

HEADQUARTERS  
5TH SPECIAL FORCES GROUP (AIRBORNE), 1ST SPECIAL FORCES  
APO San Francisco 96240

AVGB-JA

23 July 1967

SUBJECT: Legal Handbook

TO: SEE DISTRIBUTION

1. This legal Handbook is designed to provide guidance and assistance to individuals within 5th SF Gp (Abn), 1st SF, who are appointed or directed to conduct investigations, courts and other actions of a legal nature within the organization.

2. Information contained in the handbook is to be used as a guide and does not relieve appointed action officers of the responsibility of knowing and complying with the current directives and regulations pertaining to a specific action.

3. Staff sections with primary area of interest will prepare changes to this handbook as required to insure the latest changes to regulations and directives are included.

FOR THE COMMANDER:



JOHN T. BURCH  
CPT, JAGC  
Group Judge Advocate

DISTRIBUTION:  
Special

CHAPTER I

DEFENSE COUNSEL

SECTION I

GENERAL

1. Purpose: To provide a practical guide to be used by individuals appointed to the duty of Defense Counsel for accused personnel being tried before a Special Court-Martial.

2. References:

- a. Manual for Courts-Martial, US, 1951, w/Addendum, 1963
- b. DA Pam 27-9
- c. DA Pam 27-10
- d. DA Pam 27-15
- e. DD Form 458
- f. 5th SFG (Abn), Reg 27-1

3. Responsibilities:

a. The Commanding Officer, 5th Special Forces Group (Abn) is convening authority for all Special Courts-Martial within the 5th Special Forces Group (Abn), 1st SF.

b. S-1, 5th SF Gp (Abn), publishes Court-Martial Appointing Orders appointing the members of the court, Trial Counsel and Defense Counsel as directed by the Convening Authority.

c. Defense Counsel. Conducts the defense of the accused during trial and represents him in all action pertinent to the trial.

d. Group Judge Advocate processes all administrative matters relative to the trial and provides assistance and advice as requested to the Defense Counsel.

SECTION II  
ACTIONS

4. Procedures for Defense Counsel:

- a. Upon receipt of orders, insure a minimum qualification of equal status with trial counsel (Art 27c, UCMJ).
- b. Obtain a copy of the Charge Sheet (DD Form 458) and the Court-Martial Appointing Order from the Trial Counsel. Determine its correctness. Obtain a copy of the allied papers from the Trial Counsel (Statements, documentary evidence, letters of transmittal). Read carefully.
- c. Inform the accused you have been appointed to defend him. Insure that he understands his right to request civilian or individual military counsel of his choice. If he desires that you defend him, advise him of the confidential nature of any communications between you in connection with the case and insure that you obtain the full and true story from him.
- d. Advise the accused, if enlisted, of his right to request enlisted members of the court (Art 25c, UCMJ). Prepare and submit the request to the convening authority if he so elects.
- e. Obtain reference folder from the Group Legal Section and refer to DA Pam 27-10 and Paragraphs 40-42, 44-48, 50-51, 53-54, 56-78, 112-117, 120-123, 136-154, MCM, 1951, as changed by Addendum, 1963.
- f. Locate all available evidence and witnesses. Question all witnesses closely. Determine the admissibility into evidence of all documents and testimony.
- g. Determine the accused's plea; prepare the defense.
- h. Conduct the defense in accordance with references above and procedural guides (DA Pam 27-15).
- i. If a finding of guilty is returned and after sentence, prepare a recommendation for clemency (Par 77 and 48j (1), MCM).
- j. Prepare appeal, if applicable (Par 48j (2), MCM). Speed is of the essence in submitting any appeal. Notify the convening authority in writing that an appeal will be submitted so that he does not take action on the case before considering the appeal.
- k. Examine and sign the formal record of trial when satisfied that it fairly and accurately reflects the proceedings.

## CHAPTER 2

### TRIAL COUNSEL

#### SECTION I

##### GENERAL

1. Purpose: To provide a practical guide to be used by individuals appointed to the duty of Trial Counsel to efficiently accomplish the duties of prosecution. This guide refers only to duties as they apply to Special Court-Martial.

2. References:

a. Manual for Courts-Martial, US, 1951, w/Addendum, 1963.

b. S-1, 5th Special Forces Group publishes Court-Martial Appointing Orders appointing the members of the court, Trial Counsel and Defense Counsel as directed by the convening authority.

c. Trial Counsel. Prosecute, in the name of the United States, all accused persons referred to him for trial.

d. Group Judge Advocate processes all administrative matters relative to the trial and provides assistances to the Trial Counsel to set up court room and conduct of trial. Provides legal assistance and advice as required

## SECTION II

### ACTIONS

#### 4. Procedures for Trial Counsel:

a. Upon receipt of orders, obtain reference folder from the Group Judge Advocate, and refer to all references, with particular emphasis on DA Pam 27-10 and Paragraphs 40-42, 44-48, 50-51, 53-54, 56-78, 112-118, 120-123, 136-154, MCM, 1951, as changed by Addendum, 1963.

b. Review the charges (DD Form 458) for errors; serve the charges on the accused by giving a copy of the charges to him and reading the charges. Obtain the allied papers (statements, documentary evidence, letters of transmittal, etc). Read carefully. Give one copy to the Defense Counsel.

c. Notify the appointed Defense Counsel of service of charges.

d. Locate all available evidence (MP reports, extracts of morning reports, Article 32 Investigations, etc.) and witnesses, and prepare for the trial. Question each witness closely. Determine exactly how you are going to get each bit of proof admitted into evidence. (For instance, an MP Report is normally hearsay and not admissible, but may lead to admissible evidence). Compare the available evidence with the elements of proof to insure that you have sufficient evidence to prove your case.

e. Coordinate with President of the Court and Defense Counsel the administrative details of trial (place, date, time, uniform, etc.). Arrange for presence of all witnesses, for the prosecution and defense. Determine if the accused, if enlisted, desires enlisted court members (Art 25c, MCM). The presence of the accused, with guard if in pre-trial confinement, is the responsibility of the trial counsel.

f. Convene and swear the court. Conduct the trial following procedural guides in DA Pam 27-10 and 27-15.

g. After the findings (and sentence, if applicable), prepare the Record of Trial in accordance with Appendix 10, MCM.

#### 5. Reports:

a. Report the results of trial to the convening authority immediately after adjournment.

b. Complete and forward Record of Trial and all accompanying papers to the convening authority within one working day after adjournment for approval or action as he may deem appropriate (Par 44e (2)).

c. A report of the status of all cases on hand will be forwarded to the convening authority (ATTN: Judge Advocate) weekly (Par 44e (1), MCM).

CHAPTER 3

SUMMARY COURT-MARTIAL

SECTION I

GENERAL

1. Purpose: To provide a practical guide to be used by individuals appointed to the duty of Summary Court Officer to efficiently exercise military justice.

2. References:

- a. Manual for Courts-Martial, Us, 1951, w/Addendum, 1963.
- b. DA Pam 27-7
- c. DA Pam 27-9

3. Responsibilities:

a. The Commanding Officer, 5th Special Forces Group (Abn), is convening authority for all Summary Courts-Martial within the 5th Special Forces Group.

b. S-1, 5th SF Gp (Abn), publishes Court-Martial Appointing Orders appointing Summary Courts-Martial as directed by the convening authority.

c. Summary Court-Martial tries all cases referred to him for trial by the convening authority.

d. Group Judge Advocate processes all administrative matters relative to the trial and provides assistance to the Summary Court-Martial as requested; maintains a folder of references and guides to be used by Summary Courts-Martial. Provides legal assistance and advice as requested.

ANNEXES

4. Procedures by Summary Court-Martial:

a. Upon receipt of appointing orders, become familiar with duties outlined in Chapter XIV, and Appendix II, ISM.

b. Upon notification for trial, obtain reference folder for Summary Court from the Group Judge Advocate and refer to information contained in the folder and DA Pam 27-7 for details and requirements of trial procedure.

c. Upon receipt of Charge Sheets (DD Form 455) from the Group Legal Section, check the form to insure all entries are complete and correct. Notify the Group Legal Section immediately of any irregularities.

d. Set a date and place of trial.

e. Locate all available evidence and witnesses.

f. Notify the accused and all witnesses of the date and place of trial.

g. Conduct trial in accordance with cited references.

h. Prepare Report of Result of Trial in accordance with Chapter VII and appendix II, DA Pam 27-7.

i. If the accused is found guilty and after sentence, inform the accused of his rights to appeal and the procedures.

5. Reports:

a. Report results of trial immediately after adjournment to the convening authority.

b. Submit completed Report of Result of Trial to convening authority through the Group Legal Section within 24 hours after adjournment.

CHAPTER 4  
SUMMARY COURT OFFICER (EFFECTS)  
SECTION I  
GENERAL

1. Purpose: To provide a practical guide to be used by individuals appointed to the duty of Summary Court Officer for the disposition of personal effects of deceased, missing, or evacuated personnel.

2. References and applicable forms:

- |                        |                 |
|------------------------|-----------------|
| a. AR 37-103           | h. 41 Stat 809  |
| b. AR 608-12           | i. DD Form 1252 |
| c. AR 643-55           | j. DD Form 1299 |
| d. AR 643-55           | k. DA Form 52-2 |
| e. MCM, 1951           | l. DA Form 54   |
| f. JTR, 10 USC 4712    | m. DA Form 137  |
| g. 5th SF Gp Reg 643-1 |                 |

3. Responsibilities:

a. The Commanding Officer, 5th Special Forces Group (Airborne), is appointing authority for all Summary Court Officers for deceased, missing or evacuated personnel of the 5th Special Forces Group.

b. Company Commanders nominate Summary Court Officer for appointment.

c. S1, 5th Special Forces Group (Airborne), publishes Special Orders appointing Summary Court Officers for deceased personnel as directed by the Commanding Officer.

d. S4, 5th Special Forces Group (Airborne), provides assistance in the disposition of equipment and shipment of personal effects.

e. Unit Personnel Officer, 5th Special Forces Group (Airborne), closes out personnel and finance records of individual, and assists the appointed Summary Court Officer in personnel matters.

f. Group Judge Advocate assembles and maintains a folder of current references and required blank forms for use by appointed Summary Court Officer.

g. Summary Court Officers, carries out all actions necessary to settle all the affairs of the individual and ship personal belongings to the appropriate person.

## SECTION II

### ACTIONS

#### 4. Procedures for Summary Court Officer:

a. Upon notification of nomination by Company Commander, read 5th SF Gp Regulation 643-1 and assume duties immediately.

b. Conduct an inventory of deceased's personal effects and prepare DA Form 54 in 5 copies as required in 5th SF Reg 643-1. Personal effects must be carefully screened to remove any objectionable items, e.g., blood-stained clothing, obscene materials.

c. Forward DF to Group Headquarters requesting publication of required DB notice.

d. Review all documents in the possession of the deceased for possible classification; request assistance from the Group S2 for any item of questionable security classification or intelligence value.

e. Make all possible inquiries to insure that all property is recovered and assets and debts are discovered.

f. Insure that all undeliverable mail is marked "HOSPITAL" (for individuals evacuated to unknown hospitals) or "SEARCH" (for all others) and returned to the source from which received.

g. Turn in all government property and equipment to the appropriate S4.

h. After receipt of orders, determine the person entitled to receive personal effects. Prepare and ship personal effects. Obtain shipment number for report. In medical evacuation cases, ship effects to individual if he can be located.

i. Inform next of kin of your appointment and of shipment of personal effects as required in 5th SF Gp Reg 643-1.

j. Take necessary action to insure that two (2) receipted copies of DA Form 54 are obtained from next of kin or heir for personal effects shipped to them.

k. Initiate and complete Installation Clearance Record (DA Form 137).

l. Dispose of all monetary assets in accordance with the provisions of 5th SF Gp Reg 643-1. Government checks will be returned to the issuing disbursing officer for processing in accordance with AR 37-103.

m. In the event sale of any effects is necessary, sale will be in accordance with AR 643-50, Par 13.

n. Mail checks obtained from Finance Officer in exchange for funds to the appropriate individual by registered mail. Record registry number and include in report on DA Form 54.

o. Check with Unit Personnel Officer to insure that finance records are properly processed and unpaid pay and allowances are properly disposed of.

p. Send letter to person to whom effects were shipped (See 5th SF Gp Reg 643-1 for format). In the event some or all of effects were lost, abandoned, stolen, damaged or destroyed incident to military service, include claims forms.

9. Submit report.

## CHAPTER 5

### INVESTIGATING OFFICER SECTION I GENERAL

1. Purpose: To provide a practical guide to be used by individuals appointed to investigate accidents and incidents of an administrative nature and investigations under provisions of Article 32, UCMJ.

2. References and applicable forms:

- |               |                              |
|---------------|------------------------------|
| a. AR 15-6    | c. Manual for Courts-Martial |
| b. AR 635-89  | f. DA Form 19-24             |
| c. AR 635-206 | g. DA Form 457               |
| d. AR 635-212 | h. DA Form 1574              |

3. Responsibilities:

a. Commanding Officer, 5th Special Forces Group (Airborne), is the appointing authority for all investigations conducted within the 5th Special Forces Group and attached units.

b. S1, 5th Special Forces Group (Airborne), 1st Special Forces, publishes Special Orders and directives appointing investigating officers and specifying the actions required for the investigation.

c. Investigating Officer conducts an impartial, thorough investigation, prepares reports and makes findings and recommendations to the appointing authority.

d. Group Judge Advocate provides assistance to appointed Investigating Officers as requested, maintains folders of references and guides to be used by Investigating Officers. Provides legal assistance and advice as requested.

## SECTION II

### 4. Procedures for Investigating Officer:

a. Upon receipt of appointing orders or instructions, obtain reference folder from the Group Legal Section and become familiar with the portions of AR 15-6 and DA Form 1574 that pertain to the specific type investigation being conducted.

b. Determine whether previous investigations of the matter in question have been conducted; if so, secure reports and evidence for inclusion as exhibits.

c. When investigating the conduct, efficiency, fitness, or pecuniary liability of a person, that person must be afforded a hearing in accordance with procedures outlined in AR 15-6.

d. Before an individual under any type investigation is questioned, he must be advised of his rights under Article 31, UCMJ, and his entitlement to consult with counsel.

e. Conduct the investigation in accordance with AR 15-6 and DA Form 1574, insuring that the person under investigation is present at all hearings.

f. Based on the facts disclosed by the investigation, prepare your report to include findings and recommendations, and submit the report to the appointing authority.

5. Reports: Submit those required by the appropriate regulation covering types of investigation. Include DA Form 1574 as an inclosure.

### SECTION III

#### ARTICLE 32 INVESTIGATIONS

##### 6. Procedures of Investigating Officer:

a. Upon receipt of appointing orders or instructions, obtain reference folder and required blank forms from the Group Legal Section. Obtain technical guidance from the Group Judge advocate.

b. Determine whether a preliminary or previous investigation of the offense in question has been conducted; if so, secure reports and evidence for use as part of the investigation.

c. An Article 32 investigation is required before charges may be referred to a General Court; it must be impartial, thorough and complete in every detail.

d. Inform the accused of his rights under Article 31, UCMJ, of his accuser, of the charges, and of his right to counsel.

e. Conduct the investigation in accordance with the instructions for the formal investigation found in AR 15-6 and DD Form 457.

7. Reports: Prepare report (DD Form 457), with all inclosures and exhibits, and submit it to the appointing authority (in five copies, plus one additional copy for each accused in excess of one). Reports must be complete and will include notations of all significant information.

## CHAPTER 6

### CLAIMS OFFICER SECTION I GENERAL

1. Purpose: To provide a practical guide to be used by officers appointed to investigate claims against or for the United States.

2. References and Applicable Forms:

- |                                  |                       |
|----------------------------------|-----------------------|
| a. AR 25-20                      | g. USARV Reg 25-1     |
| b. AR 25-25                      | h. 5th SF Gp Reg 25-1 |
| c. AR 25-90                      | i. DA Form 1208       |
| d. AR 25-100                     | j. DA Form 1665       |
| e. AR 25-105                     | k. DA Form 1667       |
| f. MACV Dir 25-1<br>through 25-5 | l. DA Form 1668       |

3. Responsibilities:

a. The Commanding Officer, 5th Special Forces Group (Airborne), is appointing authority for all claims investigations conducted within the 5th Special Forces Group and attached units.

b. S1, 5th Special Forces Group, publishes Special Orders appointing Claims Officers as directed by the Commanding Officer.

c. Claims Officer conducts investigations and prepares reports on all claims referred to him for investigation.

d. Group Judge Advocate maintains a folder of references, guides, and blank forms to be used by Claims Officers. Provides legal assistance and advice as required.

SECTION II  
ACTIONS

4. Procedures for Claims Officers:

a. Upon receipt of appointing orders, obtain reference folder from the Group Legal Section and become familiar with 5th SF Gp Reg 25-1, with particular emphasis on inclosures 1 and 2 (Procedural Guides).

b. Determine category of claim and applicable claim regulation (Par 4, 5th SF Gp Reg 25-1).

c. Gather all information and evidence obtained as a result of any previous investigations of the incident, such as MP reports, hospital records, etc.

d. Conduct a thorough, prompt, and impartial investigation. Matters to be considered for possible inclusion as exhibits are listed in inclosures 1 and 5, 5th SF Gp Reg 25-1. Include photographs, statements, expert testimony, etc., as appropriate.

e. Complete the Report of Investigation using DA Form 1208 or 1668, as applicable. Make recommendations reference the liability, amount of damage, loss, or destruction, and amount payable. Recommendations as to safety practices and procedures to prevent recurrence should also be included.

f. Prepare the claim file in accordance with 5th SF Gp Reg 25-1. Guidelines contained therein should be strictly adhered to and all requirements must be fully satisfied.

g. Submit the completed report of investigation and recommendations to the Commanding Officer, 5th Special Forces Group, for approval and forwarding to the Office of the Staff Judge Advocate

h. Maintain personal file copy of all reports and supporting documents until final action is taken as reported by the Office of the Staff Judge Advocate.

5. Reports: DA Form 1208 or 1668 with all supporting documents.

CHAPTER 7

SURVEYING OFFICER (REPORT OF SURVEY)  
SECTION I  
GENERAL

1. Purpose: To provide a practical guide to be used by officers appointed as Surveying Officers for Reports of Survey.

2. References and Applicable Forms:

- a. AR 735-10
- b. AR 735-11
- c. DD Form 200

3. Responsibilities:

a. The Commanding Officer, 5th Special Forces Group (Abn), is appointing authority for all Reports of Survey requiring a Surveying Officer within the 5th Special Forces Group and attached units.

b. Surveying Officer conducts investigations and makes recommendations on Report of Survey in accordance with AR 735-11.

c. S-4, 5th Special Forces Group, insures DD Forms 200 are prepared and submitted as prescribed in AR 735-11; maintains a folder of references and guides to be used by Surveying Officers; provides assistance as required by appointed Surveying Officer.

d. Group Judge Advocate, 5th Special Forces Group, provides legal advice and assistance as required.

## SECTION II

### ACTIONS

#### 4. Procedures:

a. Upon receipt of Report of Survey for investigation, obtain reference folder for Surveying Officers from the S-4, 5th SF Gp (Abn).

b. Review the survey (DD Form 200) for completeness and correctness of all entries in accordance with AR 735-11.

c. Personally examine the item being surveyed, where applicable, and sign a release so that equipment can be repaired or disposed of in accordance with current supply regulations.

d. Obtain any reports of investigation, examination, accident, other items of evidence and statements from individuals that are needed to conduct the investigation.

e. After examination and evaluation of all evidence and statements, prepare report of investigation and recommendations in accordance with AR 735-11.

f. Special action where pecuniary liability is recommended:

(1) If pecuniary liability is recommended, charges are to be computed as required by Par 77-80, AR 735-11 and Section III, AR 735-10.

(2) In cases recommending pecuniary liability against an individual, he must be given an opportunity to examine all findings, recommendations and exhibits and to make a statement or present evidence in his own behalf.

(3) The Surveying Officer will advise the individual of his rights to legal counsel (Par 70, AR 735-11), to appeal and, if enlisted, to request remission (Par 176, AR 735-11).

(4) Any new evidence submitted by an individual recommended to be held pecuniarily liable will be considered as if it had been presented originally.

(5) If pecuniary liability is still recommended, a notation will be made below the initial recommendations that additional evidence was considered. If appropriate, "Amended Recommendation" based upon the additional evidence will be recorded below the original recommendations.

5. Reports: Submit completed report, DD Form 200, with appropriate exhibits, to appointing authority.