

U.S. Department of
Homeland Security

United States
Coast Guard



Commanding Officer
USCGCTAMPA (WMEC 902)

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Phone:
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5830
10 May 2012

MEMORANDUM

From: CDR, USCG
CGC Tampa (WMEC 902)

To: CAPT, USCG
CG TRACEN Cape May

Subj: REPORT OF ARTICLE 32 INVESTIGATION IN THE CASE OF ITC [REDACTED]
[REDACTED], USCG

Ref: (a) Rule for Courts-Martial (RCM) 405, Manual for Courts-Martial
(b) Military Justice Manual, COMDTINST M5810.1E, Section 3.F

1. As directed by enclosure (2), I conducted an Article 32 investigation at Yorktown, Virginia on 02 May 2012 into the charges preferred against ITC [REDACTED] USCG. This report is submitted in accordance with the requirements of reference (a).
 2. Mr. [REDACTED]; Mr. [REDACTED] and LT [REDACTED], JAGC, USN represented the accused and were present during the investigation. All defense attorneys were qualified in accordance with RCM 405(d)(2) and RCM 502(d).
 3. I advised the accused by letter dated 17 April 2012 of his Article 32 rights and again during the hearing on 02 May 2012. A copy of the Article 32 Rights Advisement letter is included as Investigating Officer (IO) exhibit 7.
 4. The following witnesses testified during the investigation: YNC (telephonically), Special Agent (S/A) [REDACTED] SN [REDACTED], YN3 [REDACTED], Ms. [REDACTED] SN [REDACTED]. All witnesses testified under oath. A summary of the sworn testimony of each witness is attached to this report.
 5. A list of the exhibits received during the investigation is attached as enclosure 3.
 6. The following information is provided regarding the truth of the matters set forth in the charges and the recommended form of the charges:
 - a. Charge I: Violation of Art. 92, UCMJ, Failure to Obey a Lawful General Order or Regulation. As charged, the elements of the sole Specification of Charge I are: (1) that there was in effect a certain lawful order or regulation, to wit COMDTINST M1000.6A; (2) that the accused had a duty to obey it; and (3) that the accused violated or failed to obey the order or regulation, to wit by wrongfully engaging in a prohibited personal relationship with [REDACTED], a recruit in his Company, and having sexual intercourse with her in a Coast Guard-controlled work place.
- SN [REDACTED] testified that the accused was her Company Commander, and that he had sexual intercourse with her at TRACEN Cape May in his office on at least two occasions that she recalls. She testified that one of the two encounters occurred in the "head" (bathroom) of the accused's office. The two incidents occurred at night after taps, and the accused was wearing a Coast Guard uniform when she arrived, either Trops or ODUs. The accused's written statement

that he had sex with SN and his oral admissions to S/A also support this specification (testimony of S/A and IO exhibits 8 and 9).

The second and third elements of the specification were well supported by the testimony and exhibits presented at the hearing. The first element, that is the lawful order or regulation in effect during the time in question, October 2009 through December 2009, was not directly established by the Government during the hearing. However, I believe this oversight at the hearing could be easily overcome by the Government during trial. The provisions of section 8.H of the Coast Guard Personnel Manual that were in effect from 1998 until 2011 are known to me as an officer who served on active duty during those years. Evidence was presented at the hearing that the accused was on active duty in the Coast Guard on the dates charged in the specification. Proof of the accused's knowledge of the order or regulation is not an element of the charge. Therefore, reasonable grounds exist to believe the accused committed the offense of failure to obey a lawful general order or regulation. I recommend that this specification be referred for trial by general court-martial.

b. The elements of Charge II, Specification 1: Violation of Art. 93, UCMJ, Cruelty and Maltreatment are: (1) that a certain person was subject to the orders of the accused, to wit Seaman Recruit ; and (2) that the accused maltreated that person by wrongfully engaging in sexual acts with her. Both elements of the specification were directly supported by the evidence offered in SN 's testimony (Enclosure 1, pages 7-9). In addition, the testimony of YNC and IO exhibits 11-12 supported the second element by providing evidence of several relevant standard operating procedures and standards of conduct applicable to Company Commanders at TRACEN Cape May, NJ. Finally the accused's written statement admitting he engaged in sexual acts with SN supports both elements of this specification. I find reasonable grounds exist to believe the accused committed the offense of cruelty and maltreatment and recommend that this specification be referred for trial by general court-martial.

c. The elements of Charge II, Specification 2: Violation of Art. 93, UCMJ are: (1) that a certain person was subject to the orders of the accused, to wit Seaman Recruit ; and (2) that the accused maltreated that person by subjecting her to degrading and inappropriate comments. Both elements of the specification were directly supported by the evidence offered in SN 's testimony (Enclosure 1, pages 7-9). In addition, the testimony of YNC and IO exhibits 11-12 supported the second element by providing evidence of several relevant standard operating procedures and standards of conduct applicable to Company Commanders at TRACEN Cape May. I find reasonable grounds exist to believe the accused committed the offense of cruelty and maltreatment and recommend that this specification be referred for trial by general court-martial.

d. The elements of Charge II, Specification 3: Violation of Art. 93, UCMJ are: (1) that a certain person was subject to the orders of the accused, to wit Seaman Recruit ; and (2) that the accused maltreated that person by subjecting her to degrading and inappropriate comments and actions. Both elements of the specification were directly supported by the evidence offered in YN3 's testimony (Enclosure 1, pages 4-6). In addition, the testimony of YNC and IO exhibits 11-12 support the second element by providing evidence of relevant standard operating procedures and standards of conduct applicable to Company Commanders at TRACEN Cape May. I find reasonable grounds exist to believe the accused committed the offense of cruelty and maltreatment and recommend that this specification be referred for trial by general court-martial.

e. The elements of Charge II, Specification 4: Violation of Art. 93, UCMJ are: (1) that a certain person was subject to the orders of the accused, to wit Seaman Recruit ; and (2) that the accused maltreated that person by subjecting her to degrading and inappropriate

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comments, to wit asking her about her sex life, etc. Both elements of the specification were directly supported by the evidence offered in YN3 [REDACTED]'s testimony (Enclosure 1, pages 4-6). In addition, the testimony of YNC [REDACTED] and IO exhibits 11-12 support the second element by providing evidence of relevant standard operating procedures and standards of conduct applicable to Company Commanders at TRACEN Cape May. I find reasonable grounds exist to believe the accused committed the offense of cruelty and maltreatment and recommend that this specification be referred for trial by general court-martial.

f. The elements of Charge II, Specification 5: Violation of Art. 93, UCMJ are: (1) that a certain person was subject to the orders of the accused, to wit Seaman Recruit [REDACTED]; and (2) that the accused maltreated that person by subjecting her to degrading and inappropriate comments, to wit asking her about her love life, and her breasts or bra size, and saying words to the effect of "let the show begin" while she was leaning over his desk in the execution of cleaning duties she was assigned to perform. Both elements of the specification were directly supported by the evidence offered in SN [REDACTED] testimony (Enclosure 1, pages 3-4). In addition, the testimony of YNC [REDACTED] and IO exhibits 11-12 support the second element by providing evidence of relevant standard operating procedures and standards of conduct applicable to Company Commanders at TRACEN Cape May. I find reasonable grounds exist to believe the accused committed the offense of cruelty and maltreatment and recommend that this specification be referred for trial by general court-martial.

g. The elements of Charge II, Specification 6: Violation of Art. 93, UCMJ are: (1) that a certain person was subject to the orders of the accused, to wit Seaman Recruit [REDACTED] and (2) that the accused maltreated that person. The form of the charge may need to be modified so as to accurately indicate the last name of [REDACTED] at the time the conduct occurred. However, both elements of the specification were directly supported by the evidence offered in [REDACTED] testimony (Enclosure 1, pages 6-7). In addition, the testimony of YNC [REDACTED] and IO exhibits 11-12 support the second element by providing evidence of relevant standard operating procedures and standards of conduct applicable to Company Commanders at TRACEN Cape May. I find reasonable grounds exist to believe the accused committed the offense of cruelty and maltreatment and recommend that this specification be referred for trial by general court-martial.

For all six specifications charged under Charge II, there are reasonable grounds to establish that the conduct described above rises to the level of maltreatment. In U.S. v. Hanson, 30 MJ 1198 (AFCMR, 1990) the U.S. Air Force Court of Military Review affirmed a maltreatment conviction for an officer who made repeated sexual remarks and gestures to his subordinates while at work. Some of his remarks were "I have a big one for you," "blow me," "get under my desk," as well as similar and even more vulgar remarks to subordinates over a two and a half year period. One time, the defendant in Hanson asked a subordinate to remove a mouse from under his desk and then pushed him under the desk and began to gyrate his pelvis as though "having a sexual experience with the chair." This court found this conduct to be abusive. ITC [REDACTED] conduct to the female recruits who cleaned his office was similarly abusive; it went beyond poor taste and banter. His pattern of conduct reveals a propensity to question female recruits about completely inappropriate personal and sexual topics, delving for information about themselves and other females enrolled in boot camp. He also seemed to find many excuses to spend time with female recruits outside of normal working hours, usually after taps. Then there is also the disturbing pattern of exploitation for his own personal and/or sexual amusement and gratification. The testimony of all four of these women who were former recruits, and the accused's direct subordinates at one time, all subject to his orders during boot camp, establishes reasonable grounds that the accused's conduct was an abuse of power and authority that resulted in mental pain and suffering to each of the four victims who testified at the hearing. For additional legal discourse about what type of evidence tends to support a conclusion that an accused's conduct rose to the level of oppression or maltreatment when the victims are

subordinates of the accused, see U.S. v. Johnson, 45 M.J. 543 (1997), a case decided by the U.S. Army Court of Appeals.

h. Charge III: Violation of Art. 120, Aggravated Sexual Assault. As charged, the elements of the sole Specification of Charge III are: (1) that the accused caused another person, to wit Seaman Recruit [redacted], to engage in a sexual act; and (2) that the accused did so by threatening or placing the other person in fear that she would be subject to harm, to wit that if she failed to comply the accused would use his military position to negatively influence her career.

Based upon the evidence presented in the testimonies of SN [redacted] YNC [redacted], S/A [redacted], and former Recruits [redacted] and [redacted] I find there is a reasonable basis to believe that the accused committed the offense of Aggravated Sexual Assault. My opinion is supported by:

The accused's abuse of his position and authority as a Recruit Company Commander.

The accused's modus operandi of singling out a female to clean his office after taps and remaining in the office while the female recruit cleaned, thereby isolating her one-on-one with him.

The accused's motive established by sufficient evidence that he intentionally introduced sexual comments and innuendos into the conversation.

The accused's failure to remain professional in circumstances that, given his experience and training as a Company Commander, he knew were likely to cause blind obedience and highly unlikely to result in a challenge to his authority or one of his subordinates reporting the incident to anyone in his chain of command.

Sufficient circumstantial and other evidence of the accused's keen understanding and exploitation of the natural fear and intimidation he knew a recruit would probably feel when dealing with a Company Commander.

It is my opinion that the accused created a trap to snare SN [redacted] and that over time he wore down her resolve and any opportunity she may have had initially to evade him. Even though she may have consented to have sex and that some of her actions which facilitated sexual intercourse were voluntary, for example the removal of her shorts while in the accused's bathroom, in the military environment of boot camp where she was the accused's subordinate, and as such subject to his orders, additional facts must be taken into consideration as follows: having been assigned as "House Mouse," SN [redacted] was not free to refuse to enter the accused's office, nor was she free to choose what time of day to clean it, nor was she reasonably able to insist that a third party be present if he were there. The evidence showed how over time SN [redacted] was rendered into such a bewildered state that a predator, such as the accused, appeared to her to be a friend. From her confused perspective, she talked about how one night she finally had to have sex with the accused because she had run out of excuses. Yet all the while military duty required her to be at his office after taps.

Based on her testimony, the testimony of all other witnesses at the hearing, and the accused's written statement, I conclude that the accused perpetrated at least two incidents of aggravated sexual assault against SN [redacted]. SN [redacted] testified that the accused had repeatedly expressed sexual interest in her during the time she cleaned his office. Initially she tried to deflect his advances, claiming she had not shaved as a way of avoiding having sex, but at length she felt she could no longer say no. She testified that she hates confrontation and had intentionally tried to block out the memory of sexual intercourse and other sexual encounters with him ("the whole sexual thing") because she was mad, ashamed and felt taken advantage of.

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She admitted she has not had any professional counseling even though she was aware of the Employee Assistance Program. She has tried to suppress her memories of all sexual aspects of the accused's interaction with her. As a Company Commander, the accused was responsible to create a command climate and training environment where all Recruits were treated with dignity and respect. The Company Commander's creed avowed that company commanders should demonstrate by their own example "the highest standards of personal conduct [and] morality..." The accused's conduct was the antithesis of that creed and of the Coast Guard's core values.

While it is my opinion that reasonable grounds exist to believe the accused committed the crime of aggravated sexual assault against SN [REDACTED], establishing proof of this Specification beyond a reasonable doubt may prove to be extremely challenging. Here are some additional thoughts and analysis about the way ahead. There is evidence that the acts of sexual intercourse between SN [REDACTED] and the accused were consensual. Establishing that the accused explicitly threatened or placed SN [REDACTED] in fear that she would be subject to harm, and specifically that he would use his military position to negatively influence her career if she did not have sex with him, will be difficult to prove beyond a reasonable doubt. SN [REDACTED]'s own testimony will be critical and she will likely be subjected to thorough, probably even vigorous, cross-examination. SN [REDACTED], the victim of the charged sexual assault, is not the strongest witness. She appears to either have suppressed her memory or for other reasons is very reluctant to testify. A fact finder viewing her overall demeanor on the witness stand while listening to her fractured testimony and hazy memory may at best conclude she is forgetful or a reluctant witness. At worst, the fact finder may conclude she is uncooperative and is lying or disingenuous. If her demeanor and testimony at trial is similar to what was presented at the hearing, it might even be necessary for the Government to request to treat her, their victim, as "hostile" so that trial counsel can ask leading questions on direct examination and thus bring forth relevant facts to support the elements of the charged offense. Obtaining a conviction under such conditions would be exceedingly difficult. Thus it is my opinion that a frank discussion ought to occur about the merits of proceeding, at what potential impact to justice overall and to SN [REDACTED] in particular. In making this difficult decision, it may be helpful to consult a trained sexual abuse counselor, psychologist or other professional who can speak to the welfare and psychology of sexual assault victims and provide a professional opinion about potential harm versus potential gain, to include any therapeutic value or cathartic effect, that may result from SN [REDACTED]'s further participation in the military justice process. Not being a trained therapist or sexual assault/abuse counselor, I am not the best judge of whether SN [REDACTED] would be better served in the long run by testifying at a court-martial or not. On one hand, it might restore a measure of her self-confidence and promote closure (perhaps if the accused were convicted, but maybe not even then). On the other hand, it might be cruel and mentally destructive to make her relive the events of boot camp yet again in front of strangers and the accused when, by her own admission, she admits to having tried to leave the past behind her. These are very important questions to weigh and consider.

i. Charge IV: Violation of Art. 134, Adultery. As charged, the elements of the sole Specification of Charge IV are: (1) that the accused wrongfully had sexual intercourse with a certain person, to wit Seaman Recruit [REDACTED]; (2) that at the time the accused was married to someone else; and (3) that, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline or was of a nature to bring discredit upon the armed forces. The first element of the specification was supported by the testimony of SN [REDACTED] and S/A [REDACTED], and by the accused's written statement. The second element was supported by the testimony of SN [REDACTED] and the copy of the accused's marriage certificate dated July 4, 2003 (IO exhibit 10). The third element, that under the circumstances the conduct of the accused was prejudicial to good order and discipline or of a nature to bring discredit upon the armed services, was supported by the testimony of SN [REDACTED] and YNC [REDACTED] (Enclosure 1). I find reasonable grounds exist to believe the accused committed the offense of adultery and recommend that this specification be referred for trial by general court-martial.

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7. Defense Counsel did not file any objections.

8. Recommended Disposition: Based on the witnesses testimony and the documentary evidence received, it is my opinion that reasonable grounds exist that the accused committed the following crimes: Charge I and its sole Specification, Charge II Specifications 1, 2, 3, 4, 5, and 6, Charge III and its sole Specification, Charge IV and its sole Specification. Charges I, II and III are very serious charges that warrant referral to a General Court-Martial. The increased burden of proof at a court-martial and the matters put forth above in paragraph 6.h. warrant careful consideration prior to making a decision whether to proceed to general court-martial with this charge or not. If a General or Special Court-martial is not pursued for any of the other more serious charges, Charge IV is not sufficiently serious to pursue in one of those two venues; standing alone it could reasonably be referred to a summary court-martial for disposition.

- Encl: (1) DD-457 and attached Summary of Witness Testimony (11 pages total)
(2) Appointment letter dtd 03 April 2012 (2 pages)
(3) List of Investigating Officer Exhibits
(4) Investigating Officer Exhibits

Copy: Defense Counsel
Government Counsel
Staff Judge Advocate

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BLANK INVESTIGATING OFFICER'S REPORT (DD-457)

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)	1b. GRADE	1c. ORGANIZATION	1d. DATE OF REPORT
	CDR/05	U.S. Coast Guard Cutter TAMPA	
2a. TITLE (Name of Officer who directed the investigation - Last, First, MI)	2b. TITLE	2c. ORGANIZATION	
	Commanding Officer	USCG Training Center Cape May, NJ	
3a. NAME OF ACCUSED (Last, First, MI)	3b. GRADE	3c. ORGANIZATION	3d. DATE OF CHARGES
	LT/C	USCG Training Center Petroleum, CA	30 JAN 2012
(Check appropriate answer)			YES NO
4. IN ACCORDANCE WITH ARTICLES 33, 37(1), AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (INSERT 1)			<input checked="" type="checkbox"/> <input type="checkbox"/>
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see # below)			<input checked="" type="checkbox"/> <input type="checkbox"/>
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(1)(2)			<input checked="" type="checkbox"/> <input type="checkbox"/>
7a. NAME OF OFFENSE COUNSEL (Last, First, MI)	7b. GRADE	7c. ORGANIZATION (If appropriate)	7d. GRADE
		U.S. Navy Legal Service Office	LT/03
8. ADDRESS (If appropriate)	9. ADDRESS (If appropriate)		
	San Diego, CA		
10. (To be signed by accused if accused moves forward. If accused does not sign, investigating officer will sign in column 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.			
11. SIGNATURE OF ACCUSED			
12. AT THE ONSET OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)			YES NO
a. THE CHARGE(S) UNDER INVESTIGATION			<input checked="" type="checkbox"/> <input type="checkbox"/>
b. THE IDENTITY OF THE ACCUSER			<input checked="" type="checkbox"/> <input type="checkbox"/>
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31			<input checked="" type="checkbox"/> <input type="checkbox"/>
d. THE PURPOSE OF THE INVESTIGATION			<input checked="" type="checkbox"/> <input type="checkbox"/>
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE			<input checked="" type="checkbox"/> <input type="checkbox"/>
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT			<input checked="" type="checkbox"/> <input type="checkbox"/>
g. THE RIGHT TO CROSS-EXAMINE WITNESSES			<input checked="" type="checkbox"/> <input type="checkbox"/>
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED			<input checked="" type="checkbox"/> <input type="checkbox"/>
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXPLANATION, OR MITIGATION			<input checked="" type="checkbox"/> <input type="checkbox"/>
j. THE RIGHT TO MAKE A SWORN OR UNWORN STATEMENT, ORALLY OR IN WRITING			<input checked="" type="checkbox"/> <input type="checkbox"/>
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below)			<input checked="" type="checkbox"/> <input type="checkbox"/>
13. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL			
None.			
NOTE: If additional space is required for any item, enter the additional material in item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate block of the form. See additional sheet.			

DD FORM 457
1 AUG 68

EDITION OF OCT 68 IS OBSOLETE

COMDTINST M5810.1E

13a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH (Check appropriate column)				
NAME (Last, First, MI)	Grade (if any)	ORGANIZATION/ADDRESS (if checked is appropriate)	YES	NO
	YN/C	USCG TRACEN Cape May, NJ	✓	
	S/A	CGIS Resident Agent Office Petaluma, CA	✓	
	SN	USCG Sector NY, NY	✓	
	YN3	USCG Sector NY, NY - logistics	✓	
		Civilian, resides in Florida	✓	
	SN	USCG TRACEN Yorktown, VA BIA A-School	✓	
D THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED			✓	
13b THE FOLLOWING STATEMENTS, DOCUMENTS OR MATTERS WERE CONSIDERED. THE ACCUSED WAS PERMITTED TO EXAMINE EACH:				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (if not attached)			
IO Exhibits 1-12				
D. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			✓	
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 RCM 902, 910a)				✓
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (if Yes, specify in Item 21 below)				✓
16. ALL CRUCIAL EVIDENCES WILL BE AVAILABLE AT THE EVENT OF TRIAL			✓	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM				
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			✓	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See RCM 902c(1))			✓	
20. THE COURSE:				
a. TRIAL BY		summary	SPECIAL	X GENERAL COURT-MARTIAL
b. OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any entries in the checkmarks, and explanation for any "no" answers above)				
14. There are no grounds to believe the accused is not mentally responsible for the offenses charged. Defense counsel stated he is competent to participate in his defense.				
15. The Defense did not request that any objections be noted in my report.				
22a TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
CDR		O5	USCG TAMP A (WMEZ 902)	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
			10 May 2012	

Summary of Witness Testimony at Article 32 Hearing

In the case of ITC [REDACTED]

02 May 2012

YNC : testified under oath telephonically from his office at Cape May, NJ. YNC has been stationed at TRACEN Cape May for approximately 3 years. He has been a recruit company commander for 10 companies and has also instructed 3 company commander courses. He knows the accused but did not work with him on a daily basis. He provided information about the orientation process for recruits, how and when they are briefed about Coast Guard standards and policies concerning interpersonal relationships (8.H, civil rights, sexual assault, harassment, hazing). He explained that the first line of recourse for a recruit is to report an issue to the company commander. Then if the company commander is the problem, go up the chain of command to the Section/Battalion Commander. Aside from the chain of command, recruits were informed they could speak with the Chaplain and medical personnel. A recruit is authorized to report to sick call any morning at 0700; however, to speak with a Chaplain, normally a recruit would have to go through his/her Company Commander to make that request. The exception might be while attending divine services, which recruits are authorized to do on Sundays, there might be opportunities to speak with a Chaplain directly. YNC recited portions of the Company Commander's creed from memory, including a portion about the obligation to meet the highest standards of personal conduct and morality and demonstrate them by their own example to recruits. YNC later emailed the complete text of the creed, which is included in the record (see IO Exhibit 11-12).

In 2009, typical training days lasted all day with physical and classroom training during the day and "remedials" after 1600. Taps occurred at 2200. Some recruits performed a few duties after taps, to include roving watches, company yeoman work, maintaining a company history or blog, and cleaning offices. In 2009, cleaning crew usually consisted of one person, sometimes two. Their duties were to clean the heads, take out the trash, and swab the decks of the company commander's offices. All these duties could be performed standing upright. YNC never saw a need for a recruit to be down on hands and knees in order to scrub into "nooks and crannies." YNC stated that the practice of having individual recruits assigned responsibility for cleaning company commander offices had changed since 2009 (when the accused had still been stationed at Cape May). He also stated that "House Mouse" – a term used by some company commanders to describe a recruit assigned to cleaning duties – had been stricken from use by the Battalion Commander because of its derogatory connotation. Furthermore, cleaning duties after taps are no longer authorized. YNC later provided an email dated 11 January 2012 from MKCM that issued an order to stop using the term "House Mouse." (IO Exhibit 11-12) Another procedural change was instituted at Cape May to provide recruits with a weekly opportunity for Battalion Commander's request and complaint mast. YNC testified that request and complaint mast either was not available to recruits in 2009 or (if available) may not have been as widely publicized as it is now. He said the training center's SOP was updated in 2011 [IO note: If more details are wanted, it could be compared side by side to the SOP in effect in 2009]. To YNC's knowledge, there are never any break-out sessions held solely for women recruits to address female-specific issues. Only about 10% of

company commanders are female; he provided the names of 2 women (Chief. and Petty Officer I did not ask for spelling of these names) who were at company commanders at Cape May in 2009. Another change to the SOP in 2011 was that nicknames that may be seen as derogatory in nature are not authorized. The percentage of female recruits varied from company to company. In a group of 60 recruits, anywhere from 10-20 people might be female.

S/A : was present at the hearing and testified under oath. On April 27, 2011, he interviewed the accused at TRACEN Petaluma, CA in a conference room in Building 500. S/A arranged for the interview through the accused's supervisor, LT (did not spell name). He and the accused were alone at the time and sat at one end of a long table. LT let them into the conference room and then left. The portion of the interview that took place in the conference room lasted from approximately 1430 to 1615. The tone was conversational throughout. The accused and S/A remained seated, except for one break when it became necessary to relocate to a different room in order to allow the conference room to be properly secured (i.e. closed) for the evening. The interview continued thereafter in S/A 's office for about 30 minutes until they took a second break, in which the accused drank some water. After the second break, the accused hand wrote a statement. It was after 1800 when the accused completed his written statement. (IO Exhibit 8)

S/A used an Acknowledgement of 31(b) Rights form to conduct the interview. He told the accused to read through the form and if he didn't understand anything, ask and he would explain it. ITC had no questions and executed the form. (IO Exhibit 8) S/A asked the accused about the "House Mouse" position. The accused said the House Mouse was a recruit assigned to clean after taps, and that it was an opportunity to speak with the Company Commander in more relaxed atmosphere. Female recruits were allowed to put their hair down because they had just showered in the evening, so their hair was wet and for health reasons it needed to dry. The accused admitted to occasional sexual banter and flirting with the House Mouse. He claimed it was innocent and he would stop if a recruit gave him an indication she was uncomfortable or offended. The accused stated all House Mice were female, and that he never used sexual banter with male recruits. The accused admitted that he had sex with one recruit, while she was cleaning his office. This action was preceded by several evenings of banter and flirtation, which then led to kissing, and eventually to sex. S/A asked the accused if the sex had been consensual. The accused stated he hoped so. S/A asked words to the effect of "why hope so?" The accused said because he recognized he was in a position of power as her superior, her Company Commander. He admitted to having sex twice with SN , and then it stopped. S/A referred to page 3 of 9 (IO Exhibit 8) to respond to Defense questions about differences between the accused's written statement and what appeared in S/A 's report. The accused's written statement does not contain the information in the CGIS report about ITC Resendez saying he hoped the sex with SN had been consensual. S/A also provided me with his written notes of the interview, which had already been made available to all parties. I have attached them in the same form as I received them at the hearing as IO Exhibit 9. S/A stated that he began typing his report of the interview with the accused the week after the interview occurred.

SN : was present at the hearing and testified under oath. SN was 22 years old when she enlisted in the Coast Guard and 23 years old when she arrived at boot camp. She was older than most women in her company, who ranged in age from 18 to 25 or 26. She estimated that 14 or 15 recruits in her company were women and the remaining 40 were men. She graduated boot camp on April 23, 2010 and left Cape May about 5 weeks later. Her delayed departure was due to a medical hold for stress fractures on her heel. Prior to boot camp, she received advice from a friend in the Navy and cousin(s) in the Army about how to survive boot camp. Their advice was do what you're told, keep your head down, don't attract attention. When she got to boot camp, the Company Commanders instructed recruits to keep their eyes down, not look company commanders in the eye, and answer "Yes Sir/Aye aye Sir." ITC [REDACTED] was her Company Commander. During Week 1 when jobs were being assigned, the accused asked if any females in the company were neat and would volunteer as a "House Mouse" to clean his office. His words as best she can remember were "I need an organized female to volunteer for a job." She volunteered. The job consisted of cleaning the company commanders' offices and heads, and filling coffee pots. Other Company Commanders told her not to touch "their stuff" (i.e. anything in their offices), only fill the coffee pots. She was "House Mouse" for the accused from Week 2 through Week 8 of boot camp. On her first night of cleaning duty, the accused told her about a "Three Question Rule." He said she could ask him 3 questions and he could ask her 3 questions. At some point he had also asked her if she took offense easily, because if so "this job isn't for you." She had told him she had three older brothers so she would be fine. She recalled that her 3 questions the first night were about his length of service, duty stations, and IT A-school/whether he liked being an IT. He answered her questions. Then he asked her where she was from; she answered Hawaii. He asked her what kind of bathing suit she wore in Hawaii, and another personal, not professional question. Over time, his questions to her while she performed her cleaning duties became progressively worse. He would ask her bra size, whether he was "her type of guy," what her underwear looked like, whether she had a boyfriend or was dating anyone. These questions made SN uncomfortable. By way of an answer, she told him that certain questions were inappropriate. His response was "If this job is too hard, he would find someone else." SN did not want the stigma of being fired. She also did not want "another girl in her Company" to be subjected to what she was going through.

SN testified that the accused would stay in his office the entire time she cleaned; usually he worked at his computer. He did not ask her to wear her hair down. She was never assigned to the roving patrol watch at night because as "House Mouse" she was exempt from roving watch duty. She testified that "at boot camp your reputation as a recruit is all you have." She stated she did not have as hard a boot camp experience as other recruits. She did not think that the accused had ever interceded on her behalf or shielded her from negative reports (i.e. "performance trackers"). However, by Week 4 she was injured. She was aware that most recruits with an injury of similar magnitude would have been reverted, but she was not.

SN had never heard of the Company Commander's creed, never heard it discussed or referred to. She doesn't remember anything about receiving training while at Cape May on the topics of Coast Guard policies on hazing, sexual assault, sexual abuse, civil rights, etc. She clarified that she has no allegation of sexual assault against the accused. She never spoke of the accused's treatment of her to anyone in

her chain of command at Cape May. She is not a religious person, so she did not feel comfortable making an appointment with a Chaplain to discuss it. She did attempt to speak about it with a recruit in her company, (maiden name , uncertain spelling?) who had opened up to her after 's father had committed suicide.

During the first week, Petty Officer pointed his finger in SN face and asked if anything inappropriate was happening between her and the accused. was so harsh and intimidating, she lied and said nothing was happening. There came a point where the accused asked her and another woman which females should be reverted. He specifically asked about tattoos on a particular female recruit's breasts. SN and the other woman were totally uncomfortable being asked about the tattoos, and they reported it to Petty Officer , another Company Commander. PO asked if anything inappropriate had happened between her and the accused; she lied and said no. The reason she lied was it was 2 days before graduation, and she feared she would be held back. She said she "just wanted to get out of there," and "wanted to pretend it never happened."

After graduation, while on medical hold, SN ran into the accused at Walmart. She felt awkward. She encountered him again at medical, and he stopped to talk to her. He asked her to attend his Chief's frocking ceremony. She said "sure" to be polite, but had no intention of going. Later while stationed at Sector New York, SN received a friend request from the accused on Facebook. It arrived after she had already spoken to CGIS. She blocked him from further contact on Facebook.

As a duty driver at Sector New York, SN was sometimes assigned to drive to the airport to pick up new crew members. One day, YN3 arrived PCS and SN picked her up in the GV. They began chatting about boot camp and Cape May. They realized the accused had been Company Commander for both of their companies. SN asked YN3 what she thought of the accused. YN3 said "He's a fucking pervert." They shared their experiences regarding the way the accused had treated each of them while they were at Cape May.

SN testified that the boot camp environment made her feel like "just a uniform, not a person." I asked SN to describe YN3's physical appearance. She stated that YN3 is blond, about 5' 2" or 3" with an athletic build. People at Sector NY often confuse them and accidentally call them by the other one's name. From the back, she said they look identical.

SN could not remember whether her company was ever given training on 8.H, civil rights, sexual assault, harassment, and/or hazing while at Cape May. She testified about 2 specific incidents where the accused invaded her personal space. She was cleaning his bathroom, and he said "You're in my head" while standing very close. Once while she was leaning over cleaning the desk, he was about 3 feet behind her and said "Let the show begin." She testified he was like that every time she cleaned. When he wasn't present, her cleaning duties only took 30 minutes. When he was there he kept her talking for 45 minutes to an hour. Sometimes when she saw how late it was getting, she'd ask to leave because she needed sleep in order to make training the next day.

YN3 : was present at the hearing and testified under oath. YN3 is stationed at Sector New York, Logistics division. Prior to joining the Coast Guard she attended about 2 years of

college, studied journalism, got a real estate license, and worked on a nursing license/ certificate. She attended boot camp for 8 weeks at Cape May, NJ in May 2009 through July 2009. She was 25 years old when she started boot camp. She testified that the first few days of boot camp are completely "terrifying" and "nerve racking." Even though she watched a video beforehand about what to expect at boot camp, and was thus knew she would be "barked" at, she said she had no idea what it would really be like until she got there. After 5-7 days of what's known as "forming week," she said the recruits in her company were turned over to their Company Commanders. The accused was one of her Company Commanders. The recruits had been indoctrinated with rules governing their behavior which included don't speak to a Company Commander unless spoken to, and don't look directly at them. As a recruit, YN3 was assigned to be the Watch Coordinator; she made the watch schedule for all the other roving watchstanders. Seaman Recruit [REDACTED] was assigned to be the "House Mouse." As the duty Watch Coordinator, YN3 did not have to clean; however, on nights SR [REDACTED] didn't clean, the accused asked YN3 [REDACTED] to take her place; he said words to the effect of "Can you come into my office after hours so that [REDACTED] doesn't have to?" In boot camp, a statement like that from a Company Commander to a recruit wasn't a question; it was an order. The first time the accused asked her to clean, she went voluntarily, but she assumed it would only be for one night. He told her to come into his office to clean around 2200 or 2300 and report in "PT" gear. He said the job would be a break from training, to be at ease, and to take down her hair. That evening, he also told her she could ask him 3 questions and that he was going to ask her 3 questions. Her questions were professional in nature. As she recalls she asked about his Coast Guard career; she did not ask him personal questions. He then asked her if she had a crush on "your lead Company Commander," which was him. He had a habit of referring to himself in the third person, but not in front of the whole company. In front of the whole company he was as professional as the other Company Commanders, but with female recruits, he would talk about himself this way. The accused asked her another question about what her boyfriend thought of her being among a lot of men at boot camp. He asked her if the swimsuit she wore for training looked like the one she wore at home. These questions made her feel she was not really there to clean, but for his enjoyment. She tried to deflect his questions.

The way the accused had her clean his office was unorthodox. He told her to scrub the floor on her hands and knees. He pointed to certain spots that she should clean. She used a bucket, paper towels and a spray bottle for this task. On cross examination, she stated she had retrieved the cleaning supplies from a cleaning gear locker, but couldn't remember whether she had also pulled a swab from the closet as well or not. While she cleaned the floor on her hands and knees, the accused maneuvered behind her and said "Let the show begin." While sitting in a chair, he pointed to a spot on the floor between his legs, with his feet spread about 24 inches apart, and told her to clean it. Doing so meant her head was between his legs. Again referring to himself in the third person, he said something to the effect of "What would your friends (she may have said "shipmates") think if they knew you were on your hands and knees under your company commander?" One time in his office the accused told YN3 swim training days were his favorite day because that's when he got to see all the women in their swim suits. On one occasion, the accused made YN3 [REDACTED] clean a vacant office. There was no reason for it to be cleaned, no trash, and no occupant. This incident frightened her. She was very concerned what might happen, but nothing did.

YN3 testified that initially there were only 5 or 6 women in her company; others came in later from other companies. She never saw a male recruit assigned as a "House Mouse." All recruits cleaned the common areas, but no male recruits ever cleaned company commander offices.

YN3 spoke with SR [REDACTED] about the accused. Both women were experiencing similar treatment from him. SR [REDACTED] was upset, crying, and asked "what should we do?" They discussed the option of telling the Chaplain, but they were concerned he wouldn't believe them, and also they were almost done with boot camp, so they did not make a report.

YN3 does not recall ever having received training while at Cape May on the subjects of on 8.H, civil rights, sexual assault, sexual harassment, or hazing. She testified that it was at her first duty station, the CGC ASPEN, that she first recalls receiving what she now called "computer mandated training."

When YN3 transferred to Station New York and met SN [REDACTED], she recalled the conversation about the accused that she had with SN [REDACTED]. YN3 remembered telling SN [REDACTED] that she thought ITC [REDACTED] was "a fucking prick." YN3 realized that [REDACTED] went through boot camp almost a year after her and received nearly identical treatment from the accused. YN3 testified this made her feel awful. She called [REDACTED] (maiden name [REDACTED]), and said "we need to call CGIS. He [REDACTED] said the same things to her [REDACTED] he said to us." At this point [REDACTED] had been in the Coast Guard for a year and knew that CGIS were the "police" who investigated incidents like this. She contacted CGIS. When CGIS didn't interview her right away, she assumed the events she reported were going to be "swept under the carpet."

[REDACTED] was present at the hearing and testified under oath. She was 22 years old, almost 23, when she enlisted in the Coast Guard. She was single at the time, and her maiden name was [REDACTED]. She testified that there were 5 or 6 female recruits in her company at the outset. One was immediately discharged for insubordination. That made an impression on her. As a recruit, [REDACTED] tried to volunteer for as many duties as she could. ITC [REDACTED] her Company Commander, said "stop volunteering, I have another job in mind for you." She said she thus did not volunteer to be the House Mouse; he selected her. Her first night as House Mouse she was cleaning the head in the accused's office. He came in and the first thing he asked was what her boyfriend thought about her joining the Coast Guard. This was the first of many personal questions and (eventually) sexual comments. [REDACTED] stated that she would say things to the accused that were in no way intended to be sexual, and he would respond like it was sexual and make inappropriate comments. The accused would twist her words and make them sound like innuendos. One time she said something innocent or innocuous and he replied "There's a lot of things I could say to you right now [REDACTED] but I'd get in trouble" or words to that effect. She felt she couldn't say anything to him at all without him twisting her words; and yet she couldn't speak back to him or protest because he was her Company Commander. He would place himself in close physical proximity to her while she cleaned. She felt she received preferential treatment because she was House Mouse. For example, she was only ordered to do individual push-ups one time during her entire boot camp experience, which was not the norm. She was constantly skipped over for various inspections. During a rucksack inspection, for example, the accused literally inspected the recruit in line before her, skipped her, and went to the next recruit in line. Others noticed this special

treatment and commented "what are you doing in there at night [REDACTED]" This embarrassed her. One night she was wearing make-up while on liberty. The accused got up in her ear and said "you and me are going to have a lot of fun later." Nothing actually happened later, but it troubled her. She told the women recruits that the accused was asking about their marital status, relationships, etc. They discussed what they ought to do, should they report it? Their conclusion was that reporting it could cause a rift and delay their departure from boot camp. The general tone of their discussion was "It's only 8 weeks, just hang in there, it will all be over soon and you'll move on." There were female CCs at Cape May while [REDACTED] was there, but she had limited interaction with them. There was a female Chief in the squad bays ahead of them.

Ms. Morrow was not familiar with the term Equal Opportunity Advisor or its acronym EOA. She did not recall an EOA giving training on sexual assault or harassment. She stated the accused had been the one to hold sexual harassment training for her company. He told the recruits to bring any complaints to him. She recalled him saying words to the effect of "If you have any issues with anyone, bring it to me because no one messes with my recruits."

[REDACTED] testified that when the person who was supposed to look out for you turns out to be the bad guy, you feel like there is no one you can trust. When dealing with the accused, often "her mind would be in another place." She didn't trust what she'd been told about reporting any issues/concerns to the Chaplain because she had observed the Chaplain laughing and joking with the accused, which caused her to wonder if telling the Chaplain was really an option due to the perceived close, comfortable relationship he had with the accused. She stated the accused "fired" her from House Mouse duties on the last night. The accused informed her another recruit, SR [REDACTED], would "be coming in tonight to take care of things, so you don't need to." As a recruit she had to just do as she'd been told. To [REDACTED] this seemed she had been fired; she explained she's a person who always completes any assignment she starts. She left Cape May disgusted with what she had seen. ITC [REDACTED], the person who had made her shout "Honor, Respect, and Devotion to Duty" at the top of her lungs, turned out to be the antithesis of those values.

[REDACTED] took advantage of the early out program to separate from Coast Guard service. She initiated this process by going to her Senior Chief and telling him she wished to pursue it. Her reasons included a medical condition (a blood clotting disorder) that would have caused her to go through a medical evaluation. A doctor explained it was not something a member would automatically be separated for, and that he would help her "fight the good fight" if she wanted to be retained in the Coast Guard. Taking into account all her circumstances (medical, marriage & personal life, other professional interests in law enforcement), she decided not to fight the medical situation, and the early out program provided her with a convenient solution. [REDACTED] left the Coast Guard and moved to Florida to be with her husband who enrolled in college there. She currently works as a police dispatcher.

SN [REDACTED] : was present at the hearing and testified under oath. She is a BM A-school student stationed at TRACEN Yorktown, VA. She was 21 years old when she went to boot camp. She testified that the environment at boot camp is completely different: "a different world." You can't have a cell

phone, you can't talk to people like you can as a civilian, and you must say "Yes Sir, No Sir" when speaking to Company Commanders. There is fatigue: boot camp is physically and mentally exhausting. At boot camp in Cape May there were three Company Commanders assigned to her company. The accused was one of them. Recruits were told not to look company commander's in the eye; they were supposed to "sound off" with "aye aye Sir," and to mind their customs and courtesies. The Company Commanders would yell at recruits. It was actually exciting to go to class because that became a little break from being yelled at by company commanders.

SN testified that she was the accused's "House Mouse." On the first night of this duty, she interacted with him while cleaning the office as follows: she finished cleaning and stood at attention against the wall. He said she could ask him questions. She asked about the Coast Guard. He answered her question. He said she could ask a question that was not about the Coast Guard. She asked about his family. He answered. Then, either that night or the next night, he asked something shocking, far outside normal context. It was about her breasts. She tried to ignore it and just chuckled. She said this happened during the first week. She answered and gave her bra size. She couldn't remember how the conversation ended.

On the nights the accused was there when SN cleaned, sometimes he was more like a friend, other times she was completely shocked by his inappropriate questions. After the first night, he didn't make many comments and she started to view him as a friend. She would talk to him as a friend. For example, she failed the swim. She was "pissed off" at herself; she had to take remedial swim classes. She talked with the accused about it and he made her feel better.

She testified sometimes she and the accused would have sexual conversations. They talked about sexual intercourse. He made a comment that he could see her nipples through her swim suit.

SN admitted she and the accused had sexual intercourse in his office in the bathroom at night after taps. She was wearing PT gear or ODUs (could not remember which). He was wearing ODUs or Trops. "It" occurred against a wall. She was facing the wall. She was not taking any medications at the time. She had not had anything to drink. She stated she was going through a lot; she was in culture shock at boot camp. They had never had sex before that night, but she had asked him for a hug before, and he had hugged her. She thinks the accused touched her first on the night they had sex. She removed her shorts, but left her top on. She said the accused asked her "if I liked the way he felt" and "I said yes." When asked about her memory of sexual encounters with the accused, she described it with these words: "My memory is very pieces." She explained that she tried to deflect the accused's sexual advances with comments like "I need to shave; I'm not presentable." Eventually she felt like she couldn't say no to having sex with him because he was a "good friend." She does not feel like the accused raped her or threatened her. She can't remember if they had sexual intercourse more than twice, but it was at least twice. She stated she felt like it was a bad idea. She wanted to tell someone, because she felt what happened was inappropriate. She was friends with another female recruit – (spelling?). She tried telling but was still in shock. The sex stopped because "we got busy" and she wasn't cleaning the accused's office as much. Her company was getting ready for

graduation. When she talked to the accused, it seemed like their relationship had returned to just a friendship.

SN testified about the time she received her orders. She had asked for "all cutters" but her orders were to Station Port Canaveral, FL. When she told the accused about her assignment, he said "thank you."

While stationed at Cape Canaveral, FL, her Chief told her when she returned from taking leave that CGI needed to speak to her about an incident with her Company Commander. A CGI agent called her. She had to go to Orlando to be interviewed. She really wanted to remember the accused as a good friend. She had pushed aside "the whole sexual thing" and tried to focus only on the friendship. She admitted "I hate confrontation with anybody." No one except perhaps CGI ever gave her the impression she was in trouble for what occurred. She emphasized how much she tried to put the matter aside and forget about it, stating "I completely blocked it out because I'm mad and ashamed." She never sought counselling from EAP or any other professional counselor. She said she knows EAP services are available in Yorktown. She admitted again she tends to ignore problems.

SN testified she had not talked to the accused in over a year. When asked about whether she now felt a need to protect him, she stated "No" but also said "I don't want to see him get hurt." She explained she was mad at herself that she let this happen. She was mad at him too because he was a Company Commander and she was a recruit. She expressed conflicted feelings because he'd been friendly and on occasion comforted her during boot camp, an experience in which for 8 weeks she felt "like a robot" and was "In a different state of mind." I asked SN for her current views of the accused, what she would do today if she happened to bump into him? She stated she felt taken advantage of and honestly did not know what she would do if she saw him again.

U.S. Department of
Homeland Security

United States
Coast Guard



Commanding Officer
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Training Center Cape May

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5811
3 April 2012

MEMORANDUM

From: CAPT
CG TRACEN Cape May

Reply to
Attn of:

To: CDR
CGC Tampa (WMEC 902)

Subj: APPOINTMENT OF ARTICLE 32 INVESTIGATING OFFICER ICO ITC [REDACTED]
[REDACTED] USCG

Ref: (a) My memo 5811 of 1 Feb 12
(b) My memo 5810 of 13 Mar 12
(c) Article 32, Uniform Code of Military Justice
(d) Rule for Courts-Martial 405, Manual for Courts-Martial (2008 ed.)
(e) Rule for Courts-Martial 707, Manual for Courts-Martial (2008 ed.)
(f) Military Justice Manual, COMDTINST M5810.1E, Section 3.F.

1. Reference (a) appointed LT [REDACTED] as the Investigating Officer in this case. Reference (b) granted the defense counsel's request for a continuance in this matter until 2 May 2012. As a result of the continuance and conflicting schedules, LT [REDACTED] is no longer available to preside as the Investigating Officer in this case. LT [REDACTED] is hereby relieved as the Investigating Officer.

2. Pursuant to references (c) through (f), you are hereby appointed as Investigating Officer to inquire into allegations against ITC [REDACTED] USCG. The allegations are contained in the enclosed charge sheet. You shall inquire into the form and truth of the charges, and into such other matters as may be necessary to make a recommendation as to the disposition of the charges. You shall be guided by the provisions of reference (d) and current case law relating to the conduct of pretrial investigations.

3. Your investigation shall commence at 0900 on 2 May 2012 at Training Center Yorktown, VA. You may grant any continuance requests up to 21 days, including excludable delay pursuant to references (d) and (e). I reserve the right to grant any request for a continuance in excess of 21 days. If a request in excess of 21 days is requested it shall be submitted to me via government counsel. Such request must detail the supporting reasons for delay and be submitted no later than five (5) working days prior to the date of the Article 32 Investigation to be considered timely. All proceedings shall be conducted in accordance with references (d) and (f). Your report shall include, at a minimum, the information specified in reference (d).

4. Unless otherwise permitted by me, all defense requests for production of witnesses shall be submitted per R.C.M. 405(g) no later than eight (8) working days prior to the date of the Article 32 Investigation.

Subj: APPOINTMENT OF ARTICLE 32 INVESTIGATING
OFFICER ICO ITC [REDACTED] USCG

5811
3 April 2012

5. In accordance with R.C.M. 405(g)(1)(A), all witness requests shall state how the requested witness' testimony would be relevant to the investigation and why it would not be cumulative with other testimony presented. All witness requests shall be submitted to you via the government counsel.

6. LT [REDACTED], USCG, and LT [REDACTED], USCG, certified in accordance with Article 27(b) UCMJ, and previously sworn in accordance with Article 42(a), UCMJ, are detailed as government counsel. They may be reached at [REDACTED] or [REDACTED] respectively. ITC [REDACTED] has retained civilian defense counsel, Mr. [REDACTED], who may be reached at [REDACTED]. You shall avoid talking to the government representatives or the defense counsel about the merits of the case, outside of formal sessions where all parties have the opportunity to be present. You may contact counsel regarding administrative matters related to your investigation.

7. 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 that these matters be determined by you without reliance upon the opinions or recommendations of any other person. Your report should be submitted to me via government counsel no later than seven (7) working days after you complete your investigation.

#

Encl: Charge Sheet

Copy: Government Counsel
Civilian Defense Counsel
LT.