsel): You may now cross-examine this witness concerning any of his/her testimony, any knowledge possessed of the offense(s), or concerning the witness's 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): *(Yes/no).*

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 did not 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 am 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): *(Yes/no).*

I.O.: The witness is excused.

Figure 3-4. Examination of witnesses

* * * * * * *

Calling Defense Witnesses

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

(Counsel) (Accused): *(No/yes, with name(s) and address(es)).*

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

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

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 (fig 3–3) 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 follows:

I.O. (to accused-counsel): (I do not intend to call any additional witnesses.) (I intend to call *(name(s))* as additional witnesses.) (I am going to recall *(name(s))* for further questioning.) Are there any witnesses you want me to recall or are there any new witnesses?

(Counsel) (Accused): *(No/yes, with name(s) and address(es)).*

Explanation of Accused's Rights as a Witness

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

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?

(Counsel) (Accused): *(Yes/no).*

Figure 3-4. Examination of witnesses - Continued

Real Evidence (Physical Objects)

I.O. (To witness): This is a knife which I have designated as *(exhibit number)*.

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: *(Yes/no)*.

I.O. How do you recognize it?

WITNESS: I recognize it by (witness describes how he or she 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, stating reason(s)/no)*.

Documentary Evidence
Authenticated Official Record

I.O. (to accused-counsel): I have SIDPERS document of *(unit designation)*, for *(inclusive dates)*, which I have designated *(exhibit number)*.It appears to be certified as a true copy by *(rank, name, organization, and duty position of authenticating official)*. 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, stating reason(s)/no)*.

Figure 3-5. Examination of evidence

Chapter 4
Completion of the Investigating Officer's Report

4–1. Report preparation

During the investigation, you should use a copy of DD Form 457 (fig 4–1). Your notes from the investigation and the DD Form 457 may be used as working papers in preparing the report to the officer who directed the investigation. If the investigation is not to be completed verbatim, you must put the substance of each witness's testimony in writing and, unless it would unduly delay completion of your report, you should ask the witness to sign and swear to the statement.

4–2. Considering the evidence and making a recommendation

In many cases, you may be able to make your recommendation as soon as the investigation closes. If so, record it in items 20 or 21 of the working copy of DD Form 457 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

a. You should attach all papers furnished to you, together with all evidence produced at the investigation, to the DD Form 457.If practicable, hand-carry the entire file to the headquarters of the officer who directed the investigation.

b. Each document in the file should be in five copies. Furnishing a copy of the investigation to the accused is not one of your responsibilities.

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

INVESTIGATING OFFICER'S REPORT

(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: *(Name of Investigating Officer — Last, First, MI)*	b. GRADE	c. ORGANIZATION	d. DATE OF REPORT
Adamson, Adam A.	Major 0-4	1st Bn, 61st Inf Bde	14 Feb 9_

2a. TO: *(Name of Officer who directed the investigation — Last, First, MI)*	b. TITLE	c. ORGANIZATION
Harrison, Harry H.	Commanding Officer	1st Bn, 61st Inf, Fort Cutts, Texas

3a. NAME OF ACCUSED *(Last, First, MI)*	b. GRADE	c. SSN	d. ORGANIZATION	e. DATE OF CHARGES
Benson, Ben B.	PVT E-1	111-11-1111	Co A, 2d Bn, 61st Inf	1 Feb 9_

(Check appropriate answer)	YES	NO
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	X	
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)	X	

7a. NAME OF DEFENSE COUNSEL *(Last, First, MI)*	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL *(If any)*	b. GRADE
Carlson, Carl C.	CPT 0-3		
c. ORGANIZATION *(If appropriate)* TDS w/duty Fort Cutts, Texas		c. ORGANIZATION *(If appropriate)*	
d. ADDRESS *(If appropriate)*		d. ADDRESS *(If appropriate)*	

9. *(To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)*

a. PLACE	b. DATE

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: *(Check appropriate answer)*	YES	NO
a. THE CHARGE(S) UNDER INVESTIGATION	X	
b. THE IDENTITY OF THE ACCUSER	X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d. THE PURPOSE OF THE INVESTIGATION	X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE *(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)*	X	

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading *(Example: "7e".)* Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

DD FORM 457 84 AUG

EDITION OF OCT 69 IS OBSOLETE.

Figure 4-1. Sample DD Form 457

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: *(Check appropriate answer)*

NAME *(Last, First, MI)*	GRADE *(If any)*	ORGANIZATION/ADDRESS *(Whichever is appropriate)*	YES	NO
Dodson, Dodd D.	CPT 0-3	Co A, 2d Bn, 61st Inf	X	
Evanson, Evan E.	SSG E-6	Co A, 2d Bn, 61st Inf	X	
Fordson, Ford F.	SGT E-5	400th MP Co	X	

b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.

13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL *(If not attached)*		
Statement of Gregg Greggson	CID, Bldg 10, Fort Cutts, Texas	X	
CID Lab Report (Fingerprint analysis)	CID, Bldg 10, Fort Cutts, Texas	X	

b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED	X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. *(See R.C.M. 909, 916(b).)*		X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT *(If Yes, specify in Item 21 below.)*	X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL	X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM	X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED	X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. *(See R.C.M. 405(d)(1).)*	X	

20. I RECOMMEND:

a. TRIAL BY ☐ SUMMARY ☐ SPECIAL ☒ GENERAL COURT-MARTIAL

b. ☐ OTHER *(Specify in Item 21 below)*

21. REMARKS *(Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)*

Examples of other matters which may be discussed here:

1. Discussion of evidence, credibility of witnesses, and sufficiency of proof.
2. Recommendations to dismiss or change any specification.
3. Statement of any anticipated offenses or of any anticipated difficulties in proving any specification on which trial is recommended.
4. Defense-requested objections (item 15).
5. Any other matter which should be known to the convening authority or subsequent reviewing authorities.

22a. TYPED NAME OF INVESTIGATING OFFICER	b. GRADE	c. ORGANIZATION
Adam A. Adamson	Major 0-4	1st Bn, 61st Inf

d. SIGNATURE OF INVESTIGATING OFFICER: Adam A. Adamson

e. DATE: 14 Feb 9—

U.S. G.P.O. 1984-421-046/17045

Figure 4-1. Sample DD Form 457—Continued

USAPA

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