

THE ARTICLE 32 PRELIMINARY HEARING OFFICER'S GUIDE



MILITARY JUSTICE DEPARTMENT

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TABLE OF CONTENTS

OVERVIEW	1
PRELIMINARY MATTERS	1
1. WAIVER OF THE ARTICLE 32 PRELIMINARY HEARING	1
ARTICLE 32 PRELIMINARY HEARING PERSONNEL	2
1. PRELIMINARY HEARING OFFICER.....	2
A. STATUTORY DUTY.....	2
B. QUALIFICATIONS	2
C. IMPARTIALITY	2
I. DISQUALIFICATION BY PRIOR KNOWLEDGE OR ASSOCIATION.....	2
II. DISQUALIFICATION FOR PRELIMINARY HEARING OF RELATED CASES	3
III. IMPROPER RECEIPT OF LEGAL ADVICE	3
IV. DISQUALIFICATION BY SUBSEQUENT ACTION.....	3
2. THE ACCUSED	3
A. RIGHTS OF ACCUSED	3
B. MENTAL CAPACITY.....	4
3. DEFENSE COUNSEL	4
A. SELECTION OF COUNSEL	4
B. ROLE	4
C. DISQUALIFICATION.....	4
4. COUNSEL FOR THE GOVERNMENT	5
A. APPOINTMENT AND DETAILING.....	5
B. ROLE	5
C. DISQUALIFICATION.....	5
5. LEGAL ADVISOR.....	6
6. OTHER PERSONNEL.....	6
PREPARING FOR THE PRELIMINARY HEARING.....	6
1. REVIEW LETTER OF APPOINTMENT	6
2. REVIEW THE CHARGE SHEET	6
A. CORRECTIONS TO THE PERSONAL DATA.....	7
B. CORRECTIONS TO THE CHARGES	7
3. CONSULT WITH LEGAL ADVISOR	7
4. HOLD A PRELIMINARY CONFERENCE	7
5. SCHEDULE THE PRELIMINARY HEARING	7
A. PRE-TRIAL RESTRAINT	8
B. CONTINUANCE REQUESTS.....	8
I. EVALUATING A REQUEST.....	8
II. EXCLUDABLE DELAY AND THE ACCUSED’S RIGHT TO A SPEEDY TRIAL.....	9
III. CHRONOLOGY	9
6. ARTICLE 32 PROCEDURAL PROCESS	9
A. REVIEW APPLICABLE LAW	9
B. RIGHTS OF THE VICTIM	9
C. EVIDENCE	10
D. WITNESSES.....	11
E. PUBLIC ACCESS	12
CONDUCTING THE PRELIMINARY HEARING.....	12
1. PRODUCTION OF DOCUMENTS AND OTHER EVIDENCE	13

TABLE OF CONTENTS

2. PRESENTATION OF EVIDENCE.....	13
A. MILITARY RULES OF EVIDENCE	13
3. PRESENTATION OF TESTIMONY	14
A. SEQUESTERING WITNESSES	14
B. TAKING TESTIMONY	15
C. AUDIO RECORDINGS	15
D. SELF-INCRIMINATION.....	15
4. OBJECTIONS	15
5. UNCHARGED OFFENSES	16
6. QUESTIONS BY THE PRELIMINARY HEARING OFFICER.....	16
PREPARING THE REPORT	16
1. TIMING	16
2. FORMAT.....	17
A. SUMMARIZE THE FACTS	17
B. OUTLINE THE EVIDENCE PRESENTED.....	18
C. ANALYZE THE REQUIRED ELEMENTS.....	18
D. RECOMMEND CHANGES TO THE CHARGES	18
I. MINOR CHANGES	18
II. MAJOR CHANGES.....	18
E. OBJECTIONS PRIOR TO DELIVERING THE REPORT TO THE CONVENING AUTHORITY	19
F. EXPLAIN DELAYS.....	19
G. HIGHLIGHT LEGAL ISSUES	19
3. LENGTH	19
4. ASSEMBLY	19
A. REPRODUCING THE REPORT.....	20
B. DISTRIBUTION OF THE REPORT	20
5. RIGHT TO OBJECT.....	20
6. REOPENING THE PRELIMINARY HEARING	21
A. PROCEDURE	21
B. MODIFYING THE REPORT.....	21
CONCLUSION.....	21

OVERVIEW

Article 32 of the Uniform Code of Military Justice (UCMJ) requires an impartial preliminary hearing on all charges and specifications against an accused prior to referral of charges to a general court-martial (GCM). The National Defense Authorization Acts for Fiscal Years 2014 and 2015 [hereinafter FY14 NDAA and FY15 NDAA] made significant changes to the military justice process, including substantial changes to Article 32 of the UCMJ.

The new Article 32 preliminary hearing is limited in both scope and purpose compared to the Article 32 investigations carried out prior to 26 December 2014. The job of the preliminary hearing officer (PHO)—generally a judge advocate—is to:

- 1) Determine whether probable cause exists to conclude that an offense(s) has been committed and whether the accused committed it;
- 2) Determine whether a court-martial would have jurisdiction over the offense(s) and the accused;
- 3) Consider the form of the charge(s); and
- 4) Make a recommendation to the Convening Authority (CA) as to the disposition of the case.

As the PHO you will assume a quasi-judicial role in the proceeding and impartially make these determinations and recommendation. This new Article 32 preliminary hearing, while more than a mere report on the charges, is limited to the scope and purposes set forth above. It is not a wide-ranging investigation or forum for discovery.

This manual is designed to serve as your guide for the proper conduct of an Article 32 preliminary hearing. Before you proceed, it is essential that you read Article 32, UCMJ, R.C.M. 404A, and R.C.M. 405 as amended by Executive Order 13696 dated 17 June 2015 [hereinafter R.C.M. 405], on the topic as the primary authorities that will govern your preliminary hearing.

PRELIMINARY MATTERS

1. WAIVER OF THE ARTICLE 32 PRELIMINARY HEARING

The accused can request a waiver of the preliminary hearing. Art. 32(a)(1); R.C.M. 405(k). If the accused indicates a desire to waive the Article 32 hearing, as may be the case following plea negotiations, you should immediately inform the CA who appointed you. Note, however, that the accused does not have an absolute right to waive the preliminary hearing. Accordingly, the appointing authority may direct a hearing to proceed despite the accused's waiver request. R.C.M. 405(k).

ARTICLE 32 PRELIMINARY HEARING PERSONNEL

1. PRELIMINARY HEARING OFFICER

A. STATUTORY DUTY

Under Article 32(a) the PHO is responsible for impartially “(a) determining whether there is probable cause to believe an offense has been committed and the accused committed the offense; (b) determining whether there is court-martial jurisdiction over the offense and the accused; (c) considering the form of the charges; and (d) recommending the disposition that should be made of the charges.”

B. QUALIFICATIONS

Navy: In preliminary hearings convened by Navy convening authorities, the PHO *should* be an impartial judge advocate certified under Article 27(b), UCMJ; for preliminary hearings involving allegations of sexual assault, the PHO *shall* be an impartial judge advocate certified under Article 27(b), UCMJ. In exceptional circumstances, not involving allegations of sexual assault and in which the interests of justice warrant, the PHO may be an impartial officer in the grade of O-4 or above who is not a judge advocate; in those cases a judge advocate, certified under Article 27 (b), UCMJ, must be available to provide legal advice to the preliminary hearing officer. When practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the government at the preliminary hearing.

Marine Corps: In preliminary hearings convened by Marine Corps convening authorities, the PHO shall be an impartial judge advocate certified under Article 27(b), UCMJ, in the grade of O-4 and equal to or greater in grade to the counsel detailed to represent the accused and the government at the preliminary hearing. See paragraph 1106 of MCO P5800.16A for certain limited exceptions to this general rule.

C. IMPARTIALITY

Art. 32(b) requires a hearing by an impartial PHO. Accordingly, you must be impartial, and your impartiality will be evaluated by the same standards that are applied to military judges as set forth in RCM 902. Your impartiality can be questioned by counsel for the accused or by counsel for the government. Additionally, your impartiality may be questioned before you start the preliminary hearing, during the course of the preliminary hearing, or after you have submitted your report to the CA. You shall not depart from your impartial role or become an advocate for either side.

I. DISQUALIFICATION BY PRIOR KNOWLEDGE OR ASSOCIATION

An accuser cannot serve as a PHO. Likewise, an officer who is a close personal friend of the accuser is normally disqualified from serving as a PHO. A PHO is not disqualified solely by virtue of his or her position in the legal office. However, a PHO who supervises counsel for either side is disqualified and must be recused. If you believe you should be

disqualified from serving as the PHO, you must disclose this information to the counsel for both sides. If you disclose all grounds for any possible bias, prejudice, or impropriety and the defense fails to object at the preliminary hearing, this is generally construed as a waiver of the issue.

II. DISQUALIFICATION FOR PRELIMINARY HEARING OF RELATED CASES

A PHO who has previously served as the PHO in cases related to the offense(s) under consideration is normally disqualified. However, this disqualification can be waived by an accused. This differs from a joint preliminary hearing of multiple service members because the PHO begins the joint preliminary hearing with no preconceived ideas as to the legal sufficiency of the evidence and has made no prior decisions that he or she might seek to vindicate. The mechanics of arranging for a joint preliminary hearing are more difficult, however, and the PHO is required to make the requisite determinations and submit a separate report regarding each accused service member.

III. IMPROPER RECEIPT OF LEGAL ADVICE

The preliminary hearing officer may seek legal advice concerning the preliminary hearing officer's responsibilities from an impartial source, but may not obtain such advice from counsel for any party or counsel for a victim. Likewise, it is error for anyone else to provide *ex parte* legal or substantive advice about the matters related to the preliminary hearing without the knowledge, presence, or consent of all parties. If you intend to seek outside legal advice on substantive issues, you must give notice to all parties (i.e., defense counsel, accused, and counsel for the government) before obtaining the advice. You shall also note the receipt of such advice on the record of the preliminary hearing and in your report.

IV. DISQUALIFICATION BY SUBSEQUENT ACTION

If you do anything during or after the preliminary hearing that creates the appearance of impropriety, it could be subject to judicial scrutiny at trial or at a subsequent appeal. You must therefore strive to avoid any appearance of partiality. If you have concerns in this area, you must notify counsel for both sides and, when warranted, notify the staff judge advocate (SJA) to the CA or the appropriate command services judge advocate.

2. THE ACCUSED

A. RIGHTS OF ACCUSED

You must ensure the accused is informed of his or her rights at the preliminary hearing. At the hearing, the accused has the right to: 1) be advised of the charges under consideration at the preliminary hearing; 2) be represented by counsel; 3) cross-examine witnesses who testify at the preliminary hearing on matters relevant to the limited purposes of the hearing; 4) be informed of the right against self-incrimination; 5) present matters in defense and mitigation relevant to the limited purposes of the hearing; 6) except for the circumstances described in RCM 804(c)(2), be present throughout the taking of evidence; and 7) make a statement in any form relevant to the limited scope and purpose of the preliminary hearing. For the purpose of the preliminary

hearing, matters in mitigation are those that may serve to explain the circumstances surrounding a charged offense.

B. MENTAL CAPACITY

As a preliminary matter, the accused must have the mental “capacity” to understand the proceedings and therefore be able to assist in his or her own defense. *See* MCM, R.C.M. 909(a). This is a different question than whether the accused was mentally “responsible” at the time of the alleged offense. *See* MCM, R.C.M. 916(k). In general, there is a presumption that the accused has the “capacity” to understand the Article 32 preliminary hearing. *See* MCM, R.C.M. 909(b). There must be some reasonable grounds other than a bare assertion by the accused or counsel of a lack of competency to participate in the preliminary hearing to form a basis for recommending the accused be referred to a sanity board under RCM 706, and thereby delay the preliminary hearing. Such grounds might include a preliminary diagnosis by a medical officer, coupled with a recommendation for a psychiatric evaluation. If, based on appropriate evidence, you find that such grounds exist you may wish to adjourn (not close) the preliminary hearing. You should then explain the reasons in your report, and refer the matter to the CA with the recommendation that he or she convene an RCM 706 board. If you receive a written medical report into evidence on the issue of mental “capacity” or “responsibility,” that evidence should be attached to your report.

3. DEFENSE COUNSEL

A. SELECTION OF COUNSEL

The accused may be represented during the hearing by a defense counsel, certified under Article 27(b), and detailed by the appropriate authority. The accused may request an individual military counsel through procedures found in RCM 506(b) and service regulations and may also be represented by a civilian attorney at his or her own expense. The accused will sometimes be represented by more than one defense counsel. The accused also has a broad right to self-representation. If the accused indicates a desire to exercise that right, you will need to conduct some additional research on this issue and should consult the pro se accused colloquy in the Military Judge’s Benchbook. U.S. DEP’T OF ARMY, PAM. 27-9, MILITARY JUDGE’S BENCHBOOK ch. 3 (10 Sep. 2014) [hereinafter Military Judge’s Benchbook].

B. ROLE

The defense counsel will ensure that the procedural and substantive rights of the accused are protected. The defense counsel will be allowed to present evidence on behalf of the accused that is relevant to the limited purposes of the preliminary hearing; to cross-examine witnesses who testify at the hearing on matters relevant to the limited purposes of the hearing; to argue for a disposition of the matter appropriate to the interests of the accused; and to conduct any other defense functions reasonably necessary to protect the interests of the accused.

C. DISQUALIFICATION

The defense counsel could be disqualified if he or she has supervisor-subordinate relationship

with other parties or currently represents the government in any matter. If there is an appearance of impropriety or conflict of interest, this matter should be raised with the counsel and the accused, and, when appropriate the detailing authority and the CA.

4. COUNSEL FOR THE GOVERNMENT

A. APPOINTMENT AND DETAILING

Navy: The CA shall appoint a judge advocate to represent the government at the preliminary hearing. As a practical matter, the CA typically requests services from the local Region Legal Service Office (RLSO). In practice, the counsel for the government has usually been detailed to the case by his or her chain of command, may have been involved in certain aspects of the investigation, and may have prepared the charge sheet. Government counsel (GC) is not required to be impartial, but rather is guided by rules of professional responsibility, case law, and the *MCM*.

Marine Corps: The appropriate detailing authority will detail a judge advocate to represent the government at the preliminary hearing. For special victim cases, the lead judge advocate must be qualified as a special victim trial counsel as set forth in paragraph 1203.3 of MCO P5800.16A.

B. ROLE

Government counsel is not an impartial legal advisor to the hearing officer, but instead, represents the government in a prosecutorial role as an adversarial party to the hearing. Accordingly, you must not seek legal advice from the government counsel. As is described in more detail below, the government counsel makes the initial decision as to whether witnesses and evidence requested by the defense will be produced and, when appropriate, issues *subpoenas duces tecum* to produce evidence to be considered at the preliminary hearing. The government counsel will also present evidence and cross-examine witnesses relevant to the limited scope of the hearing and may argue for a disposition of the matter appropriate to the interests of the government. Additionally, government counsel is responsible for logistical support. This is particularly important when you are not stationed locally. As soon as the government counsel has been appointed, he or she should contact you to determine what must be done to ensure a smooth preliminary hearing.

C. DISQUALIFICATION

The government counsel will be disqualified if he or she has a financial or improper personal stake in a prosecution. The government counsel could also be disqualified if he or she has had improper communications about the case with the PHO or the SJA, or if he or she has a supervisor-subordinate relationship with other parties, including the accused, the PHO, opposing counsel, the SJA, or the CA. If there is an appearance of impropriety or conflict of interest, this matter should be raised to the CA.

5. LEGAL ADVISOR

If you are not a judge advocate, you must be assigned a judge advocate, certified in accordance with Article 27(b), to provide legal advice. Anyone who serves in this advisory role must be impartial with no direct interest in the outcome of the proceeding. The legal advisor will answer questions of law or procedure which arise. For example, the legal advisor may provide information regarding which lesser offenses are included in an offense charged, or concerning what defenses may be applicable. You must not ask for or accept advice from the legal advisor or any other person concerning what factual conclusions should be drawn from the evidence in the case or concerning your disposition recommendation. The determination of these matters is solely the responsibility of the PHO. When you consult with your legal adviser, you should inform defense counsel and government counsel and provide them an opportunity to comment.

6. OTHER PERSONNEL

The CA may detail a court reporter, interpreter, and others to aid the preliminary hearing.

PREPARING FOR THE PRELIMINARY HEARING

Once you are appointed as the PHO, plan an effective strategy to carry out your assigned duties in compliance with Article 32 and R.C.M. 405.

1. REVIEW LETTER OF APPOINTMENT

Once appointed, you should carefully review the letter of appointment issued by the CA that directs the preliminary hearing. This letter sets forth the charges that you will be reviewing and delegates certain authorities. It may detail counsel to the case, set a date for the preliminary hearing, set a deadline for the completion of your report, and delegate to you the CA's power to grant a continuance and excludable delay. Your appointment letter is likely to direct you to make the preliminary hearing your primary duty until its completion. In any case, you should conduct the preliminary hearing promptly and diligently through completion, unless relieved. If your letter of appointment follows a pre-26 December 2014 format (i.e. appoints you to be an investigating officer) for a hearing occurring on or after 26 December 2014, you should immediately contact the CA that directed the hearing to get a new letter of appointment. A sample letter of appointment for a Navy preliminary hearing is included as Enclosure (1) and a Marine Corps preliminary hearing is included as Enclosure (2).

2. REVIEW THE CHARGE SHEET

Other documentation typically received at the first stage of the preliminary hearing includes the charge sheet, DD Form 458. You should review the charge sheet and ensure that the information is correct and that the charges are in the proper form. Although RCM 603(b) prohibits you from making any changes to the charge sheet itself – even minor ones – you should identify and recommend any necessary changes in your report.

A. CORRECTIONS TO THE PERSONAL DATA

Review the accused's personal data for accuracy. If you identify deficiencies in the personal data section, notify the government counsel and defense counsel for correction. Recommended or completed corrections to the personal data shall be noted in your report.

B. CORRECTIONS TO THE CHARGES

Compare each specification with the sample specification format found in the *MCM*, Part IV and the Military Judge's Benchbook. If you identify deficiencies in the specifications, notify the government and defense counsel. Government counsel may choose to correct the charges before you commence the preliminary hearing. *MCM*, R.C.M. 603(a). To avoid the appearance of impropriety, avoid *ex parte* communications concerning corrections to the charges and avoid being present when corrections are made.

3. CONSULT WITH LEGAL ADVISOR

If you are not a judge advocate, you are encouraged to seek legal advice from your legal advisor, so long as the parties are informed of the nature of the advice. Although you will receive legal advice from this person, 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. You may not rely upon anyone else's opinions and recommendations to make these determinations.

4. HOLD A PRELIMINARY CONFERENCE

You should arrange a preliminary conference with counsel for the government and defense counsel as soon as possible to ensure that the preliminary hearing proceeds smoothly. If civilian counsel for the accused intends to participate in the preliminary conference, you should request a notice of appearance from them before allowing them to participate in the process. The primary purposes of the preliminary conference are to ensure that all pre-hearing disclosures required by R.C.M.404A have been made, coordinate logistical issues, and determine how long the hearing is expected to last. It is useful to highlight potential points of contention to prevent unnecessary delay. Although not required, the accused may also participate in the conference. The conference can be conducted in person or by telephone. There is no mandatory format or required list of items which must be considered. You may wish to address the topics covered in Enclosure (3), which suggests an agenda for a preliminary conference.

5. SCHEDULE THE PRELIMINARY HEARING

Your appointment letter may set a date for the preliminary hearing; if it does not, you must set a date. The date should be scheduled as soon as reasonably possible and all interested parties should be notified in writing of your decision. One of the most difficult tasks in preparing for the preliminary hearing is coordinating the availability of parties. Government counsel is responsible for all preliminary hearing logistics. However, it is your responsibility to ensure that all logistical requirements are met and that the preliminary hearing is conducted in a timely manner. This is especially important when the accused is in pre-trial restraint.

A. PRE-TRIAL RESTRAINT

If an accused is in arrest or confinement, the government must take “immediate steps” to dismiss the charges or bring the accused to trial. UCMJ, Art. 10. One potential remedy to a violation of Article 10 is dismissal of all charges with prejudice – i.e. the government is foreclosed from future prosecution. You, as the PHO, are a significant participant in the speedy-trial process, and without due diligence you can be a significant roadblock. Although you are impartial for purposes of Article 32, you share the government’s responsibility to ensure that the accused is not kept in pre-trial confinement longer than necessary. *See* MCM, R.C.M. 707. Accordingly, you shall not delay in conducting the preliminary hearing or submitting your report.

NOTE: Where the accused is in pretrial confinement, the PHO is required to submit a timely written report so that the report may be forwarded to the general court-martial convening authority within 8 days of the accused being ordered into arrest or confinement, if appropriate and practicable. *See* Art. 33, UCMJ.

B. CONTINUANCE REQUESTS

After the preliminary hearing has been scheduled, the defense or government may request that the preliminary hearing be continued until a later date. As a preliminary matter, keep in mind that you can only grant a continuance if the appointment letter or some other written document from the CA delegates this power to you. If you have been given that authority, you may approve the continuance request, deny the request, or approve a shorter period of delay than that which was requested. Note that your response to defense requests, such as requests for a continuance, may be reviewed by appellate courts to determine your impartiality. Enclosure (4) is an example of a sample continuance request.

I. EVALUATING A REQUEST

In evaluating a continuance request, you must carefully and impartially balance the need for speedy disposition of charges against a party's need for additional preparation time. *See* UCMJ arts. 10 & 33; MCM, R.C.M. 707. You should require the parties to reduce their requests to writing. There should be no ambiguities in continuance requests and the other party must be given an opportunity to respond. In the end, you must independently weigh the evidence and arguments from both sides, approve only reasonable continuances, and document in detail the reasons for your decision. It is important to include this information and your reasoning in your report. As a general rule, any reasonable continuance request should be granted – especially if neither party objects. If the accused requests a continuance to retain civilian counsel or ensure the presence of his counsel of choice, reasonable latitude should be granted, and your reasons for denial should be carefully documented.

Nevertheless, you should avoid open-ended continuances, require reasonable estimates of the time necessary to complete the pending action or conduct additional preparation, and set a date.

II. EXCLUDABLE DELAY AND THE ACCUSED’S RIGHT TO A SPEEDY TRIAL

Granting a defense or government request for a continuance is not the same as excluding the delay from the speedy trial clock. The CA may grant you the authority to make a finding as to whether any delay, such as those caused by an approved continuance, may be excluded for the purposes of RCM 707(c). If the CA does grant you this authority, you should affirmatively state in all continuance requests whether you consider the delay to be excludable for the purposes of the government’s speedy trial clock. In determining whether delay should be excludable, you should consider who is requesting the delay, the length of the delay, the reasonableness of the request, and the reason for the delay. MCM, R.C.M. 707(c); *United States v. Lazauskas*, 62 M.J. 69 (C.A.A.F. 2005)

III. CHRONOLOGY

In developing the necessary record, at a minimum, you should ascertain and include in your report when defense counsel first learned of the case, when he or she received disclosures under R.C.M. 404A, and why he or she is unable to proceed at the appointed time. If the defense alleges that other cases require attention, find out how those cases have prevented or will prevent adequate preparation. If, after you review the defense’s position, you conclude that he or she needs more time in the interests of justice, then you should grant the continuance. Consider creating a chronology sheet that documents the dates and reasons for all your actions in conducting the preliminary hearing and attach it to your report.

6. ARTICLE 32 PROCEDURAL PROCESS

A. REVIEW APPLICABLE LAW

You should review the required elements for each charged offense in the *MCM*, Part IV and the Military Judge’s Benchbook. If you are not a judge advocate, you may consult your legal advisor about the required elements of the charged offenses.

B. RIGHTS OF THE VICTIM

For purposes of the preliminary hearing, “victim” means a person who has suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the victim may have an individual designated to assume the victim’s rights.

In many cases, the victim may be represented by Victims’ Legal Counsel, another service’s equivalent, or civilian legal counsel. Note, there exist service differences concerning victim counsel services eligibility. When the victim is represented by counsel, all communications with the victim or the individual designated to assume the victim’s rights, other than those made during the victim’s testimony, should normally be made through the victim’s counsel. You should note in your report the contact information for the victim’s counsel and any comments or

objections submitted by the victim's counsel.

Victims have the right to timely notice of the preliminary hearing. You should ensure the government counsel has notified all qualifying victims, through counsel if applicable, of the time, date, and place of the preliminary hearing.

Victims have the reasonable right to confer with government counsel and the right to decline to testify as a witness.

Victims have the right not to be excluded from the hearing unless you, after receiving clear and convincing evidence, determine that testimony by the victim would be materially altered if the victim heard other testimony at the preliminary hearing. Before a final decision to exclude a victim from the hearing, you should consider whether you can hear the evidence in a different order so as to negate the need to exclude the victim from the preliminary hearing.

Notwithstanding the victim's right to attend the preliminary hearing, a victim shall be excluded if a privilege set forth in MRE 505 or 506 is invoked or if evidence is offered under MREs 412, 513, or 514, for charges other than those in which the victim is named.

Finally, a victim has a right to be heard, through counsel if applicable, on all MREs 412, 513, and 514 hearings that directly relate to that victim.

C. EVIDENCE

Generally: The government bears the burden of demonstrating that there is probable cause to believe the charged offense(s) occurred; that the accused committed the offense(s); and that there is jurisdiction over the offense(s) and accused. Accordingly, the government is responsible for presenting evidence or testimony to meet this limited purpose.

In preparing for the preliminary hearing, you should consider what information you believe will be necessary to conduct the preliminary hearing. To assist you in making this determination, you may review the charge sheet and copies of other documentary evidence provided by the government and defense, so long as those documents have been provided to the other party. You may not, however, formally consider such matters as evidence unless they are properly presented at the preliminary hearing.

Defense requests for evidence: A best practice is for the preliminary hearing officer to ask what evidence the parties intend to introduce in advance and whether counsel have perceived accessibility issues in order to avoid last-minute problems. While R.C.M. 404A establishes a timeline for the disclosure by the government of specific documents, the defense may request additional information that it considers relevant, non-cumulative, and necessary for the limited purposes of the preliminary hearing. You should establish a date by which the defense shall request such information.

If the government declines to produce information requested by the defense, the defense may request that you determine whether the evidence sought is relevant, not cumulative, and necessary for the limited purpose of the hearing. These issues should be discussed with the

parties and you should then determine whether the requested evidence is relevant, non-cumulative, and necessary for the limited purpose of the hearing. If you so determine, you will, subject to the limitations concerning privileges (and in particular MRE 505 relating to classified information), direct government counsel to produce the evidence. If the evidence is not under government control, you must additionally determine that producing the evidence will not cause unreasonable delay. If you so determine, direct the government counsel to issue a *subpoena duces tecum* for the requested evidence. An unsuccessful effort by the government to secure the requested evidence by issuance of a subpoena shall be noted in the Article 32 report. Article 32 preliminary hearings shall not be unreasonably delayed to secure requested evidence; however, the missing evidence should be noted in the Article 32 report. A flowchart demonstrating the process to follow is included as Enclosures (6) and (7).

Authority of the PHO: While the PHO may direct the government counsel to produce or seek evidence that is requested by the defense, the PHO has no independent authority to order production of evidence or issue *subpoenas duces tecum*. If the government declines to produce the requested evidence or declines to issue a subpoena for the requested information, the PHO shall note that fact in the Article 32 report.

Form of the evidence: The PHO may consider other forms of evidence at the preliminary hearing, even if those forms of evidence would not be admissible at court-martial, so long as the evidence is relevant to the limited scope and purpose of the preliminary hearing and not cumulative. This includes witness testimony provided in person, by video teleconference, by telephone, or similar means of remote testimony. This also includes other evidence, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, offered by either side, that you determine reliable. If familiarity with the scene of the alleged offense would assist you, you may, subject to approval of the CA, visit the scene as long as you request the parties accompany you.

D. WITNESSES

Government witnesses: The government may call witnesses, for the limited purpose of the preliminary hearing, in person, via telephone or video teleconference, or by other means that provide reasonable opportunity to question the witness and for the defense to cross-examine the witness.

Defense witnesses: The defense shall be afforded the opportunity to call witnesses to testify for the limited purpose of the preliminary hearing. The defense may call witnesses in person, via telephone, or video teleconference, or by other means that provide reasonable opportunity to question the witness and for the government counsel to cross-examine the witness. In situations where the defense is requesting government assistance or expenditure of any government funds to facilitate witness testimony, and government counsel objects to the witness, then defense counsel may request a determination by the PHO of the necessity of the witness. If the PHO finds the witness relevant, non-cumulative, and necessary to the limited purpose of the Article 32 preliminary hearing, then the PHO shall direct the government to facilitate the witness testifying as explained below:

Military witnesses: For military witnesses, the government shall contact the witness's

command and request the witness be made available to testify. The witness's commanding officer shall determine the availability of the requested witness based on operational requirements and mission accomplishment. The commanding officer also determines the form of testimony that the witness will be made available to provide. Given the broad discretion the commanding officer has to determine the form of the testimony the witness will provide, there will normally not be an operational requirement that cannot be overcome to take the testimony of a witness. However, a commanding officer's determination of non-availability of a witness is final and is not subject to review by the PHO. A flowchart demonstrating the process to follow is included as Enclosure (8).

Civilian witnesses: If the witness is a civilian, the government shall invite the civilian witness to provide testimony and, if the civilian witness agrees, make appropriate arrangements. If testimony by the civilian witness would incur expense to the government, the CA who directed the preliminary hearing, or the CA's designee, determines whether the witness will testify in person or by some alternate means. A flowchart demonstrating the process to follow is included as Enclosure (9).

Victims: Victims, including military victims, of offenses under consideration at the Article 32 preliminary hearing may not be required to testify at the preliminary hearing.

Limitations on the PHO: While the PHO may recommend that a party call a witness to testify, the PHO may not *sua sponte* call a witness to testify. Similarly, while the PHO may suggest which form of testimony will be most helpful to the PHO, the PHO has no authority to mandate the form of the testimony provided by any witness.

E. PUBLIC ACCESS

In general, an Article 32 preliminary hearing is presumptively a public proceeding, and so it is generally inadvisable to close the preliminary hearings unless there is a substantial need to do so. Examples of substantial need include mandatory closure to conduct an MRE 412, 505, or 506 hearing, or to conduct an MRE 513 or 514 hearing on the admissibility of evidence. Accordingly, Article 32 proceedings are open to the public "whenever possible," but either you or the CA who directed the preliminary hearing may close the preliminary hearing or restrict spectators to certain parts of the proceedings. When such a decision is made, you must make specific findings of fact that justify your decision, and you must include them in your report. A decision to close part or all of a preliminary hearing should be made only after careful consideration and must be "narrowly tailored to achieve the overriding interest that justified the closure." R.C.M. 405(i)(4). All inquiries by the media concerning the preliminary hearing should be referred to the public affairs office.

CONDUCTING THE PRELIMINARY HEARING

Due to the nature of the preliminary hearing, you have limited discretion in how the preliminary hearing is conducted. However, you are responsible for maintaining the decorum of the proceeding and restricting the presentation of evidence and witnesses to the scope and purpose of the preliminary hearing. You are strongly encouraged to follow the Article 32 Preliminary Hearing Officer's Script included with this guide as Enclosure (10). Use of the script will cover all the

important requirements on the DD Form 457, Preliminary Hearing Officer's Report, and other requirements of Article 32 and R.C.M. 405. Missing a procedural requirement can lead to prejudice to the rights of an accused service member or victim or to the waste of judicial resources. Ultimately, you will weigh the credibility of the evidence presented at the preliminary hearing and (1) determine whether there is probable cause to conclude that an offense or offenses have been committed and whether the accused committed it; (2) determine whether there is jurisdiction over the offenses and the accused; (3) consider the form of the charges; and (4) make a recommendation as to disposition of the charges. The preliminary hearing shall begin with the PHO informing the accused of their hearing rights. Government counsel will then present evidence. Upon the conclusion of government counsel's presentation of evidence, defense counsel may present matters in defense and mitigation.

1. PRODUCTION OF DOCUMENTS AND OTHER EVIDENCE

During the preliminary hearing, you may consider all reliable evidence that you determine relevant, not cumulative, and necessary. Such evidence includes documents and physical evidence presented by the parties. You may consider a variety of evidence that might not be admissible at a trial, such as evidence which has been obtained illegally, evidence that has chain-of-custody problems, or matters which constitute hearsay.

2. PRESENTATION OF EVIDENCE

The government may present its case in any manner it deems suitable and is not required to call witnesses or introduce specific evidence if probable cause can be met without such presentation. Any questioning by any party (government, defense, PHO), whether on direct or cross-examination, must be relevant to the limited purposes of the preliminary hearing.

A. MILITARY RULES OF EVIDENCE

Generally: The Military Rules of Evidence do not apply to Article 32 preliminary hearings; however, MRE 301 (privilege concerning compulsory self-incrimination), MRE 302 (privilege concerning mental examination of the accused), MRE 303 (degrading questions), and MRE 305 (warnings about rights), do apply and shall be enforced by the PHO in their entirety. R.C.M. 405(h)(1).

MRE 412: In cases involving any allegation of a sexual offense, MRE 412 applies, except that MRE 412(b)(1)(C) ("the Constitutionally required exception") specifically does not apply to Article 32 preliminary hearings. R.C.M. 405(h)(2).

Privileges: Section V of the Military Rules of Evidence relating to privileges apply to Article 32 preliminary hearings with the exception of MREs 505(f)-(h) and (j); 506(f)-(h), (j), (k), and (m); 513(d)(8); and 514(d)(6). R.C.M. 405(h)(3).

Pursuant to R.C.M. 405(h)(4), when applying these rules to the preliminary hearing, the term "military judge," as used in the rules means the PHO. The PHO assumes the military judge's authority to exclude evidence from the preliminary hearing, and follows the procedures set forth in the specific rules.

However, the PHO shall not assume the military judge's authority to order production of communications covered by MRE 513 and 514. The prohibition against ordering production of evidence does not preclude a PHO from considering evidence offered by the parties under MRE 513 or 514.

Failure to meet the procedural requirements of the applicable rules of evidence, to include all notice requirements, shall result in the PHO excluding that evidence from the preliminary hearing, unless the offering party can show good cause why the procedural rules were not followed. You should note in your report both the reason for exclusion of offered evidence and, if applicable, the good cause shown on which you allowed presentation of evidence in violation of the procedural requirements of the rules.

Absent good cause shown, PHOs shall allow the victim's legal counsel to be heard at any proceedings relating to MRE 412, 513, and 514 with respect to that victim. Unreasonable delay to the proceedings may constitute good cause.

Denial of a request by victim's legal counsel to present matters related to MRE 412, 513, or 514 shall be explained in the Article 32 report.

The PHO has the authority to order exhibits, proceedings, or other matters sealed as described in RCM 1103A. Government counsel shall cause such materials to be sealed so as to prevent unauthorized viewing or disclosure.

The PHO must ensure that evidence presented pursuant to MRE 412 is protected pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a.

3. PRESENTATION OF TESTIMONY

With the exception of the accused, all witnesses are required to testify under oath. The accused is permitted to make an unsworn statement. The accused's statement shall be limited to matters in defense and mitigation.

A. SEQUESTERING WITNESSES

As a general rule, you should not permit prospective witnesses to hear, examine, or discuss the testimony or statements of other witnesses. Military judges, on their own motion or by motion of counsel, are permitted to exclude witnesses from a court-martial. MCM, MIL. R. EVID. 615. While MRE 615 is not necessarily applicable at Article 32 preliminary hearings, the practice of sequestering witnesses in order to prevent contamination of their testimony is common and is within your discretion during the preliminary hearing. However, as explained earlier, a victim of an offense under consideration at the preliminary hearing has a right not to be excluded from any portion of the hearing related to the alleged offense. In order to exclude a victim of the alleged offense(s) you must determine by clear and convincing evidence that the testimony of the victim would be materially altered if that victim heard other testimony. Your findings in this respect should be put on the record of the preliminary hearing and noted in your report to the CA. It is within the PHO's discretion to permit certain potential witnesses, such as experts,

investigators, or a parent in a child sexual abuse case, to be present if you consider their presence helpful to the preliminary hearing. Finally, you must warn (or order) witnesses who have testified not to discuss the case or their testimony with anyone, as suggested by the script in Enclosure (10).

B. TAKING TESTIMONY

It is not the PHO's duty to perfect the case for the government or to advocate for either side. The government counsel should conduct an examination of witnesses sufficient to meet the government's burden for the limited purposes of the preliminary hearing. As the PHO, you are permitted to question witnesses, but you should take care not to abandon your role as an impartial officer. To that end, you should ask questions to clarify your understanding of the facts and enable you to make a well-informed recommendation as to the disposition of the charges. However, it is the role of government counsel to present sufficient evidence to meet the government's burden. Note also that you must attempt to ascertain whether a witness will be available at the time of a potential future trial as suggested by the script in Enclosure (10), and must note potential future unavailability in your report to the CA.

C. AUDIO RECORDINGS

The Article 32 shall be recorded by a suitable recording device. Art. 32(e); R.C.M. 405(i)(6). Government counsel is responsible for ensuring that such a recording is made, but the PHO should verify this statutory requirement is being met at regular intervals of the proceeding.

D. SELF-INCRIMINATION

If a military witness "appears likely to incriminate himself or herself" then you should advise the witness of his or her rights against self-incrimination under the UCMJ. MCM, MIL R. EVID. 301(a). A script for witness advisement of rights is included at Enclosure (11).

4. OBJECTIONS

Handling objections during the hearing has traditionally been one of the most misunderstood aspects of Article 32 proceedings. You should rule upon objections made at the preliminary hearing. For example, you must make rulings that control the decorum of the hearing; on the applicable rules of evidence; and on what evidence you will consider. It is your duty to ensure that the preliminary hearing is focused on the four purposes of a preliminary hearing, and that you prevent counsel from asking immaterial and degrading questions. Your goal in a preliminary hearing is to determine whether or not the government can present sufficient evidence to show there is probable cause related to the charges and jurisdiction over the accused and the offense(s). You should also ascertain facts so that you can make an informed recommendation as to the form of the charges and an appropriate disposition of the charges, and the CA in turn can make an informed disposition decision based on the limited purpose of the Article 32 preliminary hearing. The proper basis of an objection, in most cases, will either be on relevance grounds or failure to comply with the procedural requirements for the preliminary hearing. Bearing in mind the limited scope and purpose of the Article 32 preliminary hearing, you should prevent government counsel or the defense from eliciting testimony or introducing evidence that is beyond those limits. While such

evidence may be useful to the parties and may be relevant to discovery of issues in the case, if it is not relevant to matters under your consideration it shall be precluded and counsel shall be directed to move on. Where an objection is based on a failure to comply with the procedural rules, you should carefully consider the facts and circumstances and, where appropriate, exclude presentation of matters where a party failed to meet its obligations under the rule.

5. UNCHARGED OFFENSES

During the preliminary hearing, evidence may be adduced that the accused committed an uncharged offense. If the accused is present at the preliminary hearing and you inform him or her of the nature of each uncharged offense, then you may consider evidence and testimony related to the subject matter of that offense without the accused having previously been charged with that offense. The accused must be afforded the same opportunities for representation, cross-examination, and presentation related to such uncharged offenses as were given with other charges under consideration at the Article 32 preliminary hearing.

6. QUESTIONS BY THE PRELIMINARY HEARING OFFICER

As the PHO, you have no authority to *sua sponte* call witnesses; however, you may question witnesses called by either party in order to clarify facts and circumstances of their testimony or related to other matters within the limited purpose of the preliminary hearing. You must take care not to become an advocate for either party and you must maintain your impartial role with both the nature and tone of questions asked.

While you may not *sua sponte* call witnesses or request, compel, or present evidence, you may inform government or defense counsel that matters related to probable cause or otherwise within the limited scope of the preliminary hearing require further support or evidence. You are encouraged to inform the parties of matters about which further information would be useful in your decision-making process, but neither government counsel nor the defense counsel can be compelled to present more evidence.

PREPARING THE REPORT

In preparing the preliminary hearing report, you should keep in mind your statutory obligations and the limited scope and purpose of the Article 32. Your report must specifically answer the four primary questions of the Article 32 preliminary hearing, and should provide a basis for your determinations and recommendations.

1. TIMING

You must submit a timely written report of the preliminary hearing to the CA. The appropriate amount of time required to complete the report will depend upon the nature of the preliminary hearing, though your appointment letter may give specific deadlines. Your goal should be to submit the report as soon as possible after the close of the preliminary hearing. Efficiency in completing your report is important in cases where the accused is in confinement or under restraint. If the thoroughness of your report is endangered by time constraints, ask the CA for an extension.

2. FORMAT

The format of your report will vary depending on the nature of the charges under consideration, your personal style, and instructions from the CA. Some PHOs will write what is essentially a memorandum of law in letter format containing enclosures. Others may write a simple supplement to the DD Form 457. At a minimum, the report must include:

- a) the name and contact information of defense counsel and a statement of whether the defense counsel was present throughout the taking of evidence, and if not present, the reason why;
- b) a summary of the testimony taken;
- c) any other statements, documents, or matters considered by you;
- d) a statement on the availability of witnesses for trial;
- e) an explanation of any delays;
- f) a notation if government counsel failed to issue a subpoena as directed;
- g) your conclusion on whether there is probable cause to believe the offenses on the charge sheet, or otherwise considered during the hearing, occurred;
- h) a determination as to whether there is probable cause to believe the accused committed the offenses;
- i) a determination as to whether a court-martial would have jurisdiction over the charges and the accused;
- j) a determination as to the form of the charges and specifications; and
- k) your recommendation regarding disposition of the charges.

The DD Form 457 is intended to ensure that your report satisfies all of these requirements. Therefore you are not required to supplement it to any great degree or to repeat anything that is already addressed on the form. Consider how you might incorporate the information below in a way that is understandable to the CA and to his or her SJA, and write your report accordingly.

A. SUMMARIZE THE FACTS

A brief factual summary of the case will help the CA to better understand your legal analysis. Usually, a chronological account is best. Cite the exhibits that show each fact you state in the summary. If evidence appears to be in conflict, you should outline any factual disputes, but you do not need to resolve them.

B. OUTLINE THE EVIDENCE PRESENTED

At a minimum, you must attach to DD Form 457 the substance of the testimony taken on both sides and the other evidence presented during the preliminary hearing. A summary of each witness's testimony is not required, but may be appropriate. The level of description of the evidence that you should include depends greatly on the facts of each case. You should describe the evidence which you considered, summarize each witness's testimony, and analyze the significance of this evidence in terms of the broader facts.

C. ANALYZE THE REQUIRED ELEMENTS

As you consider the elements of offenses, a good approach is to copy the elements of each specification and discuss the evidence that supports or refutes each element. If the government failed to offer evidence related to an element of proof, you should conclude that the charge is not supported by probable cause. Remember, you may consider hearsay or other inadmissible evidence in deciding whether all the elements of proof are met. You may also comment on the credibility and demeanor of any witnesses who testified. Include your observations in your report but refrain from substituting your judgment on credibility for the judgment that the members or a military judge may make in a subsequent court-martial. In other words, if there is no evidence that a witness is lying, the best practice is to comment on the witness' demeanor and apparent credibility (or lack thereof), and then consider the testimony in determining whether the charges are founded.

D. RECOMMEND CHANGES TO THE CHARGES

After the preliminary hearing and presentation of the evidence, you should review the form of the charges by comparing them to the model specifications. You may find some errors in the charges or wish to make recommendations regarding the referral of the charges to a court-martial. For example, the preliminary hearing may reveal that the date of an alleged offense is inaccurate or that a lesser included offense is warranted because evidence is lacking on a certain element of the offense currently charged. Remember, you may not make any changes to the charges. You are limited to making recommendations which a court-martial convening authority may later adopt. You may also recommend that additional charges be preferred.

I. MINOR CHANGES

RCM 603 deals with changes to charges and specifications that do not require redrafting or re-swearing by the accuser. "Minor" changes are defined as any change except one which adds a party, offense or substantial matter not fairly included in the charges previously preferred or which is likely to mislead the accused as to the offenses charged. When the CA makes a minor change, the Article 32 preliminary hearing does not need to be reopened.

II. MAJOR CHANGES

Any changes that are not "minor" are considered "major" by definition. For example, converting a specification that does not state an offense into one that does is a major change, requiring charges to be re-sworn and an additional preliminary hearing to be conducted

unless the charge as been amended or changed was covered in the prior preliminary hearing. Changing a date or place in the specification is usually minor, unless a clearly different offense than that contemplated by the accuser results. If a change is major, you may recommend reopening the Article 32 preliminary hearing, unless the accused was advised of the potential change and given the opportunity to challenge it at the preliminary hearing.

E. OBJECTIONS PRIOR TO DELIVERING THE REPORT TO THE CONVENING AUTHORITY

Although you are not required to note every objection made during the preliminary hearing in your report, you should take special care to note specific requests for objections raised by counsel. You may set a reasonable amount of time from the closing of the preliminary hearing for the parties, and if applicable, victim's legal counsel to submit objections and comments. If written objections are received, you may, but are not required to, respond to each in your report as appropriate to explain the basis of your decision. The written objections submitted by either party or the legal counsel for the victim should be appended to your report.

F. EXPLAIN DELAYS

You are required to explain any delays in the preliminary hearing. R.C.M. 405(j)(2)(E). Unless you are delegated authority to grant continuances and approve delay, you should forward requests or other delays to the CA for their action as they are requested, because exclusion of delay from the government's speedy trial clock under RCM 707 should be approved at the time the delay is approved.

G. HIGHLIGHT LEGAL ISSUES

One of the most important functions of an Article 32 preliminary hearing is to identify legal issues that may arise at court-martial. Although you are not required to rule on the admissibility of evidence, you may note any evidence that will not be admissible at trial. Thus, you should briefly discuss any evidentiary or other legal issues you see. Do not go into a lengthy legal analysis. Cite the dispositive authorities to save others unnecessary labor, but keep your explanation and analysis brief. The SJA for the CA will do the necessary legal research before making a recommendation to refer the case to court-martial as required by Article 34. In determining whether the charges are in proper form, you should consider whether any of the charges are multiplicitous on their face and therefore subject to a motion to dismiss.

3. LENGTH

When drafting your report remember your target audience and recall that the CA needs to be able to use your report to determine how to address the alleged misconduct. When in doubt, you should provide in your report more detail rather than less in order to help the CA assess the evidence. In most cases, you should include in your report a summation of the evidence – with citations to the exhibits – which substantiates each element of any charged offense. Comment on the apparent reliability of evidence and identify any significant legal issues.

4. ASSEMBLY

Like records of trial, reports of preliminary hearing under Article 32 are expected to generally follow a certain sequence. If you are unsure how to assemble your report, ask the SJA how he or she recommends the information be presented. Note that the DD Form 457 and its supplemental pages are not preliminary hearing exhibits. A copy of the charge sheet is always Exhibit 1. Do not use the original; it should be retained by the appointing authority and later forwarded to the general court-martial convening authority if a recommendation to refer the case to a general court-martial is made. Your appointment letter is attached as Exhibit 2. Other documents and witness statements which you considered should be marked as exhibits and form the rest of the report, generally in the order in which they were taken, although you may order statements in any way that makes sense for the SJA and the CA. Exhibits should be marked sequentially using Arabic numerals (i.e. “PH Exhibit 1,” “PH Exhibit 2” and so on). Add page numbers to exhibits that have multiple pages in order to facilitate the understanding of the reader. If there are any documents that you did not consider, they should not be forwarded with the report, but should be appropriately safeguarded or sealed. Enclosure (12) is a simulated PHO’s report based on the required DD Form 457, though personal style and local practice may provide for many different variations in format for the written report.

A. REPRODUCING THE REPORT

You need not produce copies of your report, but you must submit a report of such quality that it may be reproduced clearly and legibly. If applicable, consider consulting with your legal advisor concerning the format of your report.

B. DISTRIBUTION OF THE REPORT

You are required to deliver your report to the commander who directed the preliminary hearing, and the commander is responsible to deliver the report to the accused. The CA’s SJA normally performs the function of delivery to the accused for the commander, and this is not your responsibility to do so unless otherwise directed. Normally your obligation ends when you deliver your report to the CA. Remember, the CA is the release authority for the report, and is the only one who may authorize distribution. The CA may decide that your report is inadequate or deficient in some area and direct you to clarify certain aspects. The CA may not influence your impartial judgment.

5. RIGHT TO OBJECT

After service of a copy of the report on the accused, there is a five-day period for objections to the report to be made to the CA. Such objections shall be made via the PHO. The day the report is delivered to the accused is not counted in calculating the five-day period. Failure to object to matters included or omitted from the report constitutes a waiver of such objections in the absence of good cause for relief from the waiver. If timely objections are received, the CA should comment on them. If they appear valid, the CA should consider reopening the preliminary hearing or taking other appropriate action to cure the defects. If the CA is a special court-martial convening authority, and the report contains recommendations for a general court-martial, he or she is not required to wait for expiration of the five-day period before forwarding the charges and report of preliminary hearing to the general court-martial convening authority. If timely defense objections are received after the charges have been forwarded to the general court-martial convening authority,

the CA should still comment on them. Meanwhile, the general court-martial convening authority should be alerted that the objections are being forwarded.

6. REOPENING THE PRELIMINARY HEARING

There are several circumstances under which it may be necessary to reopen the preliminary hearing. If a charge or specification not contemplated at the preliminary hearing is preferred with the intention of referring to the same court-martial after the first preliminary hearing has been completed, then the preliminary hearing must be reopened. Other examples of times when a preliminary hearing must be reopened include if there has been a "major" change in a specification, or if additional evidence is required.

A. PROCEDURE

You should convene the preliminary hearing as before and re-advise the accused of his or her rights and the nature of the charges under review. The preliminary hearing should then proceed in the same manner as the first. If you are reconvening for an additional charge or specification, incorporate by reference all matters from the prior Article 32. It is not necessary for the parties to recall witnesses solely to repeat testimony relating to the original charges.

B. MODIFYING THE REPORT

If the DD Form 457, Preliminary Hearing Officer's Report, was not completed prior to the reopening, you should include all matters presented in one report. If the first report was completed, you may submit the additional matters as an addendum to the original package without completing another DD Form 457.

CONCLUSION

Article 32 preliminary hearings represent a significant departure from the previous Article 32 Investigations. The intent of this guide is to provide a comprehensive manual so that the PHO may properly conduct a preliminary hearing, consider evidence within the limited scope and purpose of the preliminary hearing, correctly resolve any issues, make an accurate determination of probable cause, and recommend disposition of the charges.



DEPARTMENT OF THE NAVY
NAVAL EDUCATION AND TRAINING COMMAND
U.S. NAVAL AIR STATION
PENSACOLA, FL 32508

In Reply Refer To:
5811
CO/SJA
11 Feb 15

From: Commander, Naval Education and Training Command
To: Lieutenant Commander Peter H. Oslo, JAGC, USN

Subj: APPOINTMENT AS ARTICLE 32 PRELIMINARY HEARING OFFICER IN CASE OF
UNITED STATES V. LANCE CORPORAL MAY B. GUILTY, U.S. MARINE CORPS

Ref: (a) Article 32, Uniform Code of Military Justice (UCMJ)
(b) R.C.M. 405, Manual for Courts-Martial

Encl: (1) Charge sheet (DD Form 458) ICO U.S. v. LCpl M. B. Guilty

1. Pursuant to references (a) and (b), you are hereby appointed as preliminary hearing officer to conduct a preliminary hearing into all matters set forth in the charges and specifications preferred against Lance Corporal May B. Guilty, United States Marine Corps.

2. You shall conduct an impartial preliminary hearing which shall be limited to a determination of whether there is probable cause to believe the offense(s) set forth on the charge sheet has been committed and whether the accused committed the offense(s); whether there is court-martial jurisdiction over the offense(s) and the accused; consideration of the form of the charges; and, your recommendation as to the disposition of the charges. In conducting this preliminary hearing and in making your report, you will be guided by the provisions of references (a) and (b) and by such other legal authorities as may be applicable.

3. Captain Fabio Gallo, USMC, certified in accordance with Article 27(b), UCMJ and previously sworn in accordance with Article 42(a), UCMJ, has been appointed government counsel.

4. Lieutenant David Costa, JAGC, USN, certified in accordance with Article 27(b), UCMJ and previously sworn in accordance with Article 42(a), UCMJ, has been detailed as defense counsel.

5. You will notify the accused, defense counsel, government counsel, and if appropriate, legal counsel for the victim of the time and place of the convening of this preliminary hearing. You are specifically granted the authority to grant one continuance for a reasonable duration up to three weeks in the subject case and, where appropriate, exclude the time from the government's R.C.M 707 and Article 10 speedy trial clocks. All continuance requests shall be submitted to you, in writing, and regardless of your decision, they shall be included in your final report.

C. OFFICER

Copy to: GC
DC

Naval Justice School
Publication

**ENCLOSURE (1): SAMPLE USN APPOINTMENT
LETTER**

Letterhead

5800
/
DD MM YY

From: Commanding Officer, O-6 Initial Disposition Authority
To: MAJ I. M. PHO, USMC

Subj: APPOINTMENT AS ARTICLE 32 PRELIMINARY HEARING OFFICER ICO UNITED STATES V. ACCUSED, USMC

Ref: (a) RCM 405
(b) Article 32, UCMJ
(c) RCM 707(c), MCM
(d) Article 6b, UCMJ
(e) MRE 412, MCM
(f) MRE 513, MCM
(g) MRE 514, MCM

Encl: (1) DD Form 450 (Charge Sheet)

1. Pursuant to references (a) and (b), you are detailed as the Preliminary Hearing Officer in the case of *United States v. Accused, USMC*, to conduct a preliminary hearing into the charges and specifications contained in enclosure (1). Your hearing shall be conducted in accordance with the relevant provisions of the Manual for Courts, reference(a), and current case law relating to preliminary hearings. There have been significant changes to the Article 32 process in the last year. You are specifically instructed to read MARADMIN ___/14 and complete the online training through Naval Justice School before conducting this hearing.
2. You shall conduct an impartial preliminary hearing which shall be limited to a determination of whether there is probable cause to believe the offense(s) set forth on the charge sheet has been committed and whether the accused committed the offense(s); whether there is court-martial jurisdiction over the offense(s) and the accused; consideration of the form of the charges; and, your recommendation as to the disposition of the charges. In conducting this preliminary hearing and in making your report, you will be guided by the provisions of references (a) and (b) and by such other legal authorities as may be applicable.
3. Captain ____, USMC, has been detailed as the government counsel. Captain ____, USMC, has been detailed as the defense counsel. Captain ____, USMC has been detailed as the victim's legal counsel.
4. The Article 32 Hearing is scheduled for **TIME, DATE**. If facts and circumstances exist that prevent the completion of the hearing on DATE, I authorize you to approve requests for delay made by either party, upon showing good cause, for up to an additional 30 days. Pursuant to reference(c), you are also authorized to make a finding of excludable delay for any continuance request; this finding must be in writing and included in your report. Any requests for delay beyond 30 days shall be submitted to me in writing for approval or disapproval. All continuance requests submitted to you, in writing, and regardless of your decision, shall be included in your final report.
5. All requests by defense counsel for production of witnesses or evidence shall be submitted to you, via the government counsel, at least 14 days prior to the start of the hearing. The government counsel shall provide you a response to the defense's request at least 10 days prior to the start of the hearing and you shall make a finding as to relevance, necessity, and cumulativeness at least 7 days prior to the start of the hearing. All witness and evidence production requests shall contain sufficient information to meet the production of witness requirements contained in reference (a).

Naval Justice School
Publication

**ENCLOSURE (2): SAMPLE USMC APPOINTMENT
LETTER**

6. As provided in references (a) and (d), the victim has a right to be informed of the date, time, and location of the hearing, to refuse to testify, and to confer with the government counsel. The victim also has a right to be present unless you receive clear and convincing evidence that the victim's testimony would be materially altered if the victim heard other testimony at the hearing. Pursuant to references (a) and (e)-(g), any party intending to introduce evidence in accordance with references (e)-(g) must provide notice at least five (5) days prior to the preliminary hearing. This notice and any relevant filings must be provided to the victim's legal counsel, if represented, and the victim has a right to be heard on these matters. You must close the courtroom for any hearings upon reference (e) and you may close the courtroom for any hearings pursuant to references (f) and (g) upon motion of any party and good cause shown. You are specifically directed to seal any exhibits or testimony received pursuant to references (e) – (g).

7. You are directed to provide a report of the preliminary hearing to me as soon as possible after the conclusion of the preliminary hearing, but no later than **10 days** after the conclusion of the hearing. Any request for delay in submitting the report shall be made in writing.

I.M. COMMANDER

Copy to:
Government Counsel
Defense Counsel

12 Feb 15

MEMORANDUM

From: Lieutenant Commander Peter H. Oslo, JAGC, USN, Preliminary
Hearing Officer
To: Captain Fabio Gallo, USMC, Government Counsel
Lieutenant David Costa, JAGC, USN, Counsel for Accused
Mr. Christopher D. Chance, Esq.
Subj: Preliminary Hearing Conference Agenda

1. I have been appointed by Commander, Naval Education and Training Command, to conduct an Article 32 preliminary hearing into the alleged offenses of Lance Corporal May B. Guilty. The appointing letter indicates that you, Captain Gallo, are the government counsel and you, Lieutenant Costa, are the detailed defense counsel. (According to my conversation concerning some logistics of this case with Captain Gallo, I understand that Lance Corporal Guilty has also retained you, Mr. Chance, as civilian counsel).

2. I would like to conduct a preliminary conference at 0900 on 1 March 2015 at the RLSO, Bldg 1456, Naval Air Station Pensacola. I expect that this meeting will take approximately one hour, and you are invited to attend in person, although a teleconference is acceptable to me as well. If this date is unworkable, please suggest an alternate time and date. During this meeting, I would like to address the specific subjects outlined below.

4. Government Counsel:

- a. Please state the elements of the charged offenses.
- b. Please state whether all disclosures set forth in R.C.M. 404A paragraph(a) and R.C.M. 405 paragraph (f) have been made.
- c. The Government's position regarding any witness or evidence requested by the defense.

3. Defense Counsel:

- a. Are there any other counsel representing the accused? Do you expect any additional counsel in the future?
- b. Please provide a list of any witness you request and the form of the requested testimony, along with contact information. If the Government has declined to produce a witness, please provide a synopsis of the expected testimony and an explanation of why the testimony is relevant and not cumulative, and the availability of the witness.

c. Please provide a list of any documents or other physical evidence you want the Government to produce and a basis for that evidence under at this hearing.

5. [Both] government and defense counsel:

a. Please suggest a time and date for the initial session of the Article 32 preliminary hearing and provide an estimate of the time required for the whole preliminary hearing. Please discuss dates with each other and try to reach an agreement. Bring your calendars to the preliminary conference.

[b. Please advise whether you anticipate any matters involving MRE 412 or a privilege under Part V of the MREs.]

6. At this time I anticipate holding a one-day preliminary hearing on 15 March.

7. I intend to discuss the location of the preliminary hearing and any administrative support needed, as well as designation of the persons responsible for ensuring that the accused is present and in the proper uniform.

8. By 25 February 2015, please respond to the questions above and send me any additional information via e-mail. Please be sure to courtesy copy opposing counsel on all communications. My government email is Peter.H.Oslo@navy.mil.

P. H. Oslo
Lieutenant Commander, JAGC, USN
Preliminary Hearing Officer

12 February 15

MEMORANDUM

From: Lieutenant David Costa, JAGC, USN, Defense Counsel
To: Lieutenant Commander Peter H. Olso, JAGC, USN, Preliminary
Hearing Officer

Subj: REQUEST FOR CONTINUANCE OF THE ARTICLE 32 PRELIMINARY HEARING

Ref: (a) PHO appointment letter of 11 February 2015
(b) RCM 405, Manual for Courts-Martial
(c) RCM 707, Manual for Courts-Martial

1. Pursuant to reference (a), paragraph (5), counsel for the accused respectfully requests that the Article 32 preliminary hearing in the case of Lance Corporal May B. Guilty, United States Marine Corps, be continued until a date no earlier than 1 April 2015.

2. Because of the serious and complex nature of the allegations against Lance Corporal Guilty and the relatively short time to prepare, the Defense requests that the Article 32 preliminary hearing be continued until no earlier than 1 April 2015.

3. Furthermore, the Defense requests that the deadline for submitting witness and evidence request for the Article 32 Preliminary hearing be likewise extended from the date of 25 February 2015 to a date not earlier than 15 March 2015.

4. Pursuant to reference (b), paragraph (c), the Defense accepts any delay as a result of this request as excludable delay attributable to the defense.

5. Thank you very much for your consideration and attention to this matter.

D. C. COSTA

Copy to:
Captain Fabio Gallo, Government Counsel

5800
Ser 123
March 5, 2015

Ms. Eva Munroe
123 Anywhere St.
Nowheresville, NA, 12345

Dear Ms. Munroe:

SUBJECT: WITNESS INVITATION

You are invited to appear as a witness in proceedings under Article 32, Uniform Code of Military Justice, against Lance Corporal May B. Guilty, United States Marine Corps. You are requested to appear at the office of the Region Legal Service Office, Bldg 1456, Naval Air Station, Pensacola, Florida on 1 April 2015 at 0900.

You are entitled to witness fees and transportation allowances to cover your attendance. You may collect these fees and allowances after completing your testimony.

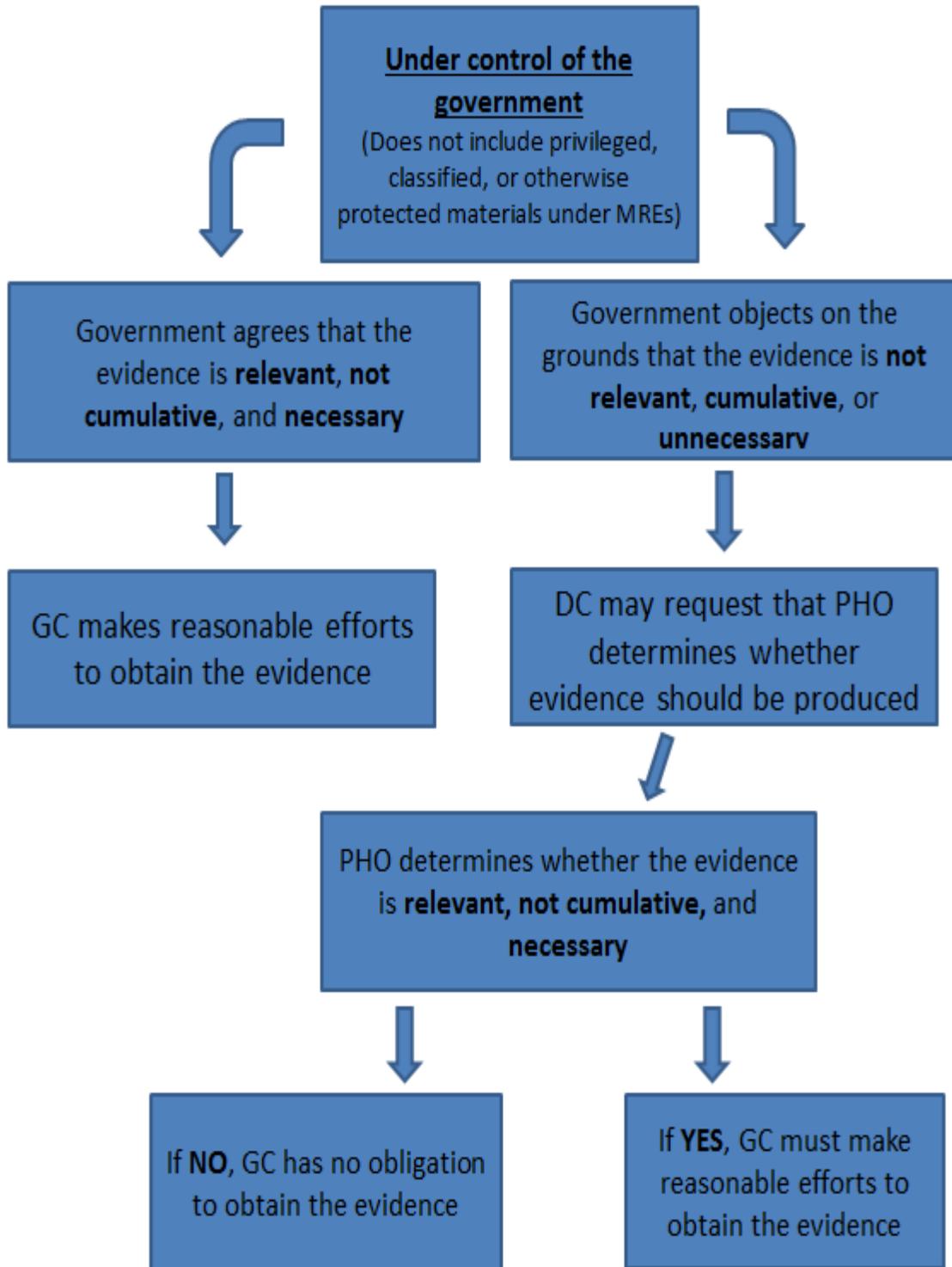
Please inform me by 10 March 2015 if you can appear on this date so that I can prepare the necessary paperwork in advance to pay you right after your testimony. My phone number is (222) 555-1212.

If you require advance travel assistance, please let me know and I will arrange for government-provided transportation to and from the proceedings.

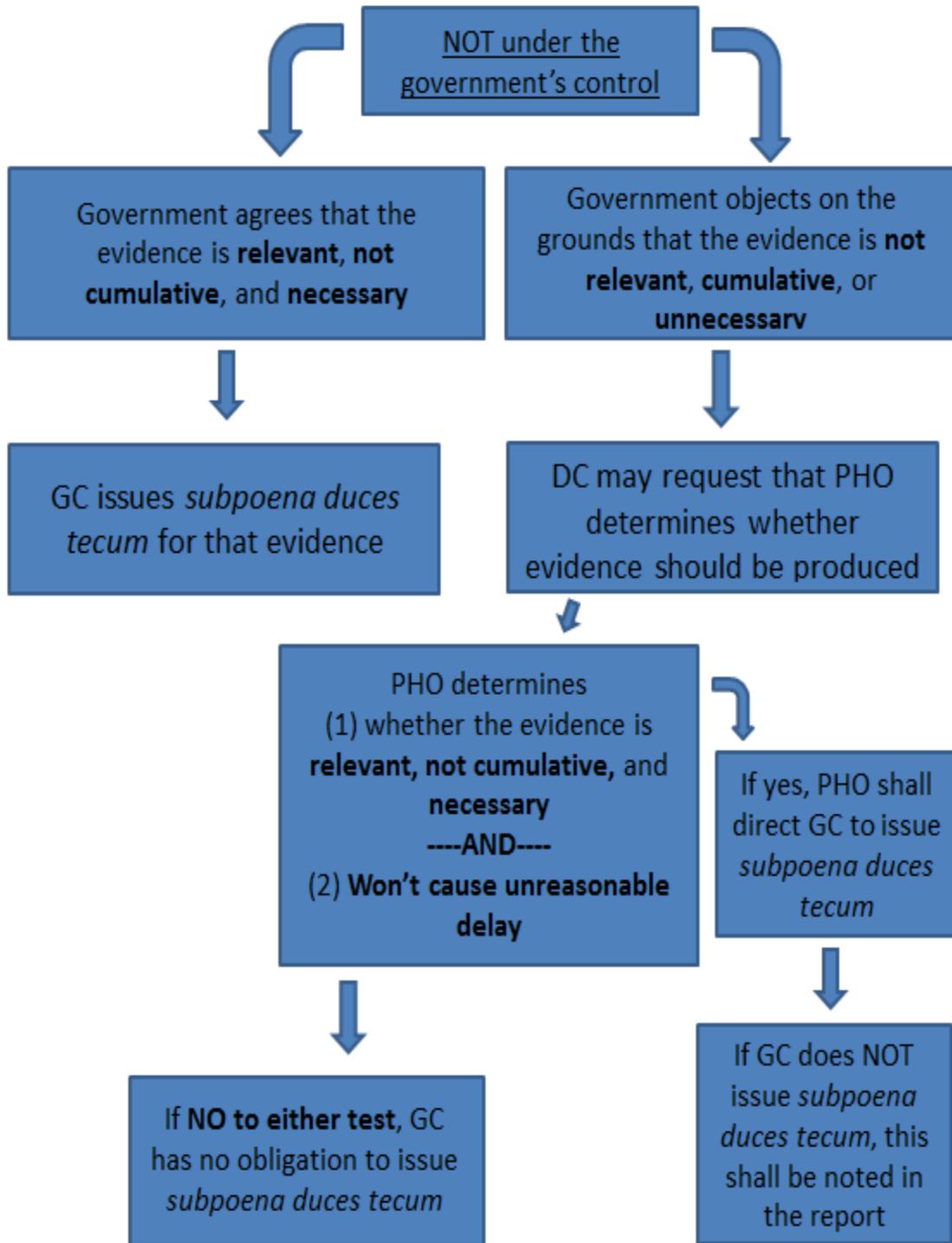
Sincerely,

F. B. GALLO
Captain, USMC
Government Counsel

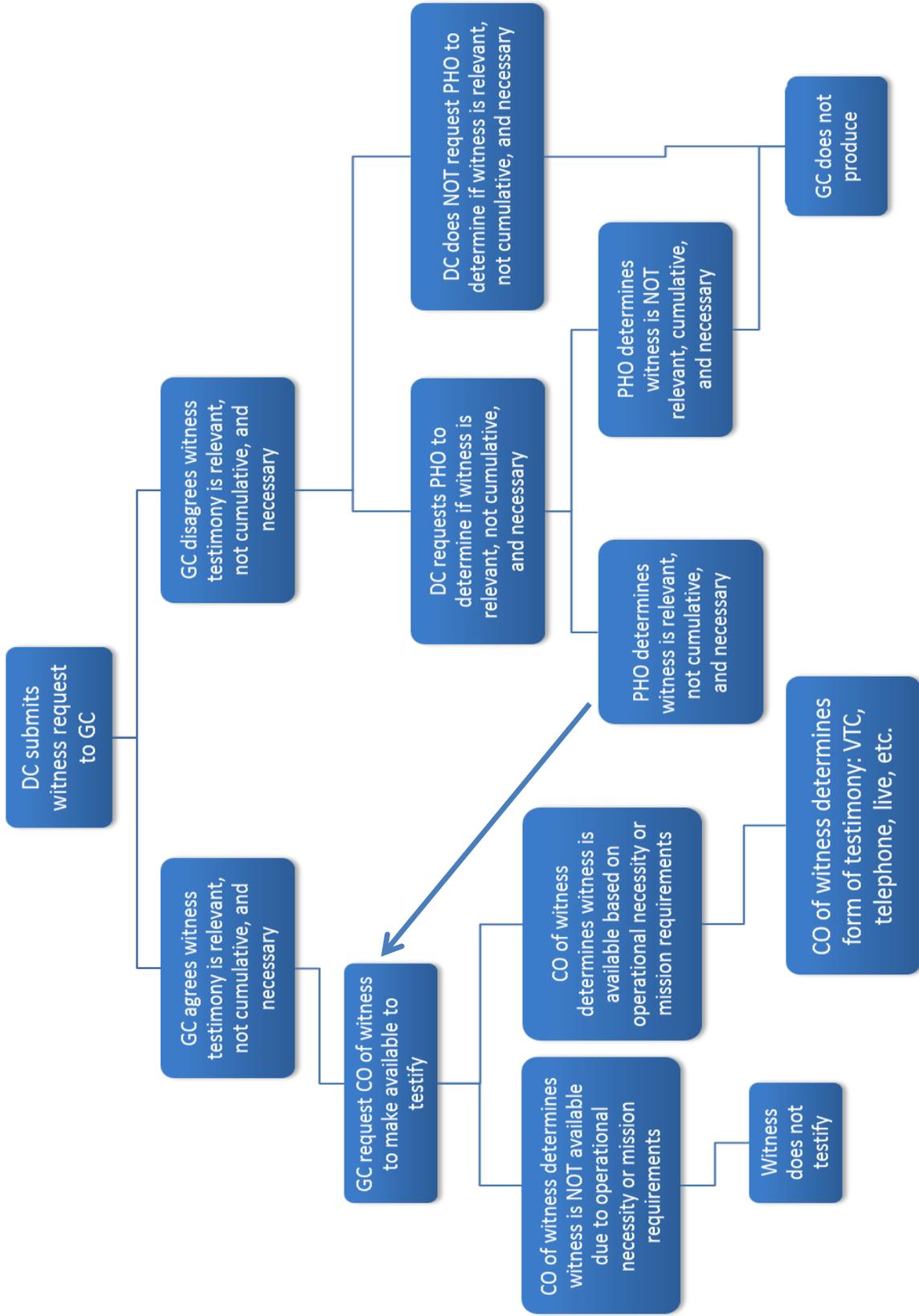
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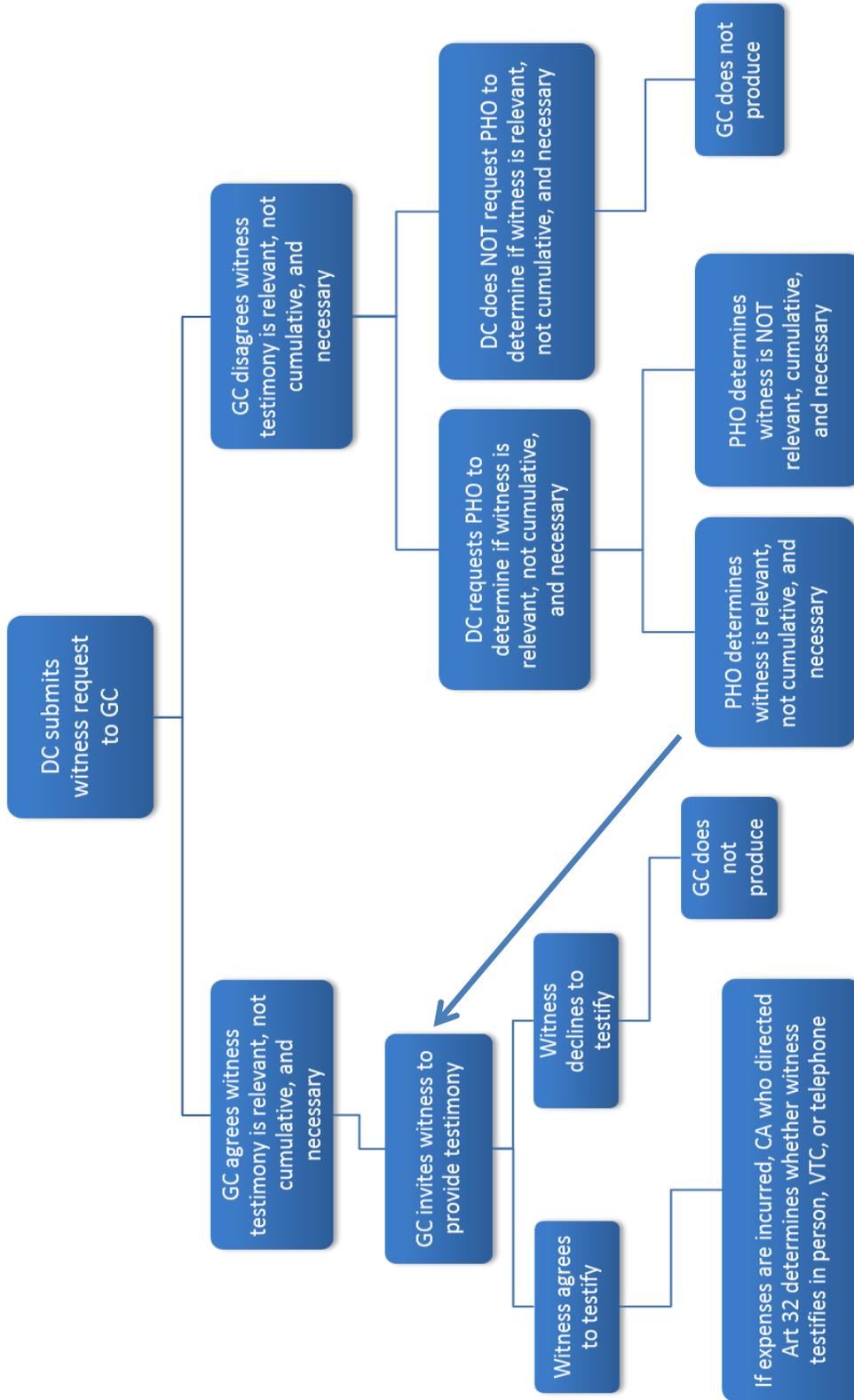
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MILITARY WITNESS PRODUCTION



CIVILIAN WITNESS PRODUCTION



INTRODUCTION AND PRELIMINARY MATTERS

PHO:	<p>(Verify recording)</p> <p>This preliminary hearing will come to order. This preliminary hearing is convened by (rank and name of CA), Commanding Officer, (organization) by the appointing order dated (date of letter of appointment). My name is (rank, name, and service of PHO). I am certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice. I have been detailed as preliminary hearing officer under Article 32(b) of the Uniform Code of Military Justice to inquire into the matters set forth on the charge sheet dated (date of preferral) in the case of (rank, name, and service of accused), the accused. Copies of the charge sheet and appointing order have been furnished to me and all counsel, and will be inserted in the record as Preliminary Hearing Officer Exhibits 1 and 2, respectively.</p> <p>Present at this hearing are myself (rank, name, and service of PHO), the detailed preliminary hearing officer; the accused (rank, name, and service of accused); defense counsel (rank, name, and service of DC, if military; Mrs./Ms./Mr. and name, if civilian); and counsel for the government (rank, name, and service of GC);</p> <p>[Present also is (rank, name and service of reporter), who has been detailed as the reporter for this preliminary hearing].</p> <p>[Present also is (rank, name, and service of translator), who has been appointed to serve as translator];</p> <p>[Present also is the reported victim in this case, (rank, name, and service of victim; Mrs./Ms./Mr. and name, if civilian) along with his/her victims' legal counsel (rank, name, and service of VLC; Mrs./Ms./Mr. and name, if civilian).]</p> <p>Are you (rank and name of accused), the accused in this case?</p>
ACC:	Yes/No, sir/ma'am.

SUBSCRIPT FOR COURT REPORTER (WHO HAS NOT PREVIOUSLY BEEN SWORN)

PHO: **(Rank and/or name of reporter)**, do you **(swear or affirm)** to faithfully perform the duties of reporter for this preliminary hearing **(so help you God)**?

Rep: I do.

SUBSCRIPT FOR INTERPRETER

PHO: **(Rank, name, and service of translator)**, do you **(swear or affirm)** that in this preliminary hearing you will interpret truly the testimony you are called upon to interpret **(so help you God)**?

Int: I do.

PHO:	Counsel, at this time please state your legal qualifications, status as to oath, the authority by whom you were appointed and/or detailed, and any disqualifying capacity in which you may have acted.
GC:	I am (rank, name, and service of GC) . I am certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice. I have been detailed to this preliminary hearing by (rank, name and command) , the convening authority. I have not acted in any disqualifying manner.
DC:	I am (rank, name, and service of DC) . I am certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice. I have been detailed to this case by (official and authority) . I have not acted in any disqualifying manner.

VLC	I am (rank, name, and service of VLC). I am an attorney and licensed to practice law in the state(s) of _____. I am a member in good standing of the (_____) bar(s). I have not acted in any disqualifying manner.
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SUBSCRIPT FOR CIVILIAN COUNSEL

PHO: Would civilian counsel representing the accused please identify yourself for the record, state you contact information, and tell me where you are currently licensed to practice law?

Civilian DC: I am (**Mrs./Ms./Mr. and name of civilian DC**). I am a civilian attorney. My office is located at (_____). My mailing address is (_____). My office phone number is _____). I am a member in good standing of the (_____) bar.

PHO: (**Mrs./Ms./Mr. and name of civilian DC**), do you (**swear/affirm**) that you will faithfully perform all the duties of defense counsel in the case now in preliminary hearing (**so help you God**)?

PHO: Would civilian counsel representing the victim please identify yourself for the record, state you contact information, and tell me where you are currently licensed to practice law?

Civilian LC: I am (**Mrs./Ms./Mr. and name of civilian victim counsel**). I am a civilian attorney. My office is located at (_____). My mailing address is (_____). My office phone number is _____). I am a member in good standing of the (_____) bar.

PHO: (**Mrs./Ms./Mr. and name of civilian victim counsel**), do you (**swear/affirm**)

that you will faithfully perform all the duties of legal counsel for the victim in the case now in preliminary hearing **(so help you God)?**

PHO:	It appears that defense counsel representing the accused (has/have) the requisite qualifications under R.C.M. 405(d)(3).
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VOIR DIRE AND ELECTION OF COUNSEL

PHO:	<p>My name is (rank, name, and service of PHO). I am a (commissioned officer/Judge Advocate certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice), qualified to serve as preliminary hearing officer in accordance with R.C.M. 405(d)(1). I am not aware of any matters that I believe may be grounds to disqualify me as the preliminary hearing officer.</p> <p>Is the accused or counsel for either side aware of any grounds that might disqualify me from conducting this preliminary hearing, or does either side desire to question me, or raise any challenge now?</p>
GC/DC:	Yes/No, sir/ma'am.
PHO:	(Rank and name of DC) are there grounds to assert that the accused was not mentally responsible for (his /her) actions at the time of the offense (s) charged or that the accused is not mentally competent to participate in the defense of (his/her) case in this preliminary hearing today?
DC:	Yes/No, sir/ma'am.

AN AFFIRMATIVE ANSWER REQUIRES THE PHO TO DETERMINE IF THE ACCUSED IS ABLE TO “UNDERSTAND THE NATURE OF THE PROCEEDINGS” AND TO “CONDUCT OR COOPERATE INTELLIGENTLY IN THE DEFENSE OF THE CASE.” SEE MCM, R.C.M. 909(a). IF THE ACCUSED IS NOT ABLE TO ASSIST IN HIS OR HER OWN DEFENSE, THEN THE PHO SHOULD CONSIDER ADJOURNING THE PRELIMINARY HEARING AND SEEKING INSTRUCTIONS FROM THE CA.

PHO:	<p>(Rank and name accused), (rank and name of GC) has been appointed as counsel for the government at this preliminary hearing. (He/she) is not acting as counsel for the preliminary hearing officer. (He/she) is here solely to represent the government. (He/she) will not advise me as to my determination of probable cause or what disposition I will recommend in this case, as those decisions rest with me alone. After completing this preliminary hearing I shall make determinations and recommendations I deem appropriate for matters disclosed at this proceeding.</p> <p>Do you understand?</p>
ACC:	Yes/No, sir/ma'am.
PHO:	Are there any questions by any party concerning my function or the function of government counsel?
ACC/ GC/DC:	Yes/No, sir/ma'am.
PHO:	<p>(Rank and name of the accused), you have the right to be represented in this preliminary hearing by (rank and name of detailed DC), your detailed defense counsel, or you may be represented by military counsel of your own selection, if the military counsel you request is reasonably available. Military counsel are provided to you free of charge. You are not entitled to be represented by more than one military lawyer, but, if you are represented by military counsel of your own selection, then you could request that (rank and name of detailed DC) your detailed defense counsel, continue to represent you, and the authority who detailed (rank and name of detailed DC) would</p>

	<p>have sole discretion to either grant or deny that request.</p> <p>Do you understand?</p>
ACC:	Yes/No, sir/ma'am.
PHO:	<p>In addition, you have the right to be represented by civilian counsel of your own selection, at no expense to the United States. Civilian counsel may represent you alone or along with your military defense counsel. Should you choose civilian counsel, you would be responsible for those expenses. If you are represented by civilian counsel, then your military counsel would continue to serve as an associate counsel unless you ask to excuse him/her.</p> <p>Do you understand your rights to counsel?</p>
ACC:	Yes/No, sir/ma'am.
PHO:	Do you have any questions about your rights to counsel?
ACC:	Yes/No, sir/ma'am.
PHO:	By whom do you wish to be represented at this preliminary hearing?
ACC:	<i>(Rank and name of detailed DC / rank and name of requested DC / name of civilian defense counsel)</i>



SUBSCRIPT FOR WAIVER OF COUNSEL

USE IF ACCUSED INDICATES DESIRE TO PROCEED WITHOUT A LAWYER

PHO: **(Rank and name of accused)**, I caution you that the charge(s) against you are very serious and it is important that you understand all of your rights as well as the procedures that control this preliminary hearing. I suggest to you that you need the assistance of a lawyer to properly protect your rights and to otherwise help you. As I explained earlier, you have an absolute right to a qualified, free military lawyer who will provide that assistance. You are free, however, to give up this right.

Assistance of counsel is a right that you have under the United States Constitution and the Uniform Code of Military Justice, and is a due process protection that is intended to guard your interests.

Do you understand what you are giving up by waiving your right to counsel?

ACC: Yes, sir/ma'am.

PHO: If you decide to proceed in this preliminary hearing without a lawyer, you do so at your peril and may, without meaning to do so, jeopardize your case.

Do you understand what I have just told you?

ACC: Yes, sir/ma'am.

PHO: Do you wish to have a lawyer to represent you, or not?

ACC: I do not want a lawyer.

IF THE PHO IS SATISFIED THAT THE ACCUSED HAS MADE A KNOWING, VOLUNTARY, AND INTELLIGENT WAIVER OF THE RIGHT TO COUNSEL, THE OFFICER SHOULD COMPLETE BLOCKS 9(a) AND 9(b) OF THE DD FORM 457, AND ASK THE ACCUSED TO SIGN THE FORM IN BLOCK 9(c), INDICATING THE FACT OF THE WAIVER. IF THE ACCUSED REFUSES TO SIGN, THE PHO WILL EXPLAIN THE REFUSAL IN BLOCK 23 OF THE FORM OR ADDENDA. IF THE PHO IS NOT SATISFIED THAT THE ACCUSED HAS KNOWINGLY AND INTELLIGENTLY WAIVED THE RIGHT TO COUNSEL, THE OFFICER SHOULD PROCEED AS FOLLOWS:

PHO: ***(Rank and name of accused)*** I am not satisfied that you fully appreciate the consequences of not having a lawyer at this preliminary hearing. Therefore, I will direct ***(Rank and name of DC)*** to continue to act as your counsel.

PRELIMINARY ADVICE

PHO:	<p>(Rank and name of accused), do you have a copy of the charge sheet in front of you?</p>
ACC:	Yes, sir/ma'am.
PHO:	<p>(Rank and name of accused), please follow along on your copy of the charge sheet as I inform you of the general nature of the charges that I will be reviewing at this preliminary hearing.</p> <p>You are alleged to have committed the following violations of the Uniform Code of Military Justice:</p> <p>Specification 1 of Charge I alleges a violation of Article ___ of the UCMJ, which alleges that [describe nature of all charges and specifications in plain language which the accused will understand].</p> <p>The charges were preferred by (rank, name, and service of accuser on in Box 11 a. of the Charge Sheet, DD Form 458) a person subject to the UCMJ, as accuser, and were sworn to before (name of officer who signed affidavit in Part III of the Charge Sheet, DD Form 458), an officer authorized to administer oaths.</p> <p>A copy of the charge sheet will be appended to the record as PH Exhibit 1.</p> <p>Does either counsel desire that I read each charge and specification, or desire further review of the charge sheet before we continue?</p>
GC/DC:	Yes/No, sir/ma'am.

PHO CAN NOW CHECK OF BOXES 10 a. & 10 b. OF THE DD FORM 457

PHO:	<p>(Rank/rate and name of accused), Under Article 31 of the Uniform Code of Military Justice, you have the right to remain silent and refuse to make a statement regarding any offense of which you are accused or suspected and that is being investigated. The fact that you may choose to exercise this right cannot be used against you in any way, and I may not consider your silence as evidence.</p> <p>Do you understand your right to remain silent?</p>
ACC:	Yes/No, sir/ma'am.

PHO CAN NOW CHECK OF BOX 10 c. OF THE DD FORM 457

PHO:	<p>(Rank and name of accused), I am going to explain to you the purpose of the preliminary hearing and the rights which you have at this preliminary hearing. If you do not understand what I am telling you, let me know and I will explain it again until you and I are both satisfied that you understand.</p> <p>The purpose of this preliminary hearing is to review the charges against you, to determine if there is probable cause to believe the charged offense(s) was committed and whether you committed the offense(s); to determine if there is court-martial jurisdiction over the offense(s) and over you; to consider the form of the charges and to recommend to (rank and name of CA) what action should be taken regarding the charges.</p> <p>I have been appointed to conduct a formal preliminary hearing under Article 32 of the Uniform Code of Military Justice. I know nothing at all about your case except for the information contained in the charge sheet and in the order that appointed me to investigate these charges; [(I have also met with your counsel and with Government counsel to discuss some of the legal issues which may arise during this preliminary hearing, to identify the witnesses who are expected to testify, and to mark the</p>
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exhibits which may be offered) and/or (I have reviewed _____ in order to make initial determinations regarding the availability of witnesses and evidence for this preliminary hearing)].

I have formed no opinion as to probable cause, jurisdiction or what I will recommend. I will make a recommendation to **(rank and name of CA)** solely on the basis of the evidence that I receive during this preliminary hearing. You will have an opportunity to review the report in which I will submit my recommendations, and will have an opportunity to object to it as well.

This preliminary hearing is not a trial. I am not here to determine your innocence or guilt. It is my duty to impartially weigh the evidence to determine probable cause, jurisdiction, and the form of the charges and to formulate a recommendation. I will consider all matters within the scope of the hearing which tend to exonerate you, and all matters which tend to implicate you in violations of the UCMJ. I may recommend that the charges against you be referred for trial at a general court-martial, special court-martial, or summary court-martial. I also may recommend that the charges, or some of them, be dismissed or disposed of at a forum other than trial by court-martial, such as NJP.

(Rank and name of CA) is not bound by my recommendation. For example, if I recommend that a charge against you should be dismissed, **(he/she)** may still decide to send that charge to a court-martial. As my recommendations are only advisory in nature and are not binding on the convening authority, he or she will make the final decision on the disposition of the charges in this case.

Do you understand the purpose of this preliminary hearing?

ACC:

Yes/No, sir/ma'am.

PHO CAN NOW CHECK OF BOX 10 d. OF THE DD FORM 457

PHO:	<p>(Rank and name of accused), you have the right to be present throughout this preliminary hearing, so long as your conduct is not disruptive. Further, you are advised that should you voluntarily absent yourself from this preliminary hearing, you shall be considered to have waived the right to be present.</p> <p>Do you understand these rights as I have explained them to you?</p>
ACC:	Yes/No, sir/ma'am.
PHO CAN NOW CHECK OF BOX 10 e. OF THE DD FORM 457	
PHO:	<p>(If applicable) Evidence will be introduced in the preliminary hearing in the form of testimony from witnesses. As I understand it, the people who are going to testify at this preliminary hearing are [PHO identifies witnesses the parties [and/or VLC] have identified as testifying].</p> <p>Other evidence may be presented in the form of exhibits. As I understand it, the exhibits that may be introduced at this preliminary hearing include [PHO describes all exhibits of which the PHO is aware. PHO may also submit this information to the accused in writing].</p> <p>You have the right to examine all of the exhibits and to make appropriate objections, through your defense counsel, to my consideration of them.</p> <p>Do you understand the evidence I expect to be presented?</p>
ACC:	Yes/No, sir/ma'am.
PHO CAN NOW CHECK OF BOX 10 f. OF THE DD FORM 457	

PHO:	<p>(Rank and name of accused), I am now going to advise you of other rights that you have at this preliminary hearing:</p> <p>You will have the right at the proper time to cross-examine witnesses called to testify at this hearing;</p>
<p>PHO CAN NOW CHECK OF BOX 10 g. OF THE DD FORM 457</p>	
PHO:	<p>Within the rules governing Article 32 preliminary hearings, you have the right call witnesses in defense and mitigation;</p>
PHO:	<p>You have the right to present relevant documentary evidence in your own behalf, either in defense or mitigation;</p>
<p>PHO CAN NOW CHECK OF BOX 10 h. OF THE DD FORM 457</p>	
PHO:	<p>(Rank and name of accused), I advised you earlier that you have the right to remain silent, and that you do not have to make any statement regarding the offenses of which you are accused and that any statement that you do make may be used as evidence against you in a trial by court-martial.</p> <p>You also have the right to testify under oath, or to make an unsworn statement. If you testify under oath you may be cross-examined by the government counsel and questioned by me. If you decide to make an unsworn statement, you may not be cross-examined by government counsel or questioned by me. You may make an unsworn statement orally or in writing, personally or through your counsel, (you may make a statement with respect to some charges or specifications and not others), or you may use a combination of these ways. If you do make a statement, whatever you say will be considered and weighed as evidence by me the same as the testimony of other witnesses.</p>

	<p>You have the right to make a statement, however if you decide to exercise your right to remain silent, then that cannot be held against you in any way.</p> <p>Do you understand your right to make a statement at this preliminary hearing?</p>
ACC:	Yes/No, sir/ma'am.
PHO CAN NOW CHECK OF BOX 10 i. OF THE DD FORM 457	
PHO:	Do you have any questions about any of your rights, or anything that we have discussed up to this point of the preliminary hearing?
ACC:	Yes/No, sir/ma'am.

<p>PHO:</p>	<p>Now, let me go over with you all the procedures I will use to conduct this preliminary hearing.</p> <p>First, counsel for the government will present documents which are relevant to this preliminary hearing. Then the government will call any witnesses it intends to offer and will conduct direct examinations of those witnesses, and the defense will be permitted to cross-examine those witnesses. After each government witness has been examined by both sides, I will ask questions and then permit re-direct and re-cross as necessary.</p> <p>Second, after the government documents and witnesses have been produced, the defense will be permitted to offer any documents and witnesses of its own which are relevant to this preliminary hearing. Any defense witness will be subject to cross-examination by government counsel. After each defense witness has been examined by both sides, I will ask questions, and then permit re-direct and re-cross as necessary.</p> <p>I remind counsel that they may make objections to the evidence presented here. Note, however, that the rules of evidence applicable to courts-martial are not generally applicable at this proceeding. The exceptions to that are the rules governing privileges, degrading questions, and past sexual behavior by the victim of a sexual offense. I will also respond to objections based on relevancy grounds, and will not admit evidence that is not relevant under Military Rule of Evidence 401. I will be the sole judge of what evidence shall be admitted and considered. Generally, your objections will be noted for the record; however, I may rule on specific objections and you are to proceed accordingly. Finally, if either side or Victims' Legal Counsel makes any objection that you want me to note in the report of preliminary hearing, then you must notify me promptly, and file that objection with the Convening Authority, via me, in writing within 24 hours after the close of the preliminary hearing.</p> <p>Do counsel for either side [or the Victims' Legal Counsel] have any questions regarding procedure or the way in which this preliminary hearing will be conducted?</p>
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GC/DC:	Yes/No, sir/ma'am.
<p>IF POTENTIALLY RELEVANT, YOU SHOULD DETERMINE IF EITHER SIDE INTENDS TO INTRODUCE EVIDENCE THAT IS PROHIBITED BY MIL. R. EVID. 412, 513, OR 514. IF THIS IS THE CASE, THE PROPONENT OF THE EVIDENCE MUST HAVE SERVED WRITTEN NOTICE UPON YOU AND UPON OPPOSING COUNSEL [AND COUNSEL FOR THE GOVERNMENT MUST HAVE NOTIFIED THE VICTIM OR COUNSEL FOR THE VICTIM AS APPLICABLE] AT LEAST 5 DAYS BEFORE THE PRELIMINARY HEARING. IF THERE HAS BEEN NOTICE, AT AN APPROPRIATE TIME YOU MUST CONDUCT A CLOSED PRELIMINARY HEARING TO DETERMINE IF THE EVIDENCE IS BEING OFFERED UNDER ONE OF THE PERMISSIBLE EXCEPTIONS (NOTE: MIL. R. EVID. 412(b)(1)(C) DOES NOT APPLY AT ARTICLE 32 PROCEEDINGS). THE LEGAL COUNSEL FOR THE RELEVANT VICTIM SHALL BE PERMITTED TO ARGUE MATTERS INVOLVING MIL. R. EVID. 412, 513, AND 514.</p>	
PHO:	Does counsel for the accused have any questions or wish to note any objections before we proceed with the preliminary hearing?
DC:	Yes/No, sir/ma'am.

GOVERNMENT CASE

PHO:	Is the government prepared to present evidence?
GC:	Yes, sir/ma'am.
PHO:	Does the government have any real or documentary evidence to present?
GC:	Yes/No sir/ma'am. [Government presents real or documentary evidence].
PHO:	(Rank and name of GC) , please list all of the witnesses that the government intends to call and the form of their testimony (live, telephonic, VTC, etc.)
GC:	[Government lists all witnesses that the government intends to call at the preliminary hearing] .
PHO:	The government may proceed.
GC:	[Oath administered to each witness before testimony]: Do you swear (or affirm) that the evidence that you are about to give at this hearing will be the truth, the whole truth, and nothing but the truth (so help you God) ?

THE TYPICAL ORDER IS FOR GC TO CONDUCT DIRECT EXAMINATION, FOLLOWED BY CROSS-EXAMINATION BY DC. QUESTIONS TO WITNESSES MUST BE RELEVANT TO THE LIMITED PURPOSE OF THE PRELIMINARY HEARING. THE PHO MAY ASK QUESTIONS AT ANY TIME, BUT WOULD USUALLY ASK QUESTIONS AFTER BOTH SIDES HAVE QUESTIONED THE WITNESSES. THE PHO MAY PERMIT RE-DIRECT AND RE-CROSS AS NECESSARY.

THE GC SHOULD CONDUCT THE INITIAL EXAMINATION OF ALL GOVERNMENT WITNESSES; THE DEFENSE COUNSEL MAY THEN CROSS-EXAMINE. IF MORE THAN ONE DEFENSE COUNSEL APPEARS, THE PHO MAY ALLOW ONE OR MORE CROSS-EXAMINATIONS AT HIS/HER DISCRETION. THE PHO MAY THEN POSE QUESTIONS.

COUNSEL FOR THE GOVERNMENT SHOULD ASK EACH WITNESS TO IDENTIFY HIMSELF OR HERSELF BY NAME, RANK AND/OR RATE AND DUTY STATION (OR, IN THE CASE OF CIVILIAN WITNESSES, CITY OF RESIDENCE AND OCCUPATION).

PHO:	Does counsel for either side desire further inquiry in light of my questions?
GC/DC:	Yes/No, sir/ma'am.

AFTER EVERY WITNESS, THE PHO MUST DETERMINE AVAILABILITY FOR TRIAL:

PHO:	(Rank and/or name of witness) in the event this case goes to trial by court-martial do you have any pending PCS orders, TAD, leave, or other situation that might interfere with your availability to testify in this case over approximately the next three months? If your status changes over the next few months then please inform the government counsel of the circumstances.
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AFTER EVERY WITNESS, THE PHO MUST GIVE A WITNESS WARNING:

PHO:	<p>(Rank and/or name of witness) you are instructed not to discuss your testimony, or the testimony of any other witness in this preliminary hearing with anyone except counsel for the government or counsel for the accused. You will not allow any witness in this preliminary hearing to talk to you about the testimony he or she has given or which he or she intends to give. If anyone other than government counsel or counsel for the accused attempts to talk to you about your testimony in this preliminary hearing, you should make the circumstances known to the counsel who originally called you as a witness, (rank and name of GC).</p>
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IF WITNESS IS IN THE MILITARY:

PHO:	<p>(Rank and name of witness), note that my order instructing you not to discuss your testimony or the testimony of any other witness is a lawful order, the violation of which could subject you to penalties under the Uniform Code of Military Justice.</p>
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PHO:	<p>(name and rank of GC), does the government have any more evidence it wishes to introduce for my consideration in this preliminary hearing?</p>
GC:	<p>No, sir/ma'am.</p>

DEFENSE CASE

THE DEFENSE MAY NOW PRESENT MATTERS IN DEFENSE AND MITIGATION RELEVANT TO THE LIMITED PURPOSE OF THE ARTICLE 32 PRELIMINARY HEARING.

PHO: **(Rank and name of accused)**, earlier I explained your right to present evidence and call witnesses to testify on your behalf in defense and mitigation.

Do you or your counsel have any evidence that you would like to present or witnesses that you would like to call?

ACC/DC: Yes/No, sir/ma'am.

PHO: Does the defense have any real or documentary evidence to present?

DC: Yes/No, sir/ma'am. **[Defense presents real or documentary evidence].**

PHO SHOULD EXAMINE THE EVIDENCE.

PHO: **(Rank and name of DC)**, please list the witnesses that the defense intends to call and the form of their testimony (live, telephonic, VTC, etc.).

DC: **[Defense lists the witnesses that the accused intends to call at preliminary hearing].**

PHO: The defense may proceed.

DC:	[Calls witnesses for defense]:
GC:	[Oath administered to each witness before testimony]: Do you swear (or affirm) that the evidence that you are about to give at this hearing will be the truth, the whole truth, and nothing but the truth (so help you God) ?
THE TYPICAL ORDER IS FOR DC TO CONDUCT DIRECT EXAMINATION, FOLLOWED BY CROSS-EXAMINATION BY GC, AND FINALLY AN EXAMINATION BY THE PHO. THE PHO SHOULD PERMIT RE-DIRECT AND RE-CROSS AS NECESSARY. THE DEFENSE IS PERMITTED TO PRESENT MATTERS IN DEFENSE OR MITIGATION, RELEVANT TO THE LIMITED PURPOSES OF THE HEARING.	
PHO:	Does counsel for either side desire further inquiry in light of my questions?
GC/DC:	Yes/No, sir/ma'am.
AFTER EVERY WITNESS, THE PHO MUST DETERMINE AVAILABILITY FOR TRIAL:	
PHO:	(Rank and/or name of witness) in the event this case goes to trial by court-martial do you have any pending PCS orders, TAD, leave or other situation that might interfere with your availability to testify in this case over approximately the next three months? If your status changes over the next few months then please inform the government counsel of the circumstances.
AFTER EVERY WITNESS, THE PHO MUST GIVE A WITNESS WARNING:	

PHO:	<p>(Rank and/or name of witness) you are instructed not to discuss your testimony, or the testimony of any other witness in this preliminary hearing with anyone except counsel for the government or counsel for the accused. You will not allow any witness to talk to you about the testimony he or she has given or which he or she intends to give. If anyone other than government counsel or counsel for the accused attempts to talk to you about your testimony in this preliminary hearing, you should make the circumstances known to the counsel who originally called you as a witness, (rank and name of DC).</p>
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IF WITNESS IS IN THE MILITARY

PHO:	<p>(Rank and name of witness), note that my order instructing you not to discuss your testimony or the testimony of any other witness is a lawful order, the violation of which could subject you to penalties under the UCMJ.</p>
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PHO:	<p>(Rank and name of accused), I previously advised you that, while you cannot be <i>compelled</i> to make any statement, you have the <i>right</i> to make a statement in any form you desire. I will not hold it against you in any way if you decide not to make a statement. Note, however, that I may consider anything that you do say, and any statements may also be used against you in the future. Bearing that advice in mind, consult with your counsel and advise me whether you wish to make a statement at this time or not.</p>
------	--

DC/ACC:	<p>(I/rank and name of accused) (do/do not/does/does not) desire to make a statement.</p>
---------	--

IF THE ACCUSED MAKES AN ORAL STATEMENT, OR MAKES A STATEMENT THROUGH COUNSEL, THE PHO SHOULD SUMMARIZE IT AND APPEND IT TO THE DD FORM 457 AS AN EXHIBIT. ANY WRITTEN STATEMENT BY THE ACCUSED SHOULD BE SIMILARLY APPENDED.

FINAL MATTERS

PHO:	I find that there are no reasonable grounds for inquiring into the mental capacity of the accused at the time of the charged offenses, and I find that there are no reasonable grounds for inquiring into the mental capacity of the accused at the time of this proceeding. Do both sides agree?
GC/DC:	Yes/No, sir/ma'am.
<p style="text-align: center;">IF THE PHO RECEIVES ANY EVIDENCE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE OR WAS NOT COMPETENT TO ASSIST IN THE DEFENSE, THEN THE PHO MUST CHECK “YES” IN BOX 14 OF THE DD FORM 457. IN THE REPORT THE PHO MUST EXPLAIN FINDINGS WITH RESPECT TO COMPETENCE AND CITE SUPPORTING EXHIBITS AND SHOULD DISCUSS ANY EVIDENCE THAT BEARS ON THE ACCUSED’S RESPONSIBILITY FOR THE ALLEGED OFFENSES.</p>	
PHO:	I will hear brief closing comments as to probable cause, jurisdiction, the form of the charges, any recommended additional charges, and the disposition of the charges. <i>(I will also permit the submission of a closing statement in writing).</i> Does either side desire to comment on the evidence and charges <i>(or does either side wish to submit a closing statement in writing)?</i>
GC/DC:	Yes/No, sir/ma'am.
PHO:	Counsel for the government may proceed with a closing comment.
GC:	[Presents argument].

PHO:	Counsel for the accused may proceed with a closing comment.
DC:	[Presents argument].
PHO:	Unless counsel has anything further to offer, this preliminary hearing will now be closed.

THE PHO SHOULD AWAIT A COPY OF THE RECORDING OF THE PRELIMINARY HEARING BEFORE COMPLETING THE DD FORM 457.

AFTER COMPLETING THE DD FORM 457, THE PHO SHOULD FORWARD IT TO THE CA VIA THE SJA OR LEGAL OFFICER TOGETHER WITH A COPY OF THE RECORDING, THE SUMMARIES OF TESTIMONY PREPARED BY THE PHO, AND ALL DOCUMENTARY EXHIBITS. THE PHO MUST ENSURE THAT ALL EVIDENCE GATHERED AT CLOSED HEARINGS IS PROPERLY SEALED. ALTHOUGH IT IS THE CA'S RESPONSIBILITY TO FURNISH A COMPLETE COPY OF THE REPORT TO THE ACCUSED UNDER R.C.M. 405(j)(4), THE LOCAL PRACTICE MAY BE FOR THE PHO TO FURNISH SUCH COPIES TO BOTH GOVERNMENT COUNSEL AND TO DEFENSE COUNSEL.



ARTICLE 31 RIGHTS WARNING FOR MILITARY WITNESS

I advise you that you may be suspected of a violation of the Uniform Code of Military Justice in that (*state nature of accusation or suspicion*).

I further advise you that under the provisions of Article 31 of the Uniform Code of Military Justice, you have the right to remain silent, that is, you have the right to say nothing at all. Any statement that you do make, oral or written, may be used as evidence against you in a trial by court-martial, or in other judicial or administrative proceedings.

You have the right to consult with a lawyer and to have a lawyer present. You have the right to military legal counsel free of charge. In addition to military counsel, you are entitled to civilian counsel of your own choosing, at your own expense. You may request a lawyer at any time during this proceeding. If you decide to answer questions, you may stop the questioning at any time.

Do you understand your rights?
(*If the answer is no, then explain rights*)

Do you want a lawyer?
(*If the answer is yes, cease all questions at this point*)

Are you willing to answer questions?
(*If the answer is yes, then you may proceed*)

IF THE WITNESS HAS POTENTIALLY GIVEN PREVIOUS STATEMENTS

Although you have indicated a willingness to testify, I must make sure that you understand you are not required to testify simply because you have already made previous statements about this offense to other persons.

Regardless of the fact that you have talked about this potential offense before, you still have the right to remain silent now. The fact that you made those previous statements does not mean that you must testify at this preliminary hearing.

Do you understand your right to remain silent now, even though you have made previous statements?

PRELIMINARY HEARING OFFICER'S REPORT (Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)			
1a. FROM: (Name of Preliminary Hearing Officer - Last, First, MI)	b. GRADE	c. ORGANIZATION	d. DATE OF REPORT
2a. TO: (Name of Officer who directed the Preliminary Hearing - Last, First, MI)	b. TITLE	c. ORGANIZATION	
3a. NAME OF ACCUSED (Last, First, MI)	b. GRADE	c. ORGANIZATION	d. DATE OF CHARGES
(Check appropriate answer)			YES NO
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I CONDUCTED A PRELIMINARY HEARING CONCERNING THE CHARGES APPENDED HERETO (Exhibit 1)			
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)			
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)			
7a. NAME OF DEFENSE COUNSEL (Last, First, MI)	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)	b. GRADE
c. ORGANIZATION (If appropriate)		c. ORGANIZATION (If appropriate)	
D R A F T			
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)	
9. TO BE SIGNED BY ACCUSED IF ACCUSED WAIVES COUNSEL. (If accused does not sign, preliminary hearing officer will explain in detail in item 23.)			
a. PLACE		b. DATE	
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED AT THIS PRELIMINARY HEARING BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL AT THIS PRELIMINARY HEARING.			
c. SIGNATURE OF ACCUSED			
10. AT THE BEGINNING OF THE PRELIMINARY HEARING, I INFORMED THE ACCUSED OF: (Check appropriate answer)			YES NO
a. THE NATURE OF THE CHARGE(S)			
b. THE IDENTITY OF THE ACCUSER			
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31			
d. THE PURPOSE OF THE PRELIMINARY HEARING			
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE			
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED THE GOVERNMENT TO PRESENT			
g. THE RIGHT TO CROSS-EXAMINE WITNESSES			
h. THE RIGHT TO PRESENT MATTERS IN DEFENSE AND MITIGATION			
i. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING			
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.)			
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 23 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading. (Example: "7c".) Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."			

DD FORM 457, 20141205 DRAFT

PREVIOUS EDITION IS OBSOLETE.

Adobe Professional X

U.S. Dep't of Def., Draft DD Form 457, Preliminary Hearing Officer's Report (Dec 2014)

Naval Justice School
Publication

ENCLOSURE (12): DD FORM 457 AND
SAMPLE PHO REPORT

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: <i>(Check appropriate answer)</i>				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES IS ATTACHED				
c. AT THE HEARING, EVIDENCE WAS OFFERED UNDER MILITARY RULES OF EVIDENCE <input type="checkbox"/> 412 <input type="checkbox"/> 513 <input type="checkbox"/> 514 <i>(Check appropriate box(es))</i>				
d. PORTIONS OF THE HEARING WERE CLOSED				
e. SEALED MATERIALS ARE INCLUDED IN THIS REPORT				
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)			
D R A F T				
b. 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 <i>(See R.C.M. 909, 916(k))</i>				
15. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL				
16. AN EXPLANATION OF ANY DELAYS IN THE HEARING IS ATTACHED HERETO				
17. THE CHARGE(S) AND SPECIFICATION(S) ARE IN PROPER FORM				
18. THERE IS PROBABLE CAUSE TO BELIEVE AN OFFENSE HAS BEEN COMMITTED AND THAT THE ACCUSED COMMITTED THE OFFENSE				
19. THE UNITED STATES HAS JURISDICTION OVER THE OFFENSE(S) AND THE ACCUSED				
20. ADDITIONAL UNCHARGED MISCONDUCT WAS CONSIDERED AND A RECOMMENDATION FOR DISPOSITION IS ATTACHED HERETO				
21. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS A PRELIMINARY HEARING OFFICER				
22. I RECOMMEND:				
a. TRIAL BY: <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER <i>(Specify)</i>				
23. REMARKS <i>(Include, as necessary, explanation for any answers above.)</i>				
24a. TYPED NAME OF PRELIMINARY HEARING OFFICER		b. GRADE	c. ORGANIZATION	
d. SIGNATURE OF PRELIMINARY HEARING OFFICER			e. DATE	

DD FORM 457 (BACK), 20141205 DRAFT

Preliminary Hearing Officer's Report, DD form 457, Supplemental page
LCDR Peter H. Oslo
20150411

Block 13 a

PH Ex-1 Charge sheet	RLSO Pensacola
PH Ex-2 Appointment letter	RLSO Pensacola
PH Ex-3 Enlistment Contract	RLSO Pensacola
PH Ex-4 Service record	RLSO Pensacola
PH Ex-5 Drug test results	RLSO Pensacola
PH Ex-6 Photograph of Engine	NCIS Pensacola
PH Ex-7 Photograph of Paint	NCIS Pensacola
PH Ex-8 Print of Paint Ebay posting	RLSO Pensacola
PH Ex-9 Photograph of Borescope	NCIS Pensacola
PH Ex-10 Print of Borescope Ebay posting	RLSO Pensacola

Block 14

In response to my question, defense counsel raised no issue during the preliminary hearing concerning either the accused's mental responsibility at the time of the alleged commission of the offenses charged or of the accused's competency to participate in his own defense.

Block 21

The military justice system has subject matter jurisdiction over the offenses alleged to have been committed by the accused. *See* UCMJ arts. 80, 112a., & 121; MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. Part IV, paras. 4, 37 & 46 (2012). Since the accused was serving on active duty at the time he allegedly committed the offenses and is still so serving, as shown by PH Ex-3 and PH Ex-4, the military justice system has personal jurisdiction over him as well. *See Solorio v. United States*, 483 U.S. 435, 450–451 (1987).

SUMMARY OF FACTS (OMITTED)

SUMMARY OF WITNESS TESTIMONY(OMITTED)

SUMMARY OF ELEMENTS OF OFFENSES (OMITTED)

RECOMMENDED CHANGES (OMITTED)

DELAYS (OMITTED)

LEGAL ISSUES (OMITTED)

RECOMMENDATIONS (OMITTED)

THE ARTICLE 32 PRELIMINARY HEARING OFFICER'S GUIDE



**NAVAL JUSTICE SCHOOL
360 ELLIOT STREET
NEWPORT, RI 02841-1523**