



Preparing for an Article 32 Preliminary Hearing

PRESENTED BY: SSG Gay
SSG Winton
20 May 2021



Task, Conditions, and Standards

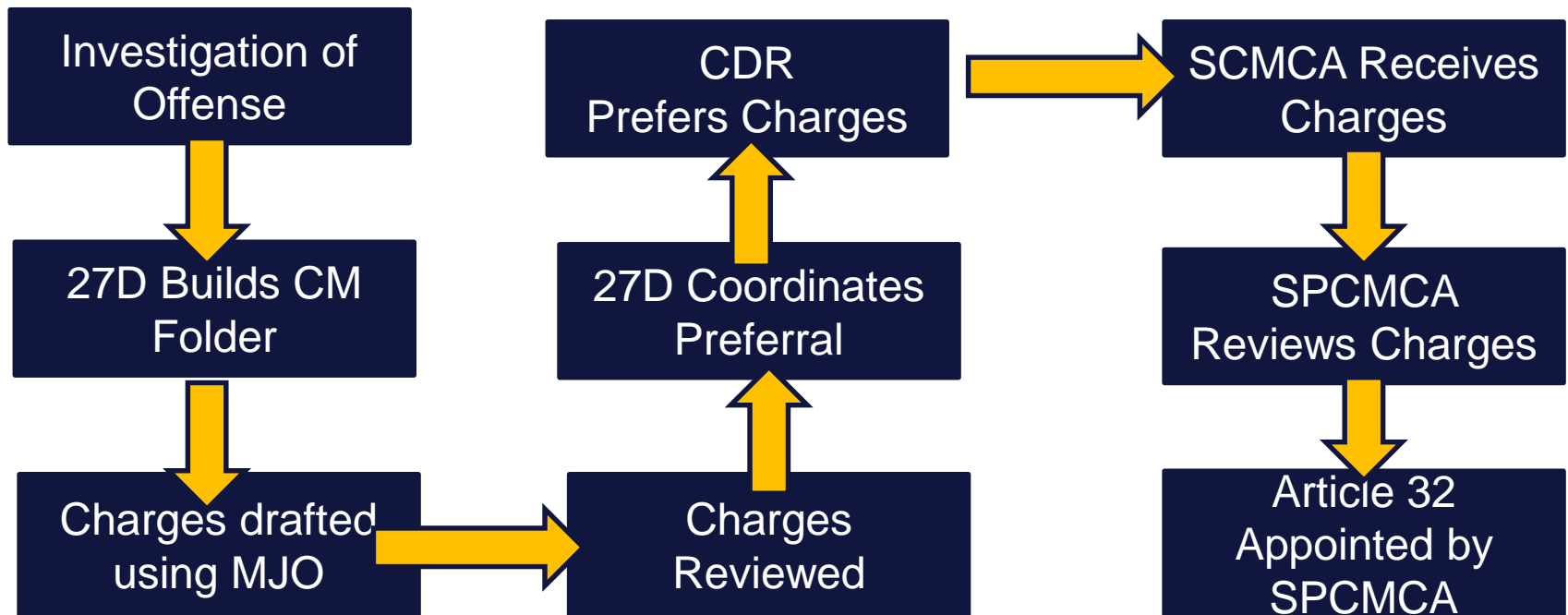
Task – Identify the responsibilities of a 27D during an Article 32 Preliminary Hearing

Conditions – Given a classroom environment and detailed discussion.

Standards – In accordance with Manual For Courts-Martial 2019 and DA Pam 27-17.



Process





Purpose: Preliminary Hearing

The purpose of a preliminary hearing is to determine whether:

- Probable cause exists to believe an offense was committed under the UCMJ.
- The accused committed it.
- The convening authority has court-martial jurisdiction over the offense and the accused.
- The charges are in proper form.



Purpose: Preliminary Hearing

- §832. Art. 32. Preliminary Hearing:
No charge or specification may be referred to general court-martial for trial until completion of a preliminary hearing unless such hearing is waived by the accused.
- The SPCMCA directs the preliminary hearing.



Key Personnel

Preliminary Hearing Officer (PHO): Whenever practicable, the convening authority shall detail an impartial judge advocate.

- When the appointment of a judge advocate as the PHO is not practicable, or in exceptional circumstances in which the interest of justice warrants, the CA may detail an impartial commissioned officer, who is not the accuser, as the PHO.
- If the PHO is not a judge advocate, an impartial judge advocate shall be available to provide legal advice to the PHO.
- PHO shall be equal or senior in grade to the military counsel detailed to represent the accused and the government at the preliminary hearing.



Key Personnel

Legal Advisor. Has no interest in the outcome of the proceedings, will answer any questions of law or procedure.

Accused. Has the right to waive an Article 32 preliminary hearing. If the hearing is not waived, the accused is entitled to be present throughout the duration of the proceedings.

Counsel for the accused. The accused may be represented during the hearing by a civilian lawyer of the accused's choice at no expense to the United States or by military counsel.

Counsel for the Government. Trial counsel will normally be assigned to participate in an Article 32 preliminary hearing as the Government's representative.



Key Personnel

Reporter.

- The reporter will normally be the paralegal specialist (27D) assigned to the accused's unit.
- The reporter will assist by:
 - Coordinating the attendance of witnesses; coordinating the use of facilities and audio/visual support equipment; preparing and furnishing all correspondence to the accused, defense counsel, government counsel, and other persons as directed by the PHO; preparing the summarized transcript of the testimony of witnesses and the conduct of the hearing.
- The reporter will record the preliminary hearing and maintain such recordings.
- The reporter will also assist with the final preparation of the report.



Paralegal Responsibilities

Pre-Article 32

- Prepare the appointment memorandum and have it ready for signature during preferral.
- Have bates stamped copies of the court-martial packet available for distribution.
 - Trial Counsel
 - TDS
 - PHO



Paralegal Responsibilities

Pre-Article 32 Packet Set Up

Court-Martial Case File Structure

- coversheet
- six sided folder
- bate stamped

* use your OSJA's packet set-up

US vs	
TC: _____	DC: _____
ATC: _____	DC2: _____
PARALEGAL: _____	Preferral Date: _____ 120 Day: _____

<u>Left Side (1)</u>	<u>Right Side (1)</u>
<input type="checkbox"/> DA 200 <input type="checkbox"/> Bate Stamp Log	<input type="checkbox"/> Charge Sheet(s) <input type="checkbox"/> Transmittals <input type="checkbox"/> Copy of CMCO <input type="checkbox"/> SJA Referral Advice <input type="checkbox"/> 706 <input type="checkbox"/> OTPG & Quantum

<u>Left Side (2) – Article 32 Documents</u>	<u>Right Side (2) - Evidence</u>
<input type="checkbox"/> DD 457 <input type="checkbox"/> Article 32 Transcript <input type="checkbox"/> Article 32 Notification/Delays <input type="checkbox"/> Article 32 Appointment Memo These documents will be BATE STAMPED	<input type="checkbox"/> SIR (BS000001-000004) <input type="checkbox"/> DNA Report (BS00005-000008) <input type="checkbox"/> CID Report (BS000010-000102) <input type="checkbox"/> Evidence Discs These documents will be BATE STAMPED

<u>Left Side (3) – Additional Evidence</u>	<u>Right Side (3) – FLAG/ERB</u>
<input type="checkbox"/> NCIC Check (BS000103-000110) <input type="checkbox"/> Unit File (BS000111-000135) These documents will be BATE STAMPED	<input type="checkbox"/> FLAG <input type="checkbox"/> ERB <input type="checkbox"/> AMHRR (DISC)



Pre-Article 32 Packet Set Up

U.S. v.

[illegible]



Paralegal Responsibilities

Pre-Article 32

- Prepare the notification and acknowledgement memorandum immediately upon the PHO's appointment. Will email PHO notifying him/her of the appointment.
 - All memorandums will be attached to the email.
 - Coordinate with PHO for date, time and location of the hearing and also a time to drop of the PHO's hard copy of the court-martial packet.



MJO: Things to Remember

- MJO will be utilized from the investigation phase through the entire course of the courts-martial.
- It should be regularly updated to reflect the current stage of the process.



Appointment Memorandum

Basic Data

Personnel

Charges

Witnesses

Referral of Charges

Art 32

Sanity Boards

Referral of Charges

Referrals

Pretrial Agreement

SJA Pretrial Advice

Docketing

Trial

Sentence

Findings

Pleas

Post-Trial

Post-Trial Home

After Trial Docs

Deferment/Waiver

Documents

Attachments

Actions Home

Motions (Government)

Administration

SSN

Last Name

First Name

MI

Suffix

Art 32 Investigation Officer

Unit of Assignment

Phone Number

Email

Rank

Branch

Appointed By

Date IO appointed

Legal Advisor

Date Accused was notified

Suspense Date for Response of the Accused

Generate Appointment

Generate Notification

Generate Acknowledgement

Generate Art32 Script

Generate DD 457

Generate DD 457 Continuation Sheet

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USA.gov

Accessibility/Section 508

Release Notes

DoD IBC Policy

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Paralegal Responsibilities

Pre-Article 32

- Paralegal will reserve a suitable site for conducting the preliminary hearing.
- PHO will sign the notification memorandum and send it back to the paralegal.
- Paralegal will then serve a copy of the written notice on the accused; the PHO should not have contact with the accused outside the presence of the defense counsel.



Paralegal Responsibilities

Pre-Article 32

- Once the accused is served, the paralegal will send the signed notification and acknowledgement memorandum to defense counsel and government counsel.
 - Strip map for the location of the preliminary hearing should also be attached.
- **Ensure government counsel has notified any qualifying victims of the time, date, and location of the preliminary hearing. *If the victim is represented by counsel, communication with the victim should only be through his or her counsel (SVC).***



Paralegal Responsibilities

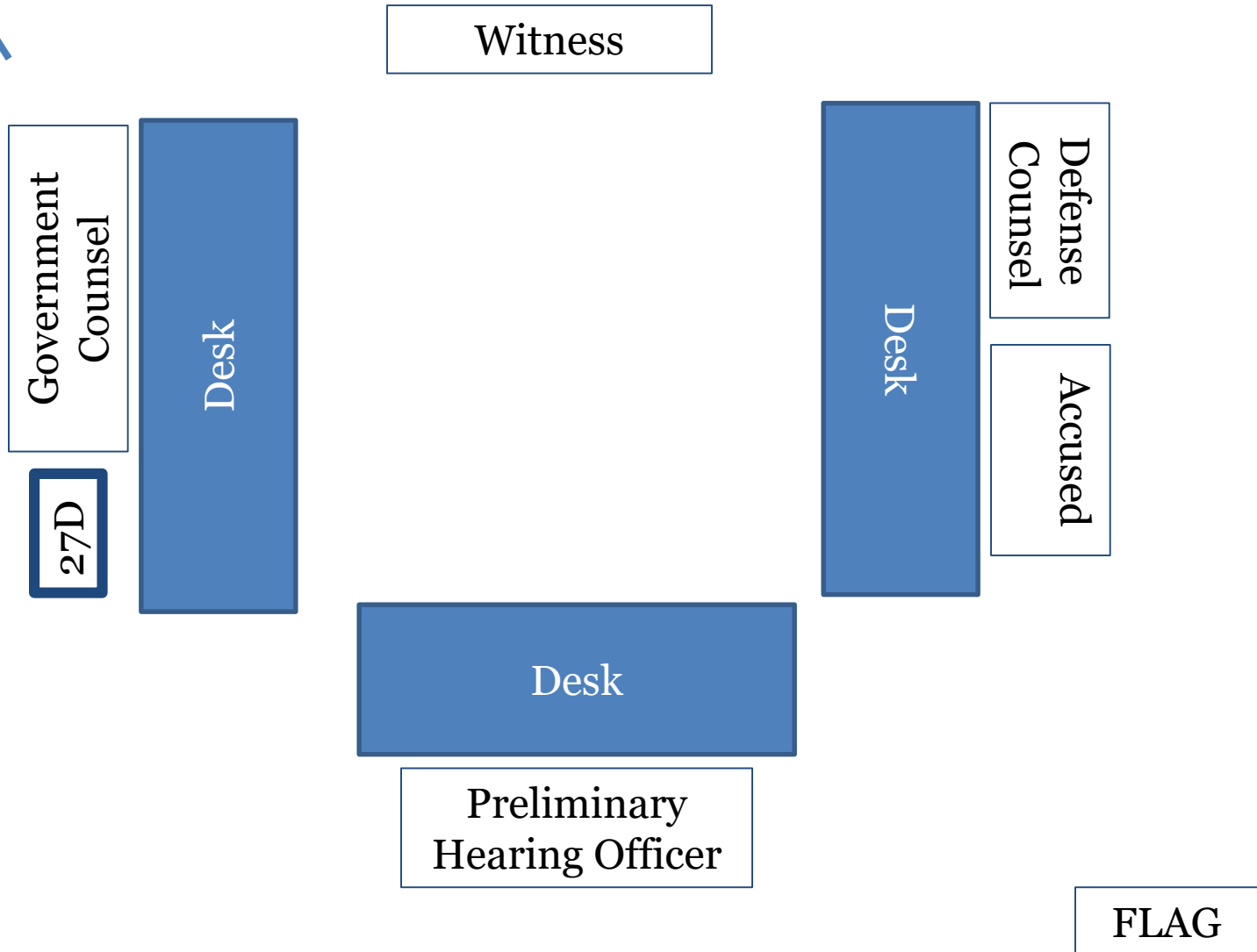
Pre-Article 32

- Paralegal will:
 - Draft DD Form 457 and script.
 - Ensure recording equipment is serviceable and make arrangements for backup recording equipment.
 - Ensure there is a telephone, video teleconference, projector available (if applicable).
 - Contact government witnesses and defense witnesses (should keep a log of witnesses contacted).
 - Contact the victims counsel to determine whether the victim chooses to be a witness during the preliminary hearing.



Paralegal Responsibilities

Article 32 – Arrangement of the room





Paralegal Responsibilities

Article 32 – Set up

- Notepads, pens, copies of the script
- Test recording device(s) and telephone,
ensure you have two recording devices
- Chairs available for witnesses
- Hard copy of DA PAM 27-17/ DD Form 457
- Contact information for witnesses
- Copies of government exhibits



Paralegal Responsibilities

Article 32 – During the Hearing

Paralegal will:

- Record the preliminary hearing
- Take notes of the witnesses testimony
- Make a list of exhibits as they are presented
- Call witnesses



Paralegal Responsibilities

Article 32 – Adjourned

Paralegal will:

- Clean up the location.
- Save the recorded hearing on a CD and share drive (additional copy in the event victim or accused makes a request for a copy).
- Scan and save all exhibits and enclosures presented.
- Begin summarizing all testimony.



Paralegal Responsibilities

Article 32 Preliminary Hearing Report

Preparation of the report:

- Summarized transcript, audio recording, and list of exhibits will be sent to the PHO.
- Paralegal will assist the PHO with compiling the report.
- Report will be provided to the convening authority who directed the preliminary hearing as expeditiously as possible.
- Paralegal will also provide a copy to the accused, government counsel, and defense counsel.



Paralegal Responsibilities

Article 32 Preliminary Hearing Report

Report will include:

- DD Form 457;

- Summarized transcript;

- Audio recording;

- Chronology sheet;

- Labeled exhibits and enclosures; and

- All documents furnished to the PHO



Paralegal Responsibilities

Article 32 Preliminary Hearing Report

SUMMARY OF PROCEEDINGS

The Preliminary Hearing session was appointed by letter of appointment, Headquarters, 10th Special Forces Group (Airborne), dated 13 September 2016, a copy of which is attached.

The Preliminary Hearing convened at Fort Carson, Colorado, on 7 November 2016 at 0926 hours.

PERSONS PRESENT:

MAJ Wayne H. Williams, Preliminary Hearing Officer
MAJ John B. Haberland, Trial Counsel
CPT Andrew A. Arndt, Assistant Trial Counsel
CPT Sara J. Nicholson, Defense Counsel
CPT Curtis C. Smith, Assistant Defense Counsel
[REDACTED] Accused
SSG Jackie J. Osterberg, Reporter

PERSONS ABSENT:

None.

INTRODUCTORY SESSION:

I am Major Wayne H. Williams, by order COL Thomas P. Vogel, I have been appointed as a preliminary hearing officer pursuant to Article 32(b) of the Uniform Code of Military Justice to inquire into certain charges against you.

Reading of the charges was waived.

PRELIMINARY SESSION:

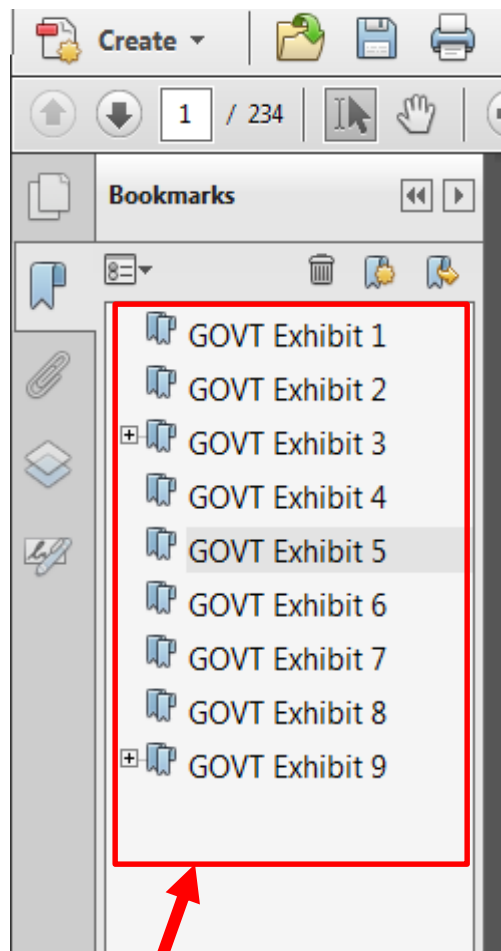
Before I begin the preliminary hearing and examination of any of the witnesses in this case, I must inform you that you have the right to be represented at all times by legally qualified counsel. This means that you have the right to be represented by a civilian lawyer of your choice, but at no expense to the United States; by military counsel of your own selection if that counsel is reasonably available; or by counsel detailed by the Trial Defense Service to represent you during the preliminary hearing. There is no cost to you for military counsel. Do you wish to be represented by counsel? If so, state the type of counsel you want to represent you.



Paralegal Responsibilities

Article 32 Preliminary Hearing Report

SCANNED EXHIBITS



PDF file
bookmarked

Statement taken by: [REDACTED] ID No: [REDACTED]

Version 09/24/2013

Signature of Person Making Statement Date & Time

FOR OFFICIAL USE ONLY
LAW ENFORCEMENT SENSITIVE

GOVERNMENT
EXHIBIT 1

EXHIBIT 000020

pages marked

previously
bated stamped



Paralegal Responsibilities

Common Errors

- Failure to coordinate witnesses.
- Script is not prepared or has significant errors.
- Equipment failure, or unfamiliarity with equipment.
- Failure to maintain control of the recording.
- Failure to serve relevant parties after the hearing.

