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NAVAL EDUCATION AND TRAINING PROFESSIONAL
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IN REPLY REFER TO:
NETPDTCINST 5811.1A
N313
06 DEC 2000

NETPDTC INSTRUCTION 5811.1A

Subj: **DUTIES OF PRELIMINARY INQUIRY OFFICERS**

Ref: (a) R.C.M. 303, Manual for Courts-Martial
(b) Uniform Code of Military Justice
(c) SECNAVINST 5520.3 (Series)

Encl: (1) Instructions for Preliminary Inquiry Officers
(2) Investigator's Report Checklist
(3) Witness' Statement Form
(4) Suspect's Statement Form
(5) Chain of Command Recommendation for Disciplinary
Action Form

1. **Purpose.** To issue instructions pertaining to the duties of the preliminary inquiry officers.

2. **Cancellation.** NETPDTCINST 5811.1

3. **Revision.** Since this is a major revision, marginal notations at not annotated. This instruction should be read in its entirety.

4. **Information**

a. Reference (a) requires commanding officers, upon receipt of charges or information indicating that a member of the command has committed an offense punishable under reference (b), to assign an individual to conduct a preliminary inquiry into the case sufficient to permit proper disposition of the matter. This may consist only of the charges and a summary of the expected evidence, while in other cases it may involve a more extensive investigation.

b. An informative preliminary inquiry report is of utmost importance to the proper administration of military justice. The report is used initially by the commanding officer in determining the proper disposition of the charges. Options include dismissal of the charge(s), imposition of non-punitive measures, nonjudicial punishment, referral to trial by court martial, and referral to a formal pretrial investigation. If the commanding officer determines nonjudicial punishment to be appropriate, the

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preliminary inquiry report will be of assistance in determining the accused's guilt or innocence and the amount of punishment to be imposed. In the event of an appeal from nonjudicial punishment, the report will assist the appellate authority in deciding whether relief is warranted. If the case is referred to trial by court-martial or to a formal pretrial investigation, the report will assist the summary court-martial officer, counsel for both sides, or the pretrial investigating officer in performing their duties.

5. Action

a. The commanding officer, upon receipt of information indicating an offense has been committed by a member of the command, will determine who should investigate the case. The commanding officer is guided by reference (c) in making this determination. If an investigation by one of the command's personnel is considered appropriate, the commanding officer will assign a preliminary inquiry officer. It may be expedient for more than one case to be assigned to the same person for concurrent investigation where the cases are closely related.

b. Preliminary inquiry officers will proceed in accordance with enclosure (1). Enclosure (2) is included to assist the preliminary inquiry officers in performing all required procedures and collecting all necessary evidence. Enclosures (3) through (5) will be used in conducting the investigation.

c. In each case the commanding officer will review the report of the preliminary inquiry officer and may return the report for further investigation where appropriate.


M. L. MORAN

Distribution: (NETPDTTCINST 5216.1C)
Lists I and II

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INSTRUCTIONS FOR PRELIMINARY INQUIRY OFFICER

1. The Preliminary Inquiry officer (PIO) will conduct an investigation by following the steps below. The report of investigation will consist of the following:

- a. NAVPERS 1626/7, Report and Disposition of Offense(s).
- b. An Investigating Officer's Report. (A checklist is provided for conducting the preliminary inquiry and preparation of the PIO's report.)
- c. Statements or summaries of interviews with all witnesses. (Sworn statements will be obtained, if practicable.)
- d. Statements of the accused's supervisor(s). (Sworn, if practicable.)
- e. Originals or copies of documentary evidence.
- f. If the accused waives all rights, a signed sworn statement by the accused or a summary of interview, signed and sworn to by the accused, or both.
- g. Any additional comments by the PIO as desired.

2. **Objectives**

a. The primary objective of the PIO is to collect all available evidence pertaining to the alleged offense(s). As a first step, the PIO should be familiar with those paragraphs of the Manual for Courts-Martial (MCM), describing the offense(s). Each of the common offenses is described in Part IV, MCM. Within each paragraph is a section entitled "elements," which lists the elements of proof for that offense. The PIO must be careful to focus on the correct variation. The PIO should be guided by the elements of the offense in searching for the relevant evidence. The PIO is to consider everything which tends to prove or disprove an element.

b. The secondary objective of the PIO is to collect information about the accused which will assist the commanding officer in making a proper disposition of the case, and in the event nonjudicial punishment is to be imposed, what the

Enclosure (1)

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appropriate punishment, if any, should be. Items of interest to the commanding officer include: the accused's assigned duties; evaluation of performance; attitude and ability to get along with others; and particular personal difficulties or hardships which the accused is willing to discuss. Information of this sort is best reflected in the statements of the accused's supervisors, peers, and the accused.

3. Interview the Witnesses First (NOT THE ACCUSED)

a. In most cases, a significant amount of the information must be obtained from witnesses. The person initiating the report and the persons listed as witnesses are starting points. Other persons having relevant information may be discovered during the course of the investigation.

b. Witnesses who have relevant information to offer should be asked to make a sworn statement. Where a witness is interviewed by telephone and is unavailable to sign a sworn statement, the PIO must summarize the interview and certify it to be true.

c. In interviewing a witness, the PIO should obtain all relevant information. One method is to start with a general survey question, asking for an account of everything known about the subject of inquiry, and then following up with specific questions. After interviewing a witness, the PIO may assist the witness in writing out a statement that is thorough, relevant, orderly, and clear. The substance must always be the actual thoughts, knowledge, or beliefs of the witness. The assistance of the PIO must be limited to helping the witness express himself/herself accurately and effectively in written form. The witness may write the statement on a copy of the Witness Statement form (enclosure (3)).

d. Before questioning the accused, the PIO should be thoroughly prepared. Therefore, meeting with the accused should be left until last. Even when the accused confesses guilt, the PIO should, nevertheless, collect independent evidence corroborating the confession.

4. Collect the Documentary Evidence. Documentary evidence such as shore patrol reports, log entries, watch bills, service record entries, local instructions, organization manuals, etc., should be collected. The original or a certified copy of relevant documents should be attached to the report. As an appointed

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investigator, the PIO has the authority to certify copies to be true by subscribing the words "CERTIFIED TO BE A TRUE COPY" with his/her signature and date.

5. **Collect the Real Evidence.** Real evidence is a physical object, such as the knife in an assault case or the stolen camera in a theft case, etc. Before the PIO obtains real evidence, if any, he/she must be completely familiar with the Military Rules of Evidence (Manual for Courts-Martial) concerning searches and seizures. If the item is too big to bring to a nonjudicial punishment hearing or into a courtroom, a photograph of it should be taken. If real evidence is already in the custody of a law enforcement agency, it should be left there unless otherwise directed. The PIO should inspect the evidence personally.

6. **Advise the Accused of His/Her Rights During Interrogation**

a. A Suspect's Rights Acknowledgement/Statement form is included as enclosure (4). The PIO **MUST** correctly advise the accused of his/her rights before asking any questions. Filling in that page must be the first order of business when meeting with the accused. Only one witness is necessary, and that witness may be the PIO.

b. In addition, the PIO will have the accused sign the acknowledgement line on the front of the Report and Disposition of Offense(s) (NAVPERS 1626/7) and initial any additional pages of charges that may be attached. The PIO should sign the witness line on the front of the NAVPERS 1626/7, next to the accused's acknowledging signature.

7. **Interviewing the Accused**

a. The accused may be questioned **ONLY** if he/she has knowingly and intelligently waived all constitutional and statutory rights. The waiver, if made, should be recorded on the Suspect's Rights Acknowledgement/Statement form. If the accused asks questions regarding the waiver of these rights, the PIO must decline to answer or give any advice on that question. The decision must be left to the accused. Other than advising the accused of the rights as stated in paragraph 6a above, the PIO should never give any other form of legal advice to the accused. If the accused desires a lawyer, the Naval Legal Service Office Central Defense Department is available to give legal advice. Contact the command legal officer if the accused desires to consult with a lawyer.

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b. If the accused has waived all rights, the PIO may question the accused. Once the accused has spoken his/her peace, the PIO may question the accused. The PIO should, with respect to his/her own conduct, keep in mind that if a confession is not "voluntary," it cannot be used as evidence. The presence of an impartial witness during the interrogation of the accused is recommended. Examples of inadmissible statements are the use of coercion, unlawful influence, and unlawful inducements. Some instances of coercion, unlawful influence, and unlawful inducement in obtaining a confession or admission are: infliction of bodily harm (including questioning accompanied by deprivation of the necessities of life, such as food, sleep, or adequate clothing); threats of bodily harm; imposition or threats of confinement, or deprivation of privileges or necessities; promises of immunity or clemency as to any offense allegedly committed by the accused; and promises of reward or benefit, or threats of disadvantage, likely to induce the accused to make the confession or admission.

c. If the accused is willing to make a written statement, ensure the accused has acknowledged and waived all rights. While the PIO may help the accused draft the statement, he/she must refrain from putting words in the accused's mouth or from tricking the accused into saying something unintended. If the draft is typed, the accused should read it over carefully and be permitted to make any desired changes. All changes should be initialed by the accused and witnessed by the PIO.

d. Oral statements, even though not reduced to writing, are admissible into evidence against the accused. If the accused does not wish to reduce his/her statement to writing, the PIO must attach a certified summary of the interview to the report. Where the accused has reduced less than all of the statement to writing, but has made a written statement, the PIO must add a certified summary of matters omitted from the accused's written statement.

e. If the accused initially waives all rights, but during the interview indicates a desire to consult with counsel or to stop the interview, the PIO will adhere to such request and terminate the interview. The interview may not resume unless the accused indicates a desire to once again waive all rights and submit to questioning.

8. Contact the command legal officer or a judge advocate if you have any questions.

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INVESTIGATOR'S REPORT CHECKLIST IN THE CASE OF:

(Accused's name/pay grade/SSN/division)

1. Read paragraphs in MCM concerning offenses/charges. Yes ____ No ____

2. List of witnesses interviewed (not the accused).

<u>Name</u>	<u>Phone</u>	<u>Signed Statement Attached</u>	<u>Summary of Interview Attached</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. Accused's supervisor(s) interviewed. Yes ____ No ____

<u>Name</u>	<u>Phone</u>	<u>Signed Statement Attached</u>	<u>Summary of Interview Attached</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Documentary/real evidence location and attached. Yes__ No__

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- 5. Permit the accused to inspect the report chit. Yes ___ No ___
- 6. Accused initialed second page of charges (if any). Yes ___ No ___
- 7. Accused signed "Acknowledge" line on report chit. Yes ___ No ___
- 8. PIO signed "Witness" line on report chit. Yes ___ No ___
- 9. Accused waived rights. Yes ___ No ___
- 10. Accused made statement (only when #9 is yes). Yes ___ No ___
- 11. Accused signed statement/summary of statement attached. Yes ___ No ___

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SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT (See JAGMAN 0170)

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT/STATEMENT

FULL NAME (ACCUSED/ SUSPECT)	SSN	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT			DATE OF BIRTH
NAME (INTERVIEWER)	SSN	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW		TIME	DATE

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he/she warned me that:

- (1) I am suspected of having committed the following offense(s);

- (2) I have the right to remain silent; -----

- (3) Any statement I do make may be used as **evidence against me in trial by court-martial**; -----

- (4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and-----

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(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview,

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that ---

(1) I expressly desire to waive my right to remain silent;

(2) I expressly desire to make a statement; -----

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; -----

(4) I expressly do not desire to have such a lawyer present with me during this interview; and -----

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind, having been used against me. -----

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

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The statement which appears on this page (and the following _____ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

RECOMMENDATION FOR DISCIPLINARY ACTION

ACCUSED'S NAME: _____

CHARGE(S): _____

RECOMMENDATION OF LCPO: _____

RECOMMENDATION OF DIVISION OFFICER: _____

Signature/Date

RECOMMENDATION OF DEPARTMENT HEAD: _____

Signature/Date

RECOMMENDATION OF LEGAL OFFICER: _____

Signature/Date

RECOMMENDATION OF EXECUTIVE OFFICER: _____
