

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 1**

47. Services: In addition to Executive Order 13669, what guidance and/or procedures address whether and how investigating officers hear and review MRE 412 or MRE 513 evidence before determining admissibility?

USA	<p>Investigating officers are provided DA PAM 27-17, Procedural Guide for Article 32(B) Investigating Officer. See http://www.apd.army.mil/pdffiles/p27_17.pdf The pamphlet is currently under revision and will incorporate Section 1702 of the FY14 NDAA.</p> <p>In addition, a draft EO implementing Section 1702 and other provisions of the FY14 NDAA was published in the Federal Register (Vol. 79, No. 192) on October 3, 2014 for public comment. See http://www.gpo.gov/fdsys/pkg/FR-2014-10-03/pdf/2014-23546.pdf.</p>
USAF	<p>The AFLOA/JAJM Article 32 Investigating Officer’s Guide, para. 8.2, provided additional guidance to IOs. (Atch 14.1) As noted above, this guidance was issued prior to the signing of the EO and attempted to address the inconsistent application of MRE 412 at Article 32 hearings that existed at the time as described above.</p> <p>Additionally, since 1 November 2013, Air Force military judges have been available to be appointed as Article 32 IOs in cases with an Article 120 charge where the victim is a military member. Making military judges available to serve as Article 32 IOs has allowed legal offices to benefit from an IO who is experienced in conducting proceedings under MREs 412.</p> <p>Finally, the Air Force Judge Advocate General’s School fields a five week Article 32 IO distance education course.</p> <p>ATTACHMENT: Atch 14.1 – AFLOA/JAJM Article 32 Investigating Officers Guide (5 May 2014)</p>
USN	<p>In accordance with Rule for Court-Martial (RCM) 405, MRE 412 and MRE 513 are applicable at Article 32 hearings. Both MREs provide guidance and procedures on the admissibility of such evidence at Article 32 hearings and courts-martial. At the direction of the Secretary of Defense, judge advocates are required to be the Article 32 investigating officer in sexual assault cases. Judge advocates are specifically trained on Article 32 procedures and applicable RCMs and MREs.</p>
USMC	<p>Enclosure (14) guides the procedures for an Article 32 in the Navy and the Marine Corps. As judge advocates serve as Article 32 officers, they have been received instruction on MRE 412 and MRE 513 during the Basic Legal Officers course. The Navy and Marine Corps is currently drafting a new Article 32 procedure guide based on the FY14 NDAA amendments. The EO currently open for public comment implements the statutory changes to Article 32 implemented in the FY14 NDAA, including clarification that MRE 412 hearings may be conducted at Article 32 preliminary hearings.</p> <p>ENCLOSURE(14): The Article 32 Investigating Officer’s Guide (Jun 2013)</p>
USCG	<p>It has been long-standing practice in the Coast Guard for judge advocates to act as the</p>

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	<p>Article 32 investigating officer. In November 2013, the Judge Advocate General formalized this practice, mandating that all Article 32 investigating officers be judge advocates certified under Article 27(b), UCMJ. An exception to this practice may be granted only by the Judge Advocate General, and there have been no requests for an exception to date. Because of the experience and qualifications of the Article 32 officers, the Coast Guard does not provide additional training guides to the investigating officers for dealing with M.R.E. 412 and M.R.E. 513. As attorneys with experience handling military justice cases, the Article 32 investigating officers are expected to be able comply with the rules of evidence as to these matters and to be knowledgeable about the evolving case law.</p>
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