FM 30- 7

FIELD MANUAL

COUNTERINTELLIGENCE OPERATIONS

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FIELD MANUAL

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COUNTERINTELLIGENCE OPERATIONS

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CHAPTER 1

INTRODUCTION

1-1. Purpose and Scope

a. This manual provides operational guidance for Army counterintelligence personnel and outlines standard investigative procedures for employment by counterintelligence elements and units of the United States Army.

b. This manual includes a general orientation on several types of counterintelligence elements existing within the Army and describes in greater detail the basic techniques and procedures employed by Army counterintelligence personnel in both peace and wartime situations. Specific applications of these techniques and procedures are covered in those chapters which deal with counterintelligence investigations and services.

c. Material in this manual is limited to those aspects of counterintelligence which are the specific responsibilities and functions of counterintelligence personnel and units in accordance with AR 381-103.

d. The material presented herein is applicable in both nuclear and nonnuclear warfare and in chemical, biological, radiological and internal defense environments as well as to peacetime counterintelligence operations.

e. Users of this manual are encouraged to submit recommended changes or comments to improve the manual. Comments should be keyed to the specific page, paragraph, and line of the text in which the change is recommended. Reasons should be provided for each comment to insure understanding and complete evaluation. Comments should be prepared using DA Form 2028 (Recommended Changes to Publications) and forwarded direct to the Commanding Officer, US Army Combat Developments Command Intelligence Agency, Fort Huachuca, Arizona 85613.

1-2. Counterintelligence Personnel

As used in this manual, the terms "counterintelligence personnel" and "Special Agents" are synonymous and include officers with MOS Code 9666—Counterintelligence Officer, warrant officers with MOS Code 971A—Counterintelligence Technician, enlisted men with MOS Code 97B—Counterintelligence Agent and DA civilians who have been accredited as Special Agents by the Chief of Personnel Operations, Department of the Army, and who are assigned to duty for the performance of counterintelligence functions. Accreditation includes issuance of identifying badge and credentials in accordance with AR 640-20.

1-3. Scope of Counterintelligence Activities

The mission of counterintelligence elements and units is to support the commander through the detection of treason, espionage, sabotage, sedition, subversive activity, and disaffection, and the prevention and neutralization of espionage and sabotage for the protection of the US Army. In the fulfillment of this mission, counterintelligence personnel and units engage in a broad range of operational activities, with direction and guidance from higher authority, within the areas of its jurisdiction to include those activities responsible for—safeguarding defense information; protecting Army functions and property such as facilities which have classified defense contracts or that have been designated as key defense installations; conducting personnel security investigations for Army personnel and contractor employees under the Defense Industrial Security Program; conducting counterintelligence surveys, services, and inspections; and conducting investigative activities authorized in connection with civil disturbances within the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States territories and possessions. Counterintelligence operations may be divided into the following three categories:

a. Counterintelligence Investigations. This operational category constitutes the bulk of the counterintelligence workload worldwide, and in-

cludes specific investigations of individuals and incidents which, for the most part, are conducted in an overt but discreet manner. Personnel security investigations (PSI) and complaint-type investigations (CTI) are included in this category.

b. Counterintelligence Services. This operational category encompasses specific security services provided by counterintelligence personnel and units to assist commanders at all echelons in planning, implementing, and maintaining proper and adequate safeguards against the threats of sabotage, espionage, and subversive activity. These services include counterintelligence surveys and inspections, security education and training programs, and technical surveys and inspections.

c. Counterintelligence Special Operations. Special operations which are concerned mainly with sophisticated and highly specialized techniques in the areas of counterespionage, countersabotage, and countersubversion are discussed in the classified supplement to this manual, FM 30–17A.

1–4. Limitations of Counterintelligence Operations

The jurisdiction and scope of authorized investigative techniques in counterintelligence operations will vary according to legal considerations, operational circumstances, and areas of operations. The following types of limiting directives may restrict the jurisdiction of counterintelligence elements and preclude or inhibit employment of certain investigative techniques and procedures described in this manual:

a. Delimitations Agreement. AR 381–115 prescribes the Army's counterintelligence investigative jurisdiction and its coordinating responsibilities with respect to the Federal Bureau of Investigation (FBI), Department of Justice; the Naval Investigative Service (NIS), Department of the Navy; and the Office of Special Investigations (OSI), Department of the Air Force.

b. National Security Directives. Operational limitations and coordinating responsibilities for United States agencies conducting security investigations or intelligence operations in foreign areas are set forth in classified policy directives issued by the National Security Council. These directives are normally implemented within the Army by operational instructions prepared and disseminated by the Office of the Assistant Chief of Staff for Intelligence, Department of the Army.

c. Status of Forces Agreements. Agreements between the United States and foreign nations in which US Army units are stationed normally include clauses delimiting the jurisdiction and scope of activities of counterintelligence agencies. Implementing directives within the Army are normally promulgated by the major command directly concerned with the "status of forces agreement."

d. DOD Directive 5200.27. This directive is a restatement of the limits applied to military counterintelligence activities to include those persons or organizations affiliated with the DOD. A person, group of persons, or organization is considered to be affiliated with DOD if the individuals involved are:

(1) Employed by or contracting with DOD or any activity under the jurisdiction of DOD, whether on a full time, part time, or consultative basis;

(2) Members of the Armed Forces on active duty or National Guard members in a reserve or retired status;

(3) Residing on, having authorized access to, or conducting or operating any business or other function at any DOD installation or facility;

(4) Authorized access to defense information;

(5) Participating in other authorized DOD programs to include persons upon whom investigations have been initiated under the following:

(*a*) AR 230–2—Personnel Policies and Procedures.

(*b*) AR 604–20—Security Requirements for Personnel in Information and Education Activities.

(*c*) AR 690–1—Civilian Applicant and Employee Security Program.

(*d*) AR 930–5—American Red Cross Service Program and Army Utilization.

(*e*) DOD Regulation 5220.22R—Industrial Security Regulation.

(6) Applying for or being considered for any status described above to include applicants for military service, preinductees, and prospective contractors.

1–5. Basic Principles of Counterintelligence Operations

Regardless of the type of operation, or of operational circumstances, all counterintelligence operations adhere to certain basic principles:

a. Conformance to Mission. The basic mission requires that every counterintelligence operation support the commander, contribute to the security of the US Army, and be within the scope of activities prescribed in the mission of counterintelligence units and personnel of the US Army.

b. Avoidance of Publicity. The "golden word of intelligence is silence." This is an established principle in all intelligence operations, and one that is especially applicable to counterintelligence activities. There will be occasions when it is desirable to publicize successfully completed investigations of espionage or other activities to deter others from engaging in such activities, or to encourage voluntary reporting of information (i.e., publicizing the location where information of counterintelligence interest may be reported). In this, however, counterintelligence personnel must exercise discretion and avoid individual publicity.

c. Objectivity. Counterintelligence elements are primarily factfinding agencies whose purpose is to collect and report factual data upon which responsible commanders may base decisions relative to the security of their commands. It is absolutely essential that counterintelligence operations be planned, executed, and reported in a completely objective manner. The principle of objectivity is perhaps most important in the reporting phase of operations. All information pertinent to the issue, whether favorable or unfavorable to an individual or organization, whether consistent with or contrary to previously reported information, must be recorded and reported accurately and objectively. However, important derivative information, indicators and/or leads must not be overlooked or ignored because they are not based on factual information at the time. Such leads may be confirmed or substantiated in the future, or may contribute significantly in other ways to the successful conclusion of the investigation.

d. Confirmation. Regardless of the probable reliability of the source of any item of counterintelligence information, independent confirmation will always be sought in all counterintelligence investigations. Confirmation may be achieved by the use of additional investigative techniques, by consulting additional sources of information, and by regularly testing the reliability of those sources which are utilized over an extended period of time. Confirmation of small details, which in themselves appear insignificant, is fundamental to all investigations and will often prove the only reliable means of establishing the true status of a person suspected of participation in hostile intelligence activities. However, reporting of information to permit initiation of preventative action, when an immediate threat to security appears probable, should not be delayed pending confirmation.

e. Offense. One of the most important principles of counterintelligence operations is a well-planned positive program of offensive actions to thwart actions of the opposition. The neutralization of hostile espionage and subversive organizations is especially dependent on positive, offensive actions for success. Offensive counterespionage details are discussed in FM 30–17A, the classified supplement to this manual.

f. Flexibility. Each counterintelligence element, from the individual to the largest operational unit, must be able to respond immediately and positively to changes in the situation, *e.g.*, a sudden influx of large numbers of refugees or a rapid change from a peacetime to a hostile environment.

g. Continuity. Continuity of action in counterintelligence investigations is imperative particularly in connection with case control personnel. Continuity can be realized only through meticulous efforts to have detailed results of investigations properly recorded in official files. The full status of any investigation at any given time should be as clear to successors as to those who originally obtained or processed the information collected or received.

h. Coordination. In all counterintelligence investigations and operations, coordination consistent with security considerations and the policy of the command is maintained with units and agencies having a direct interest.

CHAPTER 2

ORGANIZATION AND EMPLOYMENT

Section I. GENERAL

2–1. Introduction

This chapter provides a general orientation on the organization and employment of counterintelligence elements. Continuing research and development studies and the evolutionary changes in the Army bring about changes in organizational structures. These changes affect tactical counterintelligence units more than others; therefore, reference to the 30-series TOE for detailed information on the current tactical counterintelligence organizations is recommended.

2–2. Organizational Principles and Considerations

a. Counterintelligence elements are organized in consonance with the principles of organization described in FM 100–5 and FM 101–5. Organization along functional lines with maximum internal flexibility is essential to insure responsiveness to changes in operational environments, shifts in emphasis or priorities, and variances in the nature and degree of the threat to the supported command.

b. Considerations which influence the organization of counterintelligence elements include:

(1) Mission, type, strength, location, geographic responsibility, and scope of activities of the supported command.

(2) Intelligence and counterintelligence estimates and studies setting forth the characteristics of the area of operation.

(3) Intelligence mission assigned to the supported command, together with specific intelligence directives and related delimiting policy directives.

(4) Counterintelligence mission prescribed by the supported command which indicates relative emphasis to be given to the various functions enumerated in AR 381–103 and AR 381–130.

(5) Availability of counterintelligence personnel, including the availability of qualified linguists in foreign areas.

(6) Threat posed by hostile intelligence.

2–3. Employment of Counterintelligence Personnel

a. Basic policies governing the employment and utilization of counterintelligence personnel are contained in AR 381–103. Personnel may be employed in units which consist almost exclusively of counterintelligence personnel (e.g., military intelligence (MI) groups in CONUS), or they may be assigned to intelligence units which contain other intelligence specialist elements (e.g., MI groups, battalions, or companies assigned to either tactical or nontactical units).

b. The specific needs of some nonintelligence units and installations, particularly those responsible for weapons or materiel of a classified nature, will sometimes require the assignment of counterintelligence personnel on a permanent basis. US Army missile commands are examples of units which include organic counterintelligence personnel within their TOE. Details regrading the employment of counterintelligence personnel in assignments of this type are outside the scope of this manual.

Section II. CONUS AND THEATERS OF OPERATION

2–4. The US Army Intelligence Command

The US Army Intelligence Command (USAINTC), Fort Holabird, Maryland, under the supervision of the Chief of Staff, Department of the Army, is responsible for the tasking and controlling of all Army CI activities in support of

the CONUS-based major commands, Puerto Rico and the US Virgin Islands on a geographic area basis. USAINTC exercises control office functions for personnel security investigations which originate in United States Army, Europe (USAREUR); United States Army, Pacific (USARPAC); United States Army, Alaska (USARAL), and United States Army, Southern Command (USARSO). It also performs other intelligence-counterintelligence functions as assigned by Department of the Army and makes recommendations to higher and collocated echelons on these matters. Military Intelligence Groups (CI) are assigned to USAINTC as operating elements with the mission of providing CI support to all designated US Army operations in specific geographic areas. An MI group is collocated with each of the headquarters of CONUS armies and the Military District of Washington. The area of responsibility of a MI group normally coincides with the geographic area of the Army to which it is assigned. Because of the Delimitations Agreement and the limited intelligence mission of the Army in CONUS, counterintelligence operations consist primarily of security investigations and services conducted throughout the geographic area of responsibility. Figure 2–1 illustrates the organization of the USAINTC with its subordinate MI groups. Figure 2–2 is a chart of the functional organization of a typical CONUS MI group. Subordinate elements of the group—regions, field offices and resident offices—are strategically located throughout each of the geographic areas of responsibility. The regional office or headquarters is the principal operational element of most CONUS groups and normally is responsible for a specific geographic area; this area may correspond to a single political subdivision such as a county, or be comprised of multiple political subdivisions such as a group of counties, or portions of one or more states.

2–5. Tactical Counterintelligence Elements

The concept of integration of all intelligence specialists at tactical levels is contained in FM 30–9. Assigned to the field army is a MI battalion or

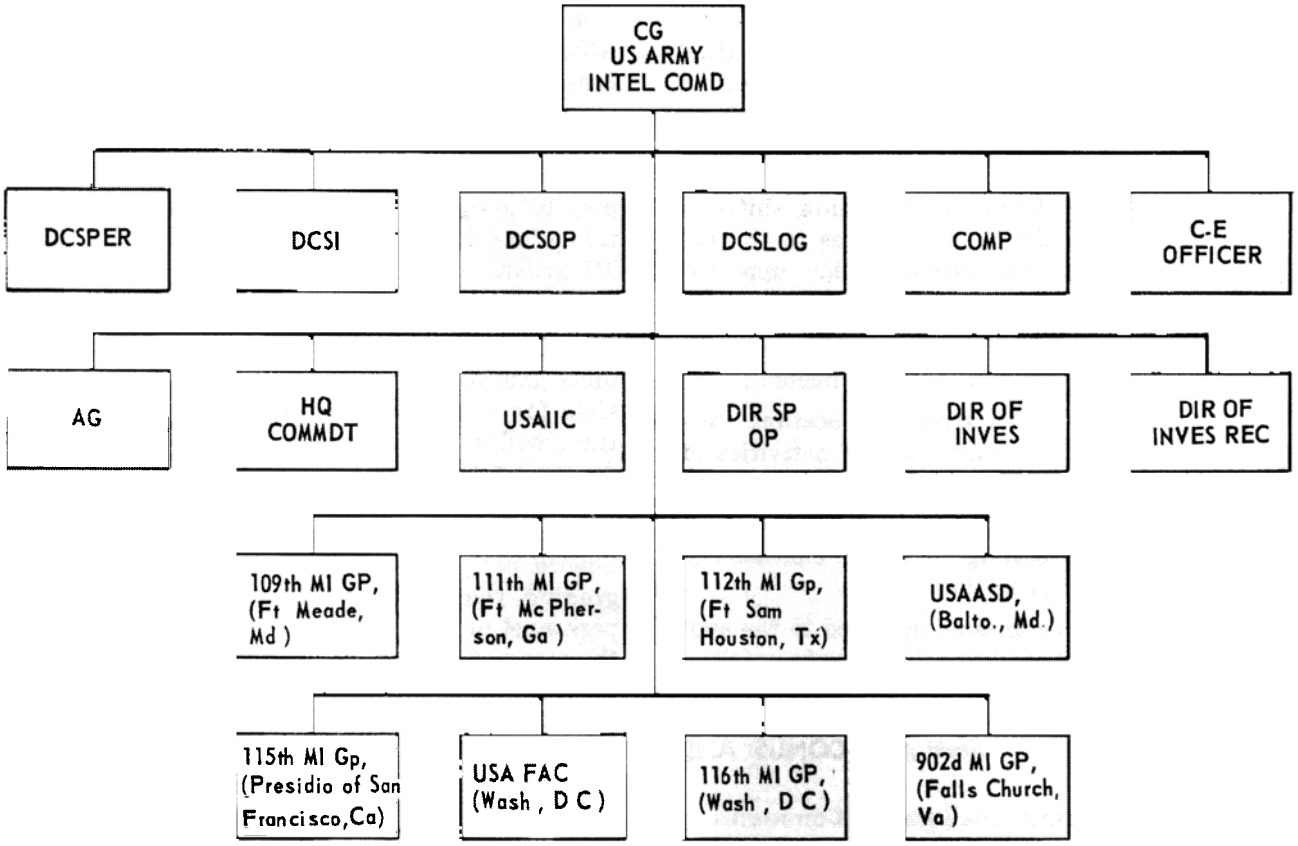


Figure 2–1. US Army Intelligence Command.

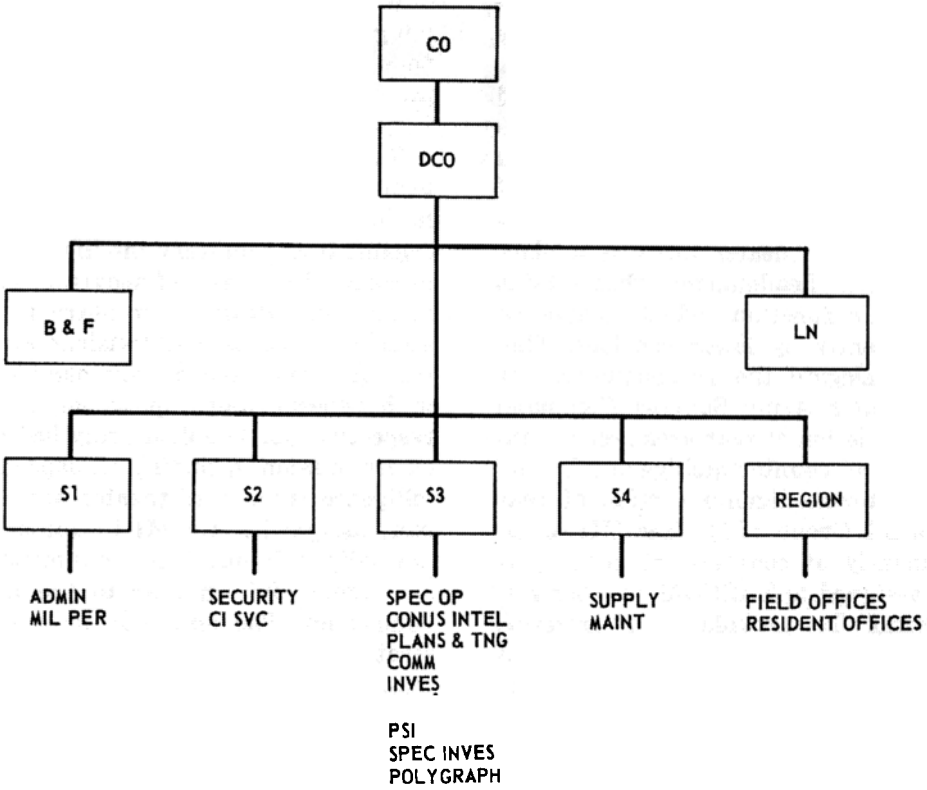


Figure 2–2. Functional organization of type CONUS MI groups.

group which has subordinate MI units attached to corps, divisions, and separate brigade-sized units to provide intelligence support. These units contain CI tactical support elements. Military intelligence units supporting corps, divisions, and separate brigades/armored cavalry regiments will move with the supported units when restationed or deployed overseas. All tactical intelligence units are controlled by the commander of the unit to which they are attached, with general staff supervision exercised by the intelligence officer, S2/G2 or the Assistant Chief of Staff, Intelligence. The CI elements of these units are operationally restricted to the confines of the military reservation where they are stationed; however, in CONUS local jurisdictional agreements between these units and the CONUS MI groups facilitate accomplishment of the mission.

2–6. Special Counterintelligence Units

The Department of Defense, the US Continental Army Command and the US Army Intelligence Command have assigned counterintelligence personnel and units over which they exercise operational control. The operations of these units are accomplished within the area of jurisdiction of the five MI groups in CONUS and, at times, cross one or more jurisdictional boundaries. Special Agents of these units will normally notify the appropriate MI groups and/or the senior intelligence staff officer of the major command of their presence in the area and, when permissible, state their mission.

2–7. Theaters of Operation

The employment, functions, and operational concept of counterintelligence elements in a theater of operations are prescribed in FM 30–9. Counterintelligence units must maintain a close working relationship with other intelligence agencies, both civilian and military, with civil affairs and with military police elements at all echelons within the theater in accordance with existing theater policies. Counterintelligence operations may be divided into two levels of activity, theater army and field army.

a. Theater Army. Counterintelligence missions and activities do vary considerably between theaters of operation and between peacetime and pe-

riods of hostilities. Differences are based on the number of installations and troop strengths within a theater, the nature and magnitude of the hostile threat in the area, and the relations and agreements with host country and allied governments. Some situations may require deviations from the general principles of organization and control, although deviation is not the normal procedure. Fundamentally, theater army is a planning and coordination headquarters that retains for itself only those functions which cannot be accomplished efficiently by lower echelons. Theater army may delegate the responsibility for rear areas to Theater Army Support Command (TASCOM). The mission of rear area security includes all aspects of counterintelligence. To accomplish the counterintelligence portion of rear area security, a MI Group (CI), (sec III), consisting predominantly of counterintelligence personnel, will be assigned to TASCOM or other responsible command. To provide area coverage, subordinate companies, detachments, or regions will be located strategically throughout the area. Included in this MI Group (CI) is a central records facility which will serve all security and intelligence elements of both theater army, and field army, as well as elements of other US military services.

b. Field Army. The field army is provided counterintelligence support by a CI company organic to the field army MI battalion and by CI elements organic to the military intelligence units attached to corps, divisions and separate brigade-sized organizations. However, military intelligence units attached to corps and divisions are controlled by the corps and division commanders, respectively, with general staff supervision exercised by the respective G2. The field army has a rear area security mission, including all aspects of counterintelligence, similar to theater army. The CI company assigned to the MI Battalion (Field Army) normally will have the counterintelligence mission from division rear to the field army rear boundaries. The unit may have several stations strategically located to facilitate control and communication with a number of small mobile teams working out of each station.

Section III. MILITARY INTELLIGENCE GROUP (COUNTERINTELLIGENCE), ASCOM

2–8. General

a. Mission and Functions. A Military Intelligence Group (Counterintelligence) is assigned to the area support command (ASCOM). It provides counterintelligence specialist support to theater army support command (TASCOM) for the security of US personnel and installations within the TASCOM area. The group accomplishes its mission by—

(1) Supporting TASCOM, ASCOM, and its subordinate area support groups (ASGP) by providing specialized assistance in the field of counterintelligence.

(2) Commanding, controlling, and supervising operational, administrative, and logistical functions of subordinate elements.

(3) Planning CI operations and activities to achieve maximum security for army units and installations within the TASCOM area and to achieve maximum neutralization of hostile espionage activities.

(4) Exercising centralized control and management of special operations in the areas of counterespionage, countersabotage, and countersubversion within the TASCOM area.

(5) Supervising the operation of a central records facility on personnel of intelligence interest for TASCOM and other elements within the theater army.

(6) Providing liaison with parallel US, host government, and allied nation intelligence and security activities.

(7) Exercising control of security investigations to include personnel security investigations (PSI) and complaint-type investigations (CTI).

(8) Supervising and coordinating security services to include CI surveys and inspections, security education and training programs, and technical surveys and inspections.

(9) Providing CI support for army nuclear weapon systems and facilities.

(10) Coordinating the allocation of counterintelligence personnel resources, based on ASCOM priorities, functional requirements, and disposition of army units and hostile elements.

b. Organization. Figure 2–3 depicts the organization of the MI Group (CI), ASCOM.

2–9. Functions

a. The MI Group (CI), ASCOM, coordinates its

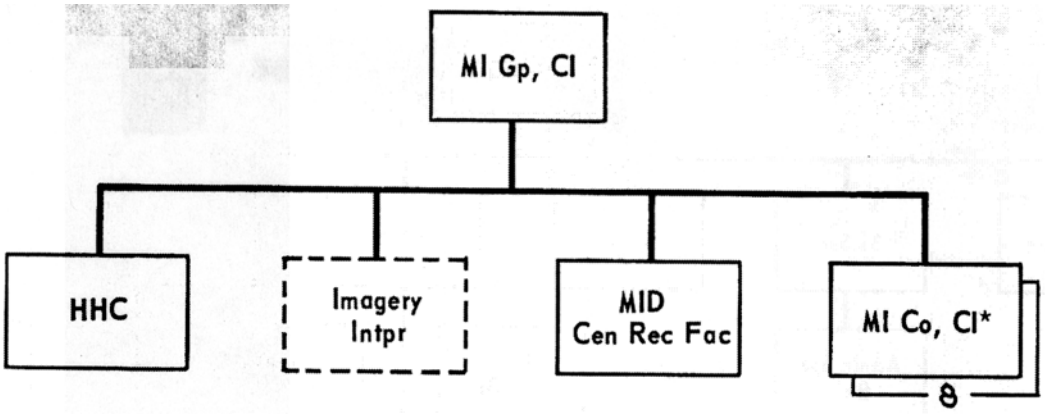


Figure 2–3. MI Group (CI), ASCOM.

operations through direct liaison with the MI Battalion (Field Army); the MI group, theater army; and other services or joint intelligence and security elements at theater level. This group maintains liaison with intelligence and security services of host governments, allied nations, and the United States, as well as with military police and civil affairs (CA) units which may be primary sources of intelligence information. Host government agencies may be responsible for providing information on which to base clearance actions on indigenous labor force personnel requested by a TASCOM unit, depending on pertinent status of forces agreements, or other appropriate agreements.

b. The HQ, MI Group (CI), ASCOM, (fig 2–4) is organized and trained to operate against the hostile clandestine threat. It exercises centralized control and management of counterespionage, countersabotage, and countersubversive operations within TASCOM. Further, the group is responsible for unified planning and operations against hostile elements whose activities transcend ASGP boundaries. As a result of these operations, this group can collect intelligence information on guerrilla forces. The MI Group (CI), ASCOM, is not organized, equipped, or trained to conduct reconnaisssance patrols or other combat missions against guerrilla forces.

c. The MI Group (CI), assists TASCOM unit commanders in the exercise of their security responsibilities and will conduct interviews, inquiries and other actions necessary to meet USAINTC requirements on PSI and CTI. This group will exercise control and management of such investigative activities conducted by its subordinate units. This group also exercises centralized control and management of personnel security actions. The MI group headquarters depends on the theater common-user signal system for communication with subordinate elements and on the personnel and administration (P&A) battalion, ASCOM, for the production of P&A reports and the maintenance of P&A records.

d. The MI Group (CI), has no imagery interpretation capability. When an air reconnaissance and surveillance unit is assigned to ASCOM, a cellular-type (TOE 30–600) MI detachment with appropriate imagery processing and interpretation capabilities can be assigned to the group.

2–10. Military Intelligence Detachment (Central Records Facility)

The MI Detachment (Central Records Facility),

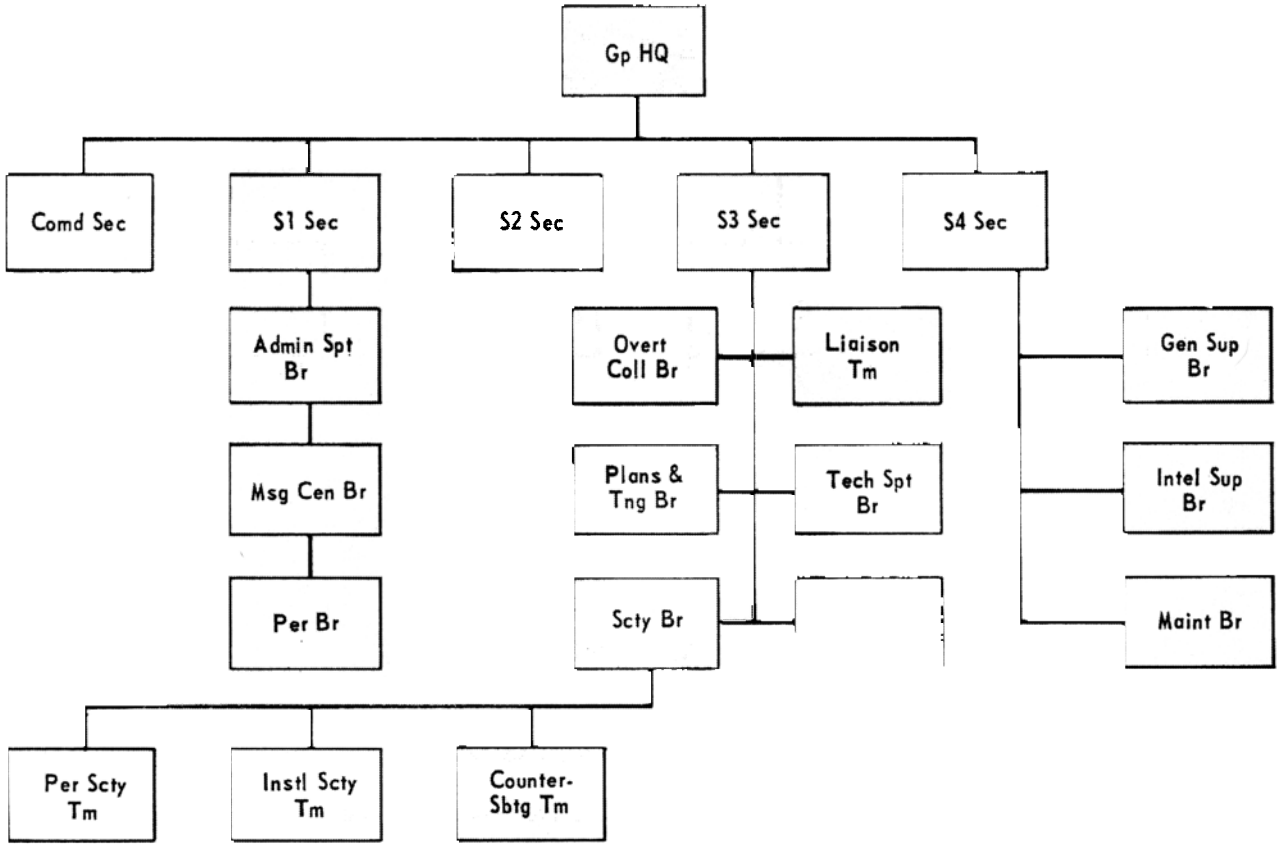


Figure 2–4. HQ, MI Group (CI).

(fig 2–5) maintains files on personnel of intelligence interest to theater army and provides direct support (DS) to theater army intelligence units. The detachment performs its mission by—

a. Receiving, screening, extracting, and filing reports from detachments of the MI Group (CI), and other intelligence units of the theater and field armies.

b. Opening new dossiers and updating existing dossiers with incoming reports.

c. Maintaining a central index and a dossier file.

d. Responding to queries from within the group and from other theater army intelligence units, conducting file searches and providing support to

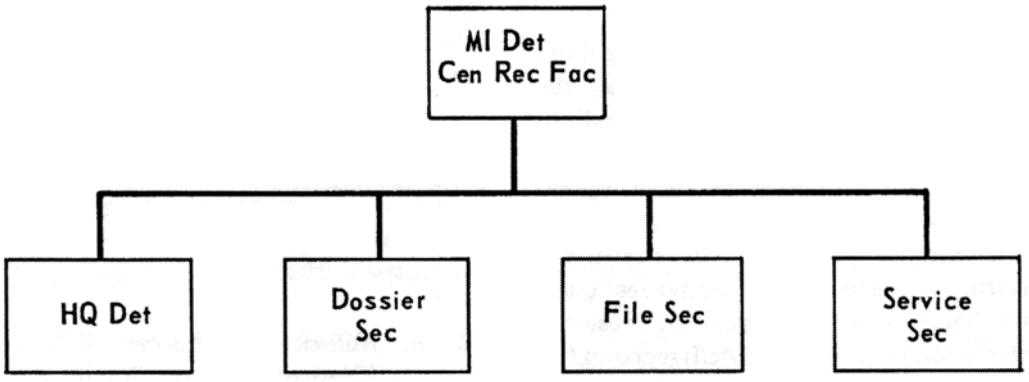


Figure 2–5. MI Detachment (Central Records Facility).

counterespionage, countersabotage, and countersubversive operations.

e. Maintaining operational files for the MI Group (CI).

2–11. Functions

The MI Detachment (Central Records Facility), normally is in the immediate vicinity of the MI Group headquarters and depends on the headquarters for its administrative communication and logistical support. The detachment operates under the direct supervision of the group S3. It maintains its own message center and teletype terminal and provides its own control of classified documents.

2–12. Military Intelligence Company (Counterintelligence)

The Military Intelligence Company (Counterintelligence), (fig 2–6) conducts operations that will enhance personnel and installation security of US personnel and facilities in the ASGP area of responsibility and reduce the hostile clandestine threat thereto. The company accomplishes its mission by—

a. Assisting in the screening of indigenous personnel for intelligence operational leads and for suspected dissidents.

b. Conducting CI surveys, inspections, and technical inspections.

c. Conducting counterespionage, countersabotage, and countersubversive operations.

d. Processing requests for clearance of indigenous labor force personnel.

e. Assisting ASGP in security education programs.

f. Conducting interviews, record checks, and other investigative activities in response to requirements of PSI and CTI.

2–13. Functions

a. The MI Company (CI), is attached to ASGP for administrative support. It provides security support for ASGP and army units or facilities located within the ASGP area. Subordinate elements of the company are located within the ASGP area at locations that facilitate counterintelligence operations. The disposition of personnel resources is based on requirements of the MI Group (CI) and the ASGP.

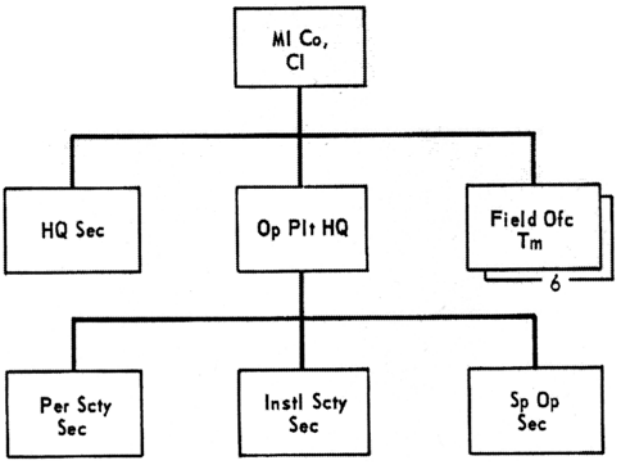


Figure 2–6. MI Company (CI).

b. The company is in the immediate vicinity of ASGP headquarters. The MI Company (CI) depends on ASGP for normal combat service support. It operates under the staff supervision of the Assistant Chief of Staff for Security, Plans, and Operations in developing the command's security program. The Assistant Chief of Staff for Security, Plans, and Operations levies requirements directly on the company. He also determines requirements for interrogation personnel or other MI specialist support and directs the utilization of such assets when they ar provided. Unit requests for CI surveys, inspections, and technical inspections go to ASGP for approval and designation of priorities for accomplishment by the company. Resulting reports go directly to the requesting unit with information copies to ASGP.

CHAPTER 3

INVESTIGATIVE LEGAL PRINCIPLES

Section I. GENERAL

3-1. Introduction

a. Although only a small percentage of counterintelligence investigations will result in the prosecution of an offender before any type of court, investigations should be conducted with an awareness of the principles of law and the rules of evidence which govern the prosecution of any criminal activity. The majority of counterintelligence investigations, particularly personnel security investigations, usually require only administrative actions, in which the actual legal requirements regarding evidence are much less stringent than in the case of court proceedings. It is nevertheless essential that counterintelligence personnel have a basic understanding of the legal principles and procedures involved in conducting an investigation, for at least three reasons:

(1) To be able to apply them in cases where they are strictly applicable;

(2) To be guided by them in cases not foreseen, but where there is no time to seek specific guidance or assistance; and

(3) To be able to recognize those cases where specific guidance or assistance must be obtained prior to proceeding further.

b. The legal principles covered in this chapter are designed to aid counterintelligence personnel in recognizing basic legal problems that might arise during an investigation and to provide guidance when evidence is sought from an accused or suspect. Basic legal principles are applied in specific investigative situations; accordingly, counterintelligence personnel should obtain advice from a staff judge advocate or legal officer to be certain that full consideration is given to recent court decisions interpreting statutes and regulations.

3-2. Evidence

a. In the broadest sense, "evidence" consists of all matters which are logically relevant to the resolution of any issue of concern. Evidence may include the testimony of witnesses, documents, objects, photographs, and sound and video recordings as well as the results of scientific tests.

b. Normally, only evidence that has been lawfully obtained is admissible in courts. "Lawfully obtained" means obtained in accordance with the legal principles of the jurisdiction concerned. Evidence which is admissible in a court proceeding is always preferred in an administrative hearing as well, because of the greater weight logically accorded it by reasonable men. The normal job of the Special Agent is to conclude his investigation with all his evidence having been lawfully obtained and admissible in court, and therefore in any board.

3-3. Criminal Offenses

a. A "criminal offense" or "crime" is generally defined as a violation of penal law. In the United States, penal law is largely statutory in form. The statute prescribing a criminal offense will usually include in some detail the acts or omissions constituting the offense.

b. The responsibility of counterintelligence personnel for investigating criminal offenses is specified in paragraph 1-3 above. Chapter 9 further discusses these offenses.

3-4. Rules of Evidence

a. Every court or board has rules concerning the evidence that it will accept. The Manual for Courts-Martial, United States, 1969 (Rev. Ed.), contains the "rules of evidence" in cases before courts-martial. The "rules of evidence" for federal and state courts may be found in legal texts or other published volumes of law. "Rules of Evidence" for administrative boards, however, to whatever extent they exist, may or may not be contained in the regulation pursuant to which the board was established. Most often, AR 15-6 applies, and, as a result, the exclusionary rules of

evidence do not apply, necessarily. In their stead evidence will be accorded weight consistent with its relevancy and materiality value.

b. Counterintelligence personnel are not expected to be experts on rules of evidence nor need they be. However, they must have sufficient knowledge of these rules to recognize the existence of evidentiary problems that arise in the course of an investigation. A general explanation of the rules of evidence is contained in the Manual for Courts-Martial, United States, 1969 (Rev. Ed.). Specific questions or problems should be directed to a staff judge advocate or other legal officer.

Section II. OBTAINING EVIDENCE

3–5. Introduction

This section discusses the constitutional rights of a suspect or accused person during an investigation and the legal ramifications when obtaining evidence by means of interviews or interrogations, search and seizure, and apprehension. A violation of legal principles involved in these means will substantially, if not completely, reduce the chances of a subsequently successful criminal prosecution, and could adversely affect administrative action.

3–6. Suspect or Accused Person

Article 31, Uniform Code of Military Justice (UCMJ), and the Fifth Amendment to the United States Constitution prohibit the US Government from compelling any person to incriminate himself or to answer any question, the answer to which may tend to incriminate him, and further that he may remain absolutely silent and not answer any questions. To be admissible against him, a confession or admission of the accused must be voluntary. A statement obtained through any use of coercion (or other unlawful influence or inducement) is termed involuntary; physical violence, confinement, and interrogation to the point of exhaustion are examples of acts which may produce involuntary statements. Courts will use a "reasonable man" test to determine whether the investigator should have considered the individual a suspect and, therefore, given an explanation of rights under article 31, UCMJ. It should be noted, however, that much derogatory information from the point of view of security suitability or even loyalty is not criminal in nature; however, the explanation of rights requirements as set forth in AR 381–130 will be adhered to in those cases required by the control office. If the individual appears confused as to his rights or status, the agent should make every reasonable effort to remove the confusion. As the factors that affect a proper warning may be changed by court decision, appropriate advice should be sought on a continuing basis from a judge advocate.

a. Interrogation or Interview of a Subject, Suspect, or Accused Person.

(1) To enforce the constitutional prohibition against psychologically coerced confessions, the Congress, the Supreme Court, and the Court of Military Appeals have acted to require Special Agents to explain legal rights to all suspects and accused persons prior to questioning. Failure to give the explanation, even to a suspect who is himself a lawyer or Special Agent, will result in the exclusion of the interviewee's statements at any trial. Therefore, prior to beginning any subject interview, the Special Agent will inform the individual of the offense of which he is accused or suspected. If the Special Agent is unsure of the precise charge, he will explain, as specifically as possible, the nature of the facts and circumstances which have resulted in the Special Agent's considering the individual to be a suspect.

(2) If a suspect waives his rights, then the Government must be prepared at trial to prove beyond a reasonable doubt that the defendant understood his rights and chose to waive them voluntarily, knowingly, and intelligently. This is a greater burden than merely showing that he was "read his rights" and did not attempt to assert them. Whether the Government can sustain this burden at trial will depend largely upon the testimony and written record furnished by the Special Agent who conducted the interview.

b. Manner in Which Explanation of Rights Is To Be Given.

(1) The explanation of rights set forth below replaces all previous explanations of legal rights, including the customary reading of Article 31, UCMJ, and the Fifth Amendment to the United States Constitution. A mere recitation of this explanation, however, does not assure that subsequent statements by the subject will be ad-

missible in court, as it must be shown that the suspect, in fact, understood his rights.

(2) The explanation of rights will not suffice if delivered in an off-hand or ambiguous manner. Nor should the tone of the interrogator's voice suggest that the explanation is a meaningless formality. It also would be improper for the interrogator to "play down" the seriousness of the investigation or "play up" the benefits of cooperating. In short, the interrogator must not, by words, actions, or tone of voice, attempt to induce the individual to waive his right to remain silent or his right to counsel. Such action will be denounced by the courts as overreaching and contrary to the purpose of the explanation of rights requirement. The same result will occur if the interrogator accidentally misstates or confuses the provisions of the explanation. Even in a purely administrative hearing, it will tend to cast Special Agent in a very unfavorable light; this, in turn, could damage his own credibility before the board. In addition, all other evidence offered will become suspect, for besides excluding illegally obtained statements, the courts may reject, and the boards are free to reject, any evidence which is not the logical product of legally obtained statements. However, tricking, deceiving, or emphasizing the benefits of cooperating with the government have not been declared illegal per se. The methods used must merely be directed toward obtaining a voluntary and trustworthy statement and not toward vitiating an otherwise proper Article 31 and fifth amendment explanation of rights.

c. The Explanation of Rights. The Special Agent will administer the following explanation of rights, making use of the parenthetical explanation when the suspect appears confused or in doubt. Any further explanations which are necessary should be given as well:

Before I ask you any questions, you must understand your rights. You are accused or suspected of ---------- *(offense) by/for* ---------- *(facts supporting offense).*

(1) *You have the right to remain absolutely silent. (You do not have to answer my questions and you do not have to make any statement. Your decision to remain silent cannot be held against you. If you decide to speak, but later change your mind, you can assert this right at that time and the interrogation will stop immediately. However any statement you may have made prior to stopping the interrogation may be used against you.)*

(2) *Any statement you make, oral or written, may be used as evidence against you in the event of a criminal trial or administrative proceeding.*

(3) (*a*) For military: *You have the right to counsult with a lawyer and to have a lawyer present with you during questioning. You may hire a lawyer at your own expense, or a military lawyer will be appointed for you at no expense to you. He will be a military lawyer of your own selection if he is reasonably available. (You have the right to both a civilian lawyer at your own expense and a military lawyer at the government's expense. Your military lawyer will either be someone you choose, provided he is reasonably available, or someone appointed who is acceptable to you.)*

(*b*) For civilians: *You have the right to consult with a lawyer before being asked any questions and to have the lawyer present with you during questioning. If you cannot afford a lawyer and want one, a lawyer will be appointed for you.*

(4) *Even if you decide to answer questions now without a lawyer present you may stop answering questions at any time or stop answering questions until you consult with a lawyer. (You do not have to answer any of my questions. You can answer some, and refuse others. You can stop the interrogation whenever you wish. If you tell me that you do not want to answer any more questions, I will not ask you any more questions and we will end the interview right there.) Also, you may request a lawyer at any time during questioning.*

d. Explanation of Rights. If the interviewee indicates that he wishes to consult with counsel for any reason, no further attempt to question him will be made until he has conferred with counsel, or has been afforded the opportunity to do so. If he decides to waive any right, such as his right to have counsel present at the interrogation or his right to remain silent, he will be informed that he may reassert the right at any time. Under no circumstances will he be questioned until the interrogator is satisfied that the individual under-

stands his rights. An effort will be made to have him sign a "Waiver Certificate" (part I, DA Form 2820, Statement of Accused or Suspect Person). If the suspect cannot afford a lawyer, the interrogation cannot resume until he has been furnished with a qualified counsel. If the suspect refuses an appointed counsel, he must have a reasonable basis for that refusal, e.g., obvious incompetency, but he may not arbitrarily declare the counsel unacceptable.

(1) *Military Suspects.* If the individual is suspected of an offense under the Uniform Code of Military Justice, and is himself subject to the Code, he is entitled to be represented by an attorney at government expense, either an Army lawyer of his own choice, or if he is not reasonably available, any detailed lawyer from the local JAG office. The suspect may also retain a civilian lawyer at his own expense. If the suspect requests his own civilian lawyer, the interrogator must allow him the opportunity to retain one before continuing the interrogation. The interrogator should assist the individual in obtaining acceptable counsel. The interrogator may not limit the suspect to one telephone call or otherwise interfere in his assertion of his rights to counsel.

(2) *Civilian Suspects.* Civilians generally are not entitled to have counsel provided for them by the armed services. If a civilian suspect demands an attorney, the interrogator must permit him to retain his own counsel. If he has no lawyer, the interrogator should aid him in obtaining legal counsel by providing him with the names and addresses of local agencies that provide legal services. Such organizations as Legal Aid and the Lawyer's Referral Service are generally listed in local telephone directories. It is to the interrogator's advantage to aid the suspect, for the interrogation can only continue when the suspect is properly represented. All questions about legal representations should be directed to the local Staff Judge Advocate.

e. Understanding of Rights. The interrogator should be prepared to question the suspect about each right. Whenever possible a verbatim recording of these questions and answers should be made. If this is not possible, the interrogator should ask the suspect to acknowledge both the explanation of rights and his understanding of his rights in writing. It is highly desirable to obtain oral and written acknowledgements. With evidence of both oral and written acknowledgements, the interrogator is well prepared to rebut any charge that the suspect did not understand his rights. Appropriate questions are:

(1) Do you understand that you have the right to have a lawyer of your choice here at this interrogation to advise and assist you?

(2) Do you also understand that your right to a military counsel means a professional lawyer and not just an officer or military superior?

(3) Do you understand that the Army will provide you with a military lawyer free of charge?

(4) Do you understand that you have the right to remain silent?

(5) Do you understand that if you decide to answer questions that you may stop whenever you choose?

(6) Do you understand that anything you say will be made a matter of written record and can be used against you in a court of law?

f. The Waiver.

(1) Evidence that the suspect made a conscious and knowledgeable decision to answer questions without a lawyer (or to speak with the assistance of a lawyer) also should be obtained in writing and through the use of the following apanswering my questions?

(*a*) Do you understand each right that I have just explained?

(*b*) Do you have any questions about your rights?

(*c*) Do you want a lawyer to assist you in answering my questions.

(*d*) Do you want to answer my questions without the assistance of a lawyer?

(2) Any written waiver should state explicity

(*a*) I (do, do not) want counsel at this

(*b*) I (do, do not) want to make a statement or answer questions.

g. Halting Interrogation After Waiver Obtained.

(1) If, at any time and for any reason, the suspect indicates in any manner that he does not want to answer any more questions or wants to see a lawyer, the interrogation should stop immediately. No attempt should be made to persuade him to change his mind.

(2) If the suspect does not want to stop the interrogation entirely, but chooses to refuse to answer some questions while answering others, the interrogator is under no obligation to continue but should certainly do so in most cases.

However, the interrogator must not end the interrogation in a manner calculated to intimidate, induce, or trick the suspect into answering questions that he does not care to answer. Under no circumstances should the interrogator ask the suspect why he decided to reassert his rights.

h. Evidence Obtained Involuntarily From a Suspect or Accused Person. Article 31 also prohibits any use of coercion, unlawful influence, or unlawful inducement in obtaining any other evidence from a suspect or accused. One general rule is that evidence which requires a suspect to exercise his mental faculties may not be compelled. Conversely, acts which do not require such exercise of the faculties may be compelled provided the means of coercion fall within the limits of fundamental decency and fairness. Each of these rules is often quite difficult to apply unless guidance is obtained from a legal officer or judge advocate.

i. Improper Explanation of Rights. If a suspect has been interrogated without a proper explanation of rights, it is possible to cure the defect and proceed after a valid explanation of rights; however, he must be told that his previous statement(s) cannot be used against him. If the suspect has not been told that his previous statements cannot be used against him, subsequent admissions might be the result of his belief that his earlier admissions were still of use to the Government. If the Special Agent does not know whether a prior statement was properly obtained, he should give this curative explanation of rights, and he may succeed in producing useful evidence notwithstanding the irregular procedure (para 140*a*, Manual for Courts-Martial, 1969 (Rev. Ed.)).

3–7. Search and Seizure

a. Search. The Manual for Courts-Martial and the fourth amendment protect individuals against "unreasonable searches and seizures of their persons, houses, papers and effects" and prescribes that this right will not be violated. The fourth amendment forms the basis for this right in our federal, state, and military court systems. An "unlawful search" is one made of a person or of his house, papers, or effects without probable cause to believe that thereon or therein are located certain objects which are subject to lawful seizure. "Probable cause" means evidence from which a reasonable, prudent, and responsible individual would conclude that an offense has been or is being committed; it means more than mere suspicion, report, or good reason to suspect, and it must have been obtained legally. Any evidence found as a result of an illegal search or seizure is inadmissible in any civil or military trial and might well taint other evidence derived from the material found, thus precluding further judicial action.

b. Legal Search.

(1) *General.*

(*a*) The legality of each search necessarily depends upon all of the facts in each situation.

(*b*) A search may be overt or covert.

(2) *Types of legal searches.*

(*a*) *Search warrant.* A search conducted in accordance with the authority granted by proper search warrant is lawful. The warrant must be issued from a court having jurisdiction over the place searched.

(*b*) *Incident to lawful arrest or apprehension.* A search of an individual's person or the clothing he is wearing, and of the property in his immediate possession or custody is lawful when conducted as an incident to the lawful apprehension of such persons.

(*c*) *To avoid removal of criminal goods.* A search is lawful when made under circumstances necessitating the taking of "Immediate Action" to prevent the removal or disposal of property believed on reasonable grounds to be criminal goods.

(*d*) *Consent search.* A search is legal when made with the freely given consent of the owner in possession of the property searched. However, such consent must be the result of a knowing and willing waiver of the rights of the individual concerned and not the mere peaceful submission to apparent lawful authority. Circumstances may dictate the need to obtain written permission of the owner to avoid later denials that permission was "freely given." Figure 3–1, provides a format which incorporates the legal requirements for consent of the owner.

(*e*) *United States property.*

1. A commanding officer having jurisdiction over the place wherein is situated property owned or controlled by the United States and under the control of an armed force may lawfully authorize the search of such property. It is immaterial whether or not the property is located in the United States or a foreign country. Such a search must also be based upon probable cause.

2. For most purposes, routine personnel security investigations and routine investigations of military or civilian personnel when entering or

CONSENT TO SEARCH

DATE:

PLACE:

TIME:

I, SAMPLE, fully understanding my right to refuse, do hereby voluntarily authorize Special Agent(s) _____ to search my _____ located (at) (in) _____

I have been informed of my rights to resist this search under paragraph 152 of the Manual for Courts-Martial, 1969 (Rev. Ed.) and under the fourth amendment to the Constitution of the United States of America. I am also aware that any evidence which is found may be used against me in a court of law.

_____

WITNESS:

_____

Figure 3-1. Consent search form.

leaving military areas are not considered to be "searches" but are treated as legitimate administrative measures. Contraband (*e.g.*, narcotics, other illegal goods, *etc.*) may be seized when discovered during a legitimate administrative inspection by gate guards or other personnel.

3. If possible, requests for authority to search should be in writing and should state sufficient factual information to support a conclusion that an offense has been committed and that certain property used in committing the offense, or obtained as a result of the offense, is located at

or within the place or property to be searched. Permission to search should be granted by indorsement to such request.

c. Search Procedures. The law of search and seizure must always be related to the actual circumstances; the advice of a staff judge advocate or legal officer should be obtained in any doubtful case. The following procedures however, are valid for any search:

(1) The Special Agent secures all available evidence that an offense has been committed and that property relating to the offense is located at a specific place.

(2) The Special Agent submits this evidence to the person with authority to order a search of the place or property. If the place or property is located in a civilian community in the United States, the evidence is submitted to the judge or court with authority to issue a search warrant. If the place or property is located in a foreign country, or occupied territory and is owned, used, or occupied by persons subject to military law or the law of war, the evidence is submitted to a commanding officer of the US Armed Forces who has jurisdiction over personnel subject to military law or to the law of war in the place where the property is located. If the place where the property is owned or controlled by the United States is under the control of an armed force wherever located, the evidence is submitted to the commanding officer having jurisdiction over the place where the property is located.

(3) The person with authority to order a search must find in the evidence probable cause to believe that the specified place or property contains specified objects subject to lawful seizure. If the person finds probable cause, he may then lawfully authorize the search.

(4) Having been so authorized, the Special Agent may search the specified place or property for the specified objects.

d. Civilian Search Warrants. To obtain a search warrant from a civilian court, counterintelligence personnel must establish liaison with local civilian police agencies who are authorized to request search warrants and perform the search.

e. Search and Seizure as Separate Factors.

(1) It is possible to have a legal seizure during an illegal search (e.g., the seizure of contraband is always legal, although the illegality of the search will prevent the use of such contraband as evidence) or an illegal seizure during a legal search.

(2) In any given judicial procedure, the first point of inquiry will be the legality of the search. If it was illegal, there will be no need to go any further; only if the search was legal will it become necessary to determine the legality of the seizure.

f. Seizure. If the search is lawful, certain objects may be seized and admitted in evidence against the suspect:

(1) Contraband. Property which is prohibited by law. Narcotics and untaxed liquor are examples.

(2) Fruits of the crime. Property which has been wrongfully taken or possessed.

(3) The tools or means by which the crime was committed.

(4) Other evidence of the crime, such as clothing.

3–8. Apprehension

a. "Apprehension" (called "arrest" in many civilian jurisdiction) is the taking of a person into custody. A person has been taken into custody or apprehended when his freedom of movement is restricted in any substantial way.

b. Authorized individuals may apprehend persons subject to the UCMJ upon reasonable belief that an offense has been committed and that the person arrested committed the offense. This is apprehension for probable cause.

c. The authority of the Special Agent to apprehend is specified in Article 7, UCMJ; paragraph 19*a*, Manual for Courts-Martial, United States, (Rev. Ed.), and AR 381–103.

d. To cause the apprehension of a DOD affiliated civilian suspect, counterintelligence personnel must establish liaison with civilian police who have arrest authority. The basis for arrest by civilian police will depend on the particular jurisdiction concerned. In general, civilian police make arrests either by a warrant upon a showing of probable cause to a magistrate or without a warrant, but for probable cause, when a felony or misdemeanor is committed or attempted in their presence, or if a reasonable belief exists that the person committed the offense.

e. Incident to a lawful apprehension, the suspect's person, clothing that he is wearing, and

property in his immediate possession or control may be searched. Any weapon or means of escape may be lawfully seized in addition to those objects specified in 3–7*b*(2).

3–9. Results of Unlawfully Obtained Evidence

Evidence unlawfully obtained through any of the ways covered in this section is inadmissible as evidence against the suspect or accused; any other evidence subsequently obtained as a result of this evidence is likewise inadmissible.

3–10. Unlawful Seizures

Whether the use of a particular item in evidence violates an individual's rights is usually a complex and technical determination. Advice should be obtained from the local judge advocate or as specified by the unit in its SOP. The mere fact that such an object is not related to the purpose for which the search was undertaken does not necessarily make the seizure unlawful.

3–11. Authority to Search

a. All searches, overt or covert, require prior approval from the unit headquarters or as specified by SOP.

b. Agent Reports revealing covert searches will be classified at least CONFIDENTIAL.

Section III. THE SWORN STATEMENT

3–12. General

In the course of counterintelligence investigations, the Special Agent frequently finds it necessary to request a statement from a person who has personal knowledge crucial to an investigation. The best means of making an accurate and complete record of this information is the sworn statement. A sworn statement (sometimes called an affidavit) is a written statement of facts voluntarily made by a person competent to be a witness who affirms under oath that the contents of the statement are true. Counterintelligence Special Agents are authorized by Article 136(b), UCMJ, to administer the oath in conjunction with sworn statements taken in the course of their duties.

3–13. Application

a. Special Agents will request sworn statements from sources whenever credible derogatory information is given or whenever credible nonderogatory information which tends to rebut previously obtained credible derogatory information is given. Special Agents will request sworn statements from subjects, suspects, and accused persons whenever such persons are interviewed. Appropriate forms are published for this purpose. However, no special form is required to make a sworn statement admissible in evidence, but Department of the Army policy requires preparation of a sworn statement on DA Form 2820 (Statement by Accused or Suspect Person). Whenever a Special Agent prepares a sworn statement for a source or witness he will use DA Form 2823 (Witness Statement), which contains no reference to accusations, Article 31, UCMJ, or the Fifth Amendment to the Federal Constitution.

b. In some instances an affiant (or his counsel) may prefer to submit his own sworn statement following his own format. He may do so, but the Special Agent will endeavor to make certain that the statement is complete. It is recommended that the Special Agent supply the affiant with the appropriate blank forms for this purpose.

3–14. Uses for Sworn Statements

Sworn statements are requested to help Special Agents and case control officers to appraise the credibility of sources for investigative purposes and to protect the interests of sources and subjects by providing an accurate record of their interview or interrogation. Sworn statements also furnish means of persuading magistrates, US Commissioners, and commanders to authorize searches, apprehensions, or arrests. In addition, they provide loyalty adjudicators, clearance issuing authorities, and personnel officers with credible information from which to determine the loyalty and suitability of military and civilian personnel. On occasion sworn statements are used in trials to prove confessions made out of court, to refresh a witness recollection, and to assist government attorneys in impeaching defense witnesses or to support government witnesses who have been accused of telling inconsistent stories.

3–15. Contents of a Sworn Statement

A complete sworn statement normally will contain the following information:

a. The name of the person making the statement (called the "affiant"), his social security account number, military unit, or civilian address.

b. The place at which the oath affirming the statement was administered (the city and state is sufficient).

c. The date the statement was affirmed.

d. An acknowledgment, if appropriate, that a full explanation of rights was given.

e. Statements, if appropriate, showing that any decision not to exercise a legal right was made with full knowledge of the nature of the suspicion, accusation, or investigation, without any coercion, unlawful influence, or unlawful inducement.

f. An association paragraph (similar to that found in the accompanying Agent Report).

g. Relevent probative facts (the body of the statement).

h. A concluding statement (technically the "affidavit") by the affiant, supplemented by his initials at the bottom of each page, acknowledging that he has written, read, or (if blind or illiterate) heard the statement, understands it, affirms it to be true, has approved (by initialing) all corrections, and (if not stated previously) makes the statement freely without hope of benefit or reward, fear of punishment, and without being subject to coercion, unlawful influence, or unlawful inducement.

i. Signature of the affiant.

j. A statement (technically the "jurat") by the official administering the oath attesting that the statement was "sworn to and subscribed before me this _____ day of _____, 19____, at _____".

k. Signature of the Special Agent administering the oath.

l. Special Agent's authority to administer such oath (Article 136(b), UCMJ).

3–16. Explanation of Rights—To Whom Given

a. The Constitution and the Uniform Code of Military Justice require that an explanation of rights be administered to all subjects, suspects, and accused persons prior to questioning.

b. Sources, such as listed and developed character references, will be given an explanation of rights, if the sources offer information which tends to incriminate them. At that time, the interview will be suspended until a full explanation of rights has been given and a valid Waiver Certificate (part 1, DA Form 2820) has been obtained.

c. When a witness or informant confesses before he was considered a suspect, the Special Agent may have to explain in court why no explanation of rights was administered. His explanation will be satisfactory if he can clearly show that at the time of the confession:

(1) the Special Agent did not suspect the subject of a crime,

(2) the atmosphere in which he was questioned was not coercive, or

(3) that the confession came as a spontaneous outburst from the subject.

d. Elicitation of information from unsuspecting suspects by undercover agents need not be exposed by the administration of an explanation of rights as long as such elicitation was not direct questioning of the suspected offense and because they normally do not take place in a coercive atmosphere. However, in cases where it is important to gain competent evidence, the advice of a judge advocate should be first solicited, as this area of law is subject to changing technical rules.

3–17. Waiver of Legal Rights

a. If the subject, suspect, or accused person does understand his rights, the Special Agent should then specifically ask him:

(1) "Do you want counsel?"

(2) "Do you consent to being questioned?"

b. If it is desired to obtain competent evidence, the person questioned should always complete a "Waiver Certificate" (Part 1 of DA Form 2820). The Special Agent should also establish in the record of the interview (i.e. through Agent Reports, witnesses, and/or tape recordings): that the full explanation of rights was given; that it was understood by the subject, suspect, or accused person (by his own acknowledgment); and that the waiver of a legal right, if any, was made freely, with full knowledge of the charges, the consequence of not remaining silent, and with the awareness that the right or rights waived could have been reasserted at any time during the interrogation.

c. The interrogator should ask the following question of the individual prior to questioning

and will include the question in Part II, Sworn Statement, immediately following the word "oath:"

QUESTION: Before you make any statement I would like to ask you if you understand that the word "counsel" used in Part I, above, means lawyer or attorney or attorney-at-law and do you understand that by stating "I do not want counsel" you mean that you do not want a lawyer or an attorney or an attorney-at-law present during your questioning, even though such an attorney or lawyer would be furnished to you free of charge, and if you state "I do want counsel" it means you want a lawyer or an attorney or an attorney-at-law present during your questioning. Do you also understand that the words "military counsel" as used in Part I, above, means lawyer or attorney in the military service and not a "military superior?"

ANSWER:

3–18. Format

a. All sworn statements should be written in the first person. The vocabulary and grammar of the affiant should be used throughout even if it is vulgar. Parenthetical expressions, official sounding abbreviations, military-style data, and investigative jargon or capitalization (such as "fnu", "SUBJECT", etc.) should be avoided. This practice insures that the writing reflects the witness' intentions and therefore it is more likely that courts and administrative agencies will give weight to its contents.

b. Sworn statements can be written in several formats, including: the narrative, the question-answer, and the combined question-answer-narrative. Sworn statements prepared by or for sources (such as listed or developed character references) usually will be written in the narrative. This technique is the least time-consuming for the Special Agent and the easiest for the source who normally is asked to complete a handwritten statement before the interview is terminated. When the source tends to be vague in his expression of crucial information, the Special Agent will employ the question-answer technique to the extent necessary to assure an accurate and complete statement.

c. In all sworn statements prepared for subjects, suspects, and accused persons, the Special Agent will use the question-answer or the question-answer-narrative format, thereby assuring a substantially verbatim record for use at subsequent adjudications and trials.

d. It is important that any statement obtained contain as much detail as possible to minimize the risk that the statement could be explained or repudiated later to avoid criminal implications.

3–19. Initials, Marks, and Margins

The initials of the affiant at appropriate places on the face of the statement insure against repudiation at a later date. By initialing the statement the affiant adopts it as his own. Typewritten statements prepared by the Special Agent should be initialed—before the first and after the last word of the statement on each page; above or beside each erasure, correction, or crossout; and at the bottom of each page. Handwritten statements need not be initialed, except where crossouts, corrections, and erasures occur. Further, to avoid charges of tampering, the Agent should type close to all margins, line out unused spaces, and draw in margins as appropriate. It is further suggested that the affiant initial lined-out areas.

3–20. Rumor, Second-Hand Information, and Potential Hearsay

Sworn statements should be requested primarily from persons who have direct, personal knowledge of the facts. If the information offered was told to the affiant by someone else, the Special Agent will attempt to obtain a sworn statement from the originator. When the Special Agent has the opportunity to assist the affiant in preparing the statement, he should tactfully attempt to have the statement distinguish between first-hand and second-hand information and state clearly the sources of all information. At the same time, the Agent should not refuse to accept sworn statements prepared by the affiant which fail to make this distinction. Inadmissible remarks can be edited out by the judge or law officer before the statement is read to the jury or court-martial. To assist other investigators and loyalty and suitability adjudicators, however, the Agent should question the affiant about each source of information and note the source in the accompanying agent report.

3–21. Opinions and Conclusions

Opinions and conclusions tend to discredit the reliability of a sworn statement. The function of a court-martial, jury, or other adjudicative board is to form its own opinion and its own conclusions from verifiable facts. Therefore, conclusions about the subject's suitability for a "position of trust and responsibility" have no place in a sworn

statement. Similarly, speculations by the source about the subject's possible motives, income, activities, etc., should be avoided whenever possible. Instead, the Special Agent should attempt to obtain the facts upon which such opinons are based, and persuade or guide the affiant to substitute the facts for the opinions. In this way, the fact-finders are not distracted by irrelevant conclusions and the subject, suspect, or accused person is guaranteed a fair administrative or judicial decision. Following this procedure in no way hampers the investigation; opinions and conclusions are recorded in the Agent's Report.

3–22. Handwritten Statements

A statement taken at the time of the interview or interrogation should be in the affiant's own handwriting (DA Forms 2820 and 2823 should be used). Nevertheless, typewritten statements are preferred for administrative convenience. Therefore, if the handwriting of the affiant is difficult to read, the Special Agent should have it typed and return it to the affiant for his signature, under oath. Once this is accomplished, the two statements should be included in the record of the investigation. Under no circumstances should the original handwritten statement be destroyed.

3–23. Statement Taken in Foreign Countries

The procedures for taking statements of US personnel outside the United States do not differ from those employed for taking statements in CONUS. When statements are taken form the nationals of a host country for use by that country as well as by the United States, the statements should conform to that country's requirements as well. In such instances it should be remembered that it is the completeness, and not the form, that determines the validity of a sworn statement under American law. A judge advocate should be contacted as to the procedures and legal limitations involved in administering an oath to foreign nationals.

3–24. Statements in a Foreign Language

When a sworn statement is taken from a person who does not speak English, an interpreter-translator must be used. He will assist in the preparation of copies of the sworn statement in each language. Both statements must include a certification by the interpreter-translator that his renditions of the affiant's statements and the Special Agent's questions are accurate and complete and that the interpreter-translator is competent to make the translation. An appropriate certification is: "I affirm that I am fully conversant in both the English and languages and that my interpretation and translation in preparation of this sworn statement have been accurate and complete." The Special Agent must administer the oath of truthfulness (para 3–27) to the interpreter-translator and attest to its administration by signing a jurat (the "Sworn to and subscribed before me. . . ." paragraph) which will be entered on the sworn statement following the interpreter-translator's certificate.

3–25. Oath of Truthfulness

a. Prior to asking the affiant any questions, but following the explanation and acknowledgment of legal rights, the Special Agent will administer the oath. An appropriate oath is: "Do you affirm that the statements you are about to make are the truth, the whole truth, and nothing but the truth?" Additional remarks such as "So help you God" are unnecessary and may, in the case of an agnostic or an atheist, be offensive.

b. If the affiant brings in a sworn statement of his own making, the Special Agent will administer the following oath: "Do you affirm that the statement you are about to sign is the truth, the whole truth, and nothing but the truth?"

3–26. Unsworn Statements

If a person refuses to make the statement under oath, the Special Agent should not attempt to persuade him to change his mind. However, the Agent may discuss the meaning of the oath and explain that there are severe penalties for false swearing or making a false official statement, and that an unsworn statement also may be used as evidence. In a loyalty action every effort should be made to obtain a sworn statement from the subject involved.

3–27. Unsigned Statements

When a person makes a oral statement under oath but refuses to sign a statement prepared from his remarks, the Special Agent should not attempt to persuade him to change his mind. The Agent should explain, however, that it is the oath, and not the signature, that makes a statement a sworn statement. Therefore, if the affiant has any reservations about the accuracy or completeness of the sworn statement he gave orally, he should consider making another statement under oath for the purpose of extending or clari-

fying his remarks. If the affiant chooses to make a supplementary sworn statement, the Agent should repeat the explanation of rights and obtain another completed waiver form. An oral confession or admission can be used in court if it is corroborated even though not sworn to or reduced to writing. It is absolutely necessary that the Special Agent make detailed and accurate notes for use as support testimony in court.

3–28. Examples

The following are examples of properly executed sworn statements.

STATEMENT BY ACCUSED OR SUSPECT PERSON
(AR 195-10)

PLACE	DATE	TIME	FILE NUMBER
(Enter City and State)	(Date prepared)	(Time prepared)	(Dossier Number)
LAST NAME, FIRST NAME, MIDDLE NAME	**SOCIAL SECURITY ACCOUNT NO.**		**GRADE**
(Self-explanatory)	Social Security Account Number		(Enter Grade or N/A)
ORGANIZATION OR ADDRESS			
(Self-explanatory)			

PART I - WAIVER CERTIFICATE

I HAVE BEEN INFORMED BY (Name of Special Agent)
OF Military Intelligence, US Army
THAT HE WANTS TO QUESTION ME ABOUT [1]
OF WHICH I AM ACCUSED OR SUSPECTED. HE HAS ALSO INFORMED ME OF MY RIGHTS.

I UNDERSTAND THAT I HAVE THE RIGHT TO REMAIN SILENT AND THAT ANY STATEMENT I MAKE MAY BE USED AS EVIDENCE AGAINST ME IN A CRIMINAL TRIAL.

I UNDERSTAND THAT I HAVE THE RIGHT TO CONSULT WITH COUNSEL AND TO HAVE COUNSEL PRESENT WITH ME DURING QUESTIONING. I MAY RETAIN COUNSEL AT MY OWN EXPENSE OR COUNSEL WILL BE APPOINTED FOR ME AT NO EXPENSE TO ME. IF I AM SUBJECT TO THE UNIFORM CODE OF MILITARY JUSTICE, APPOINTED COUNSEL MAY BE MILITARY COUNSEL OF MY OWN CHOICE IF HE IS REASONABLY AVAILABLE.

I UNDERSTAND THAT EVEN IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT HAVING COUNSEL PRESENT, I MAY STOP ANSWERING QUESTION AT ANY TIME. ALSO, I MAY REQUEST COUNSEL AT ANY TIME DURING QUESTIONING.

I *(DO) (DO NOT)* WANT COUNSEL. [2]
I *(DO) (DO NOT)* WANT TO MAKE A STATEMENT AND ANSWER QUESTIONS.

(Signature of Deponent)
(Signature of Person To Be Questioned)

INTERROGATOR: (Self-explanatory)
(Signature)

WITNESS: (Self-explanatory)
(Signature)

(Self-explanatory)
(Typed Name and Organization)

(Self-explanatory)
(Typed Name and Organization)

PART II - SWORN STATEMENT

I, (Enter Deponent's Name) WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q: Before you make any statement I would like to ask you if you understand that the word "counsel" used in Part I above, means lawyer or attorney or attorney-at-law and do you understand that by stating "I do not want counsel" you mean that you do not want a lawyer or an attorney or an attorney-at-law present during your questioning, even though such an attorney or lawyer would be furnished to you free of charge, and if you state "I do want Counsel" it means you also understand that the words "military counsel" as used in Part I above, means lawyer or attorney in the military service and not a "military superior"?[3]

[1]Enter appropriate phrase; e.g., "my background," "my qualification of DD Forms 98 and 398," "my association with John Jones, a member of the CPUSA," or the name of the individual or incident being investigated.

[2]When deponent waives his right to counsel, he will strike out the word "(do)" waiving this right, and initial above these strikeovers.

[3]Begin statement with above question and have deponent initial above the first word of the statement; above any corrections or strikeovers in the body of the statement; and above the last word of the statement.

[4]Enter total number of pages of the statement.

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT	
(Leave blank)	(Self-explanatory)	[4] PAGE 1 OF _____ PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF__TAKEN AT__DATED__CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE__OF__ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 2820 1 OCT 57 REPLACES DA FORM 19-24, 1 SEP 62, WHICH IS OBSOLETE.

Figure 3–2 Sworn statement format.

STATEMENT *(Continued)*

SAMPLE

AFFIDAVIT

I, (Enter Deponent's Name) HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 5. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Self-explanatory
(Signature of Person Making Statement)

WITNESSES:

(Signature)

(NAME TYPED)

(Special Agent or if civilian, give address)
ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, 19____

at City and State

(S/A Signature)
(Signature of Person Administering Oath)

(S/A NAME TYPED) (Special Agent)
(Typed Name of Person Administering Oath)

Article 136(b), UCMJ
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT
(Have deponent Initial Here)

5 PAGE OF PAGES

Figure 3–2—Continued.

STATEMENT OF (Name of Deponent) Taken at (City and State), (Date) (continued).

(When additional space is needed, continuation sheets (bond paper) will be used. The above heading will appear on each additional sheet. Deponent's initials and "page___of___pages" will also be typed on each additional page as illustrated below. At the conclusion of the statement, regardless of the number of pages, the following entry will be made:)

////////////////////////////////END OF STATEMENT////////////////////////////////

(HAVE DEPONENT INITIAL)

SAMPLE

DEPONENT'S INITIALS_____ [5]PAGE_ OF_ PAGES

Figure 3–2—Continued.

STATEMENT BY ACCUSED OR SUSPECT PERSON
(AR 195-10)

PLACE	DATE	TIME	FILE NUMBER
Presidio of San Francisco, California	2 Feb 72	1500	BB 35 67 98
LAST NAME, FIRST NAME, MIDDLE NAME	**SOCIAL SECURITY ACCOUNT NO.**		**GRADE**
Neuman, Alfred E.	458-58-5821		CPT
ORGANIZATION OR ADDRESS			
US Army Repository Group (3000), Presidio of San Francisco, California			

PART I - WAIVER CERTIFICATE

I HAVE BEEN INFORMED BY Elliot A. Ness, Special Agent
OF Military Intelligence, US Army
THAT HE WANTS TO QUESTION ME ABOUT an omission and possible falsification of an SPH
OF WHICH I AM ACCUSED OR SUSPECTED. HE HAS ALSO INFORMED ME OF MY RIGHTS.

I UNDERSTAND THAT I HAVE THE RIGHT TO REMAIN SILENT AND THAT ANY STATEMENT I MAKE MAY BE USED AS EVIDENCE AGAINST ME IN A CRIMINAL TRIAL.

I UNDERSTAND THAT I HAVE THE RIGHT TO CONSULT WITH COUNSEL AND TO HAVE COUNSEL PRESENT WITH ME DURING QUESTIONING. I MAY RETAIN COUNSEL AT MY OWN EXPENSE OR COUNSEL WILL BE APPOINTED FOR ME AT NO EXPENSE TO ME. IF I AM SUBJECT TO THE UNIFORM CODE OF MILITARY JUSTICE, APPOINTED COUNSEL MAY BE MILITARY COUNSEL OF MY OWN CHOICE IF HE IS REASONABLY AVAILABLE.

I UNDERSTAND THAT EVEN IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT HAVING COUNSEL PRESENT, I MAY STOP ANSWERING QUESTION AT ANY TIME. ALSO, I MAY REQUEST COUNSEL AT ANY TIME DURING QUESTIONING.

I [XXX] *(DO NOT)* WANT COUNSEL.
I *(DO)* [XXXXXX] WANT TO MAKE A STATEMENT AND ANSWER QUESTIONS.

Alfred E. Neuman
(Signature of Person To Be Questioned)

INTERROGATOR: Elliot A. Ness
(Signature)
Elliot A. Ness, 116th MI Group
(Typed Name and Organization)

WITNESS: Lucius Pollock
(Signature)
(Typed Name and Organization)

PART II - SWORN STATEMENT

I, Alfred E. Neuman---------- WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q: Before you make any statement I would like to ask you if you understand that the word "counsel" used in Part I above, means lawyer or attorney or attorney-at-law and do you understand that by stating "I do not want counsel" you mean that you do not want a lawyer or an attorney or an attorney-at-law present during your questioning, even though such an attorney or lawyer would be furnished to you free of charge, and if you state "I do want Counsel" it means you want a lawyer or an attorney or an attorney-at-law present during your questioning. Do you also understand that the words "military counsel" as used in Part I above, means lawyer or attorney in the military service and not a "military superior"?----------

A: Yes, I understand that the word "counsel" means lawyer or attorney-at-law, and that I may have a lawyer present at my questioning if I so desire.----------

Q: Please state your full name, grade, service number, organization, duty station, and place of birth.----------

A: Alfred E. Neuman, Captain, 458-58-5821, US Army Repository Group, Presidio of San Francisco, California, born 22 January 1945 in San Francisco.----------

Q: Captain Neuman, it is the policy of the Department of the Army to allow the subject of a personnel security investigation every reasonable opportunity to refute, explain, or mitigate the effect of derogatory information that has arisen during the course of an investigation. Information has been received that you were arrested on 11 November 1968 in San Francisco, California, and charged with responsibility for a hit-and-run.

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 2 PAGES
	aEN	

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF__TAKEN AT__DATED__CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE__OF__PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 2820 1 OCT 67 REPLACES DA FORM 19-24, 1 SEP 62, WHICH IS OBSOLETE.

Figure 3–3. Example of a completed DA Form 2820.

STATEMENT (Continued)

AEN

accident. You did not list this arrest on your Statement of Personal History, DD Form 398, dated 10 November 1970. The purpose of this interview is to determine why you omitted this arrest. Do you understand the purpose of this interview?----------

A: I do.----------

Q: I now show you a copy of DD Form 398 dated 10 November 1970. Do you recall preparing this form?----------

A: Yes, I do.----------

Q: Is this your signature on this form?----------

A: Yes.----------

Q: AEN Why did you not list your 11 November 1968 arrest? AEN----------

A: It is true I was arrested in 1968 for hit and run. However, the charges were dropped. The case never even went to trial. Three days after I had been arrested, the police decided I was telling the truth when I said I did not realize I had hit someone. As it turned out, the victim was a drunken derelict who had walked into the right rear side of my car as I was making a right hand turn on a dark rainy night. The police even found a witness who said that the victim walked into my car and that I was not speeding.----------

Q: Are you aware of the fact that question 18 of DD Form 398 asks if you have ever been detained or arrested, regardless of whether or not you were convicted or ever went to trial?----------

A: That is not the way I interpreted the question, especially since the arrest was really not justified and I never spent any time in jail.----------

Q: Is there anything which you would like to add to this statement?----------

A: No.////////////////////////////End of Statement////////////////////////////

AEN

NOT USED AEN

AFFIDAVIT

I, Alfred E. Neuman----------HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Alfred E. Neuman
(Signature of Person Making Statement)

WITNESSES:

Lucius Pollock

ORGANIZATION OR ADDRESS

115th M.I. Group

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 2 day of February, 19 72 at The Presidio of San Francisco, California

Elliot A. Ness
(Signature of Person Administering Oath)

Elliot A. Ness
(Typed Name of Person Administering Oath)

Article 136(b), UCMJ
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT AEN

PAGE 2 OF 2 PAGES

Figure 3–3—Continued.

WITNESS STATEMENT

For use of this form, see AR 195-10 - TB PMG 3; the proponent agency is Office of the Provost Marshal General.

PLACE	DATE	TIME	FILE NUMBER
Fort Huachuca, Arizona 85613	13 Jan 72	1300	AB 971-666
LAST NAME, FIRST NAME, MIDDLE NAME	**SOCIAL SECURITY ACCOUNT NO.**		**GRADE**
FINK, Leonard D.	014-30-7963		DAC, GS-12
ORGANIZATION OR ADDRESS			
Fort Huachuca Security and Plans Office			

SWORN STATEMENT

I, Leonard D. Fink, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

I first met CPT Robert H. Humphrey in May 1965 when I was assigned to the Fort Huachuca Security and Plans Office. He was the Plans Officer for the Office. We worked together until August 1968 when he was reassigned somewhere in Asia. I have not seen him since and we have not communicated in any way. While he was stationed at Fort Huachuca, we visited in each others homes on an alternate weekly basis. One day in January 1968, I saw Humphrey placing classified defense information, to include SECRET material, into his briefcase. I questioned the necessity of taking classified defense information home, and I pointed out that it was in violation of post regulations. Humphrey told me that he frequently worked on plans at home so that he would not have to work at the office at night, but Humphrey assured me that he secured the material in his home so that no unauthorized personnel could read or obtain copies of it. I did not repeat this to our superior, COL William A. Custer, Chief, Security and Plans, because I was confident that Humphrey was careful with the handling of classified defense information while it was out of the office. I also knew that Humphrey's hobby was photography with miniature cameras and that he maintained his own darkroom in a storage closet of his quarters. Additionally, I was aware that in August 1968 when Humphrey was departing from Fort Huachuca that the classified cage easily cleared him and that he had no outstanding documents charged to him. I am unaware of any altered certificates of destruction during any period in which he was the Destruction Officer for the Fort Huachuca Security and Plans Office. I know of no foreign friends or relatives that he may have. I consider Humphrey to be an honest, loyal officer in the US Army.

SAMPLE

NOT USED

INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF 1 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF___ TAKEN AT___ DATED___ CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE___ OF___ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 1 JAN 72 2823

Figure 3–4. Example of a completed DA Form 2823.

STATEMENT *(Continued)*

SAMPLE NOT USED LDF

AFFIDAVIT

I, Leonard D. Fink HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2 . I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Leonard D Fink
(Signature of Person Making Statement)

WITNESSES:

William R. Cop
William R. Cop

ORGANIZATION OR ADDRESS

115th MI Group

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 13th day of January , 19 72 at Fort Huachuca, Arizona

Glenn F. Beach
(Signature of Person Administering Oath)

Glenn F. Beach
(Typed Name of Person Administering Oath)

Article 136(b), UCMJ
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT LDF

PAGE 1 OF 2 PAGES

Figure 3–4—Continued.