**SAMPLE SCRIPT FOR ARTICLE 32 PRELIMINARY HEARING**

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| 1. INTRODUCTION & PRELIMINARY MATTERS | |
| PHO: | (Verifies recording)  This preliminary hearing will come to order. This preliminary hearing is convened by **(*rank and name of CA*)**, Commanding Officer, **(*organization*)** by the appointing order dated **(*date of letter of appointment*)**.  My name is **(*rank, name, and service of PHO*)**. I am a **(*Judge Advocate certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice/commissioned officer*)**. I have been detailed as preliminary hearing officer under Article 32(b) of the Uniform Code of Military Justice to inquire into the matters set forth on the charge sheet dated **(*date of preferral*)** in the case of **(*rank, name, and service of accused*)**, the accused. Copies of the charge sheet and appointing order have been furnished to me and all counsel, and will be inserted in the record as Preliminary Hearing Officer Exhibits 1 and 2, respectively.  Present at this hearing are myself **(*rank, name, and service of PHO*)**, the detailed preliminary hearing officer; the accused **(*rank, name, and service of accused*)**; defense counsel **(*rank, name, and service of DC, if military; Mrs./Ms./Mr. and name, if civilian*)**; and counsel for the government **(*rank, name, and service of GC*)**;    [Present also is **(*rank, name and service of reporter*)**, who has been detailed as the reporter for this preliminary hearing].  [Present also is **(*rank, name, and service of translator*)**, who has been appointed to serve as translator];  [Present also is the reported victim in this case, **(*rank, name, and service of victim; Mrs./Ms./Mr. and name, if civilian*)** along with his/her counsel **(*rank, name, and service of VLC/SVC; Mrs./Ms./Mr. and name, if civilian***).]    Are you **(*rank and name of accused*)**, the accused in this case? |
| ACC: | Yes/No, sir/ma’am. |
| **SUBSCRIPT FOR COURT-REPORTER WHO HAS NOT PREVIOUSLY BEEN SWORN** | |
| PHO: | **(*Rank and/or name of reporte****r*), do you **(*swear or affirm*)** to faithfully perform the duties of reporter for this preliminary hearing **(*so help you God*)**? |
| CR: | I do. |
| **SUBSCRIPT FOR INTERPRETER WHO HAS NOT PREVIOUSLY BEEN SWORN** | |
| PHO: | **(*Rank, name, and service of interpreter*)**, do you **(*swear or affirm*)** that in this preliminary hearing you will interpret truly the testimony you are called upon to interpret **(*so help you God*)**? |
| INT: | I do. |
| PHO: | Counsel, at this time please state your legal qualifications, status as to oath, the authority by whom you were appointed and/or detailed, and any disqualifying capacity in which you may have acted. |
| GC: | I am **(*rank, name, and service of GC*)**. I am certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice. I have been detailed to this preliminary hearing by **(*rank, name and command*)***,* the convening authority. I have not acted in any disqualifying manner. |
| DC: | I am ***(rank, name, and service of DC)****.* I am certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice. I have been detailed to this case by **(*official and authority*).**  I have not acted in any disqualifying manner. |
| VLC/SVC: | I am ***(rank, name, and service of DC)***. I am an attorney and licensed to practice law in the state(s) of \_\_\_\_\_\_\_\_\_\_. I am a member in good standing of the (\_\_\_\_\_\_\_\_\_\_) bar(s). I have not acted in any manner which might tend to disqualify me in this court-martial. |
| **SUBSCRIPT FOR CIVILIAN COUNSEL** | |
| PHO: | Would civilian counsel representing the accused please identify yourself for the record, state you contact information, and tell me where you are currently licensed to practice law? |
| CDC: | I am **(*Mrs./Ms./Mr. and name of civilian DC*)**. I am a civilian attorney. My office is located at (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_). My mailing address is  (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_). My office phone number is  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_). I am a member in good standing of the (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) bar. |
| PHO: | **(*Mrs./Ms./Mr. and name of civilian DC*)**, do you **(*swear/affirm*)** that you will faithfully perform all the duties of defense counsel in the case now in preliminary hearing **(*so help you God*)**? |
| CDC: | I do. |
| PHO: | Would civilian counsel representing the victim please identify yourself for the record, state you contact information, and tell me where you are currently licensed to practice law? |
| CVC: | I am **(*Mrs./Ms./Mr. and name of civilian victim counsel*)**. I am a civilian attorney. My office is located at (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_). My mailing address is (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_). My office phone number is (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_). I am a member in good standing of the (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) bar. |
| PHO: | It appears that defense counsel representing the accused **(*has/have*)** the requisite qualifications under R.C.M. 405(d)(3). |
| 1. **VOIR DIRE AND ELECTION OF COUNSEL** | |
| PHO: | My name is **(*rank, name, and service of PHO*)**. I am a **(*Judge Advocate certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice/commissioned officer*)**,qualified to serve as preliminary hearing officer in accordance with Article 32 and R.C.M. 405(d)(1). I am not aware of any matters that I believe may be grounds to disqualify me as the preliminary hearing officer.    Is the accused or counsel for either side aware of any grounds that might disqualify me from conducting this preliminary hearing, or does either side desire to question me, or raise any challenge now? |
| GC/DC: | Yes/No, sir/ma’am. |
| PHO: | **(*Rank and name of DC*)**are there grounds to assert that the accused was not mentally responsible for **(*his /her*)** actions at the time of the offense**(*s*)** charged or that the accused is not mentally competent to participate in the defense of **(*his/her*)** case in this preliminary hearing today? |
| DC: | Yes/No, sir/ma’am. |
| *An affirmative answer requires the PHO to determine if the accused is able to “understand the nature of the proceedings” and to “conduct or cooperate intelligently in the defense of the case.” R.C.M. 909(a).* *If the accused is not able to assist in his or her own defense, the PHO should consider adjourning the preliminary hearing and seeking instruction from the CA.* | |
| PHO: | **(*Rank and name accused*)*,*** **(*rank and name of GC*)** has been appointed as counsel for the government at this preliminary hearing. **(*He/she*)** is not acting as counsel for the preliminary hearing officer. **(*He/she*)** is here solely to represent the government. **(*He/she*)** will not advise me as to my determination of probable cause or what disposition I will recommend in this case, as those decisions rest with me alone. After completing this preliminary hearing I shall make determinations and recommendations I deem appropriate for matters disclosed at this proceeding.    Do you understand? |
| ACC: | Yes/No, sir/ma’am. |
| PHO: | Are there any questions by any party concerning my function or the function of government counsel? |
| ACC/  GC/DC: | Yes/No, sir/ma’am. |
| PHO: | ***(Rank and name of the accused*)***,* you have the right to be represented in this preliminary hearing by **(*rank and name of detailed DC*)**,your detailed defense counsel, or you may be represented by military counsel of your own selection, if the military counsel you request is reasonably available. Military counsel are provided to you free of charge. You are not entitled to be represented by more than one military lawyer, but, if you are represented by military counsel of your own selection, then you could request that **(*rank and name of detailed DC*)**, your detailed defense counsel, continue to represent you, and the authority who detailed **(*rank and name of detailed DC*)** would have sole discretion to either grant or deny that request.    Do you understand? |
| ACC: | Yes/No, sir/ma’am. |
| PHO: | In addition, you have the right to be represented by civilian counsel of your own selection, at no expense to the United States. Civilian counsel may represent you alone or along with your military defense counsel. Should you choose civilian counsel, you would be responsible for those expenses. If you are represented by civilian counsel, then your military counsel would continue to serve as an associate defense counsel unless you ask to excuse him/her.    Do you understand your rights to counsel? |
| ACC: | Yes/No, sir/ma’am. |
| PHO: | Do you have any questions about your rights to counsel? |
| ACC: | Yes/No, sir/ma’am. |
| PHO: | By whom do you wish to be represented at this preliminary hearing? |
| ACC: | ***(Rank and name of detailed DC / rank and name of requested DC / name of civilian defense counsel)****.* |
| **SUBSCRIPT FOR WAIVER OF COUNSEL** | |
| *Use if accused indicates desire to proceed without a lawyer.* | |
| PHO: | **(*Rank and name of accused*)***,* I caution you that the charge**(*s*)** against you are very serious and it is important that you understand all of your rights as well as the procedures that control this preliminary hearing. I suggest to you that you need the assistance of a lawyer to properly protect your rights and to otherwise help you. As I explained earlier, you have an absolute right to a qualified, free military lawyer who will provide that assistance. You are free, however, to give up this right. Assistance of counsel is a right that you have under the United States Constitution and the Uniform Code of Military Justice, and is a due process protection that is intended to guard your interests.  Do you understand what you are giving up by waiving your right to counsel? |
| ACC: | Yes/No, sir/ma’am |
| PHO: | If you decide to proceed in this preliminary hearing without a lawyer, you do so at your peril and may, without meaning to do so, jeopardize your case.    Do you understand what I have just told you? |
| ACC: | Yes/No, sir/ma’am. |
| PHO: | Do you wish to have a lawyer represent you or not? |
| ACC: | I do/do not want a lawyer. |
| *If the PHO is satisfied that the accused has made a knowing, voluntary, and intelligent waiver of the right to counsel, the officer should complete blocks 9.a and 9.b of the DD Form 457, and ask the accused to sign the form in block 9.c. If the accused refuses to sign, the PHO will explain the refusal in Block 24 of the form or addenda. If the PHO is not satisfied that the accused has knowingly and intelligently waived the right to counsel, the officer should proceed as follows:* | |
| PHO: | **(*Rank and name of accused*)**,I am not satisfied that you fully appreciate the consequences of not having a lawyer at this preliminary hearing. Therefore, I will direct ***(rank and name of DC)*** to continue to act as your counsel. |
| 1. **PRELIMINARY ADVICE** | |
| PHO: | ***(Rank and name of accused)***, do you have a copy of the charge sheet in front of you? |
| ACC: | Yes, sir/ma’am. |
| PHO: | ***(Rank and name of accused)****,* please follow along on your copy of the charge sheet as I inform you of the general nature of the charges that I will be reviewing at this preliminary hearing.  You are alleged to have committed the following violations of the Uniform Code of Military Justice:  Specification 1 of Charge I alleges a violation of Article \_\_\_ of the UCMJ, which alleges that **[describe nature of all charges and specifications in plain language which the accused will understand]**.  The charges were preferred by ***(rank, name, and service of accuser on in Box 11.a of the Charge Sheet, DD Form 458)*** a person subject to the UCMJ, as accuser, and were sworn to before **(*name of officer who signed affidavit in Part III of the Charge Sheet, DD Form 458*)**,an officer authorized to administer oaths.  A copy of the charge sheet will be appended to the record as PH Exhibit 1.  Does either counsel desire that I read each charge and specification, or desire further review of the charge sheet before we continue? |
| GC/DC: | Yes/No, sir/ma’am. |
| *PHO can now check off boxes 10.a and 10.b of the DD Form 457.* | |
| PHO: | ***(Rank/rate and name of accused)****,* under Article 31 of the Uniform Code of Military Justice, you have the right to remain silent and refuse to make a statement regarding any offense of which you are accused or suspected and that is being investigated. The fact that you may choose to exercise this right cannot be used against you in any way, and I may not consider your silence as evidence.    Do you understand your right to remain silent? |
| ACC: | Yes/No, sir/ma’am. |
| *PHO can now check off box 10.c of the DD Form 457.* | |
| PHO: | **(*Rank and name of accused*)**, I am going to explain to you the purpose of the preliminary hearing and the rights which you have at this preliminary hearing. If you do not understand what I am telling you, let me know and I will explain it again until you and I are both satisfied that you understand.    The purpose of this preliminary hearing is to determine whether or not the specifications (a) allege (an) offense(s); whether or not there is probable cause to believe that you committed the offense(s) charged; whether or not the convening authority has jurisdiction over you and over the offense(s) charged; and to recommend to **(*rank and name of CA*)** what action should be taken regarding the charges.    I have been appointed to conduct a formal preliminary hearing under Article 32 of the Uniform Code of Military Justice. I know nothing at all about your case except for the information contained in the charge sheet and in the order that appointed me to investigate these charges. [**(*I have also met with your counsel and with government counsel to discuss some of the legal issues which may arise during this preliminary hearing, to identify the witnesses who are expected to testify, and to mark the exhibits which may be offered*)** **and/or** **(*I have reviewed \_\_\_\_\_\_\_\_\_\_\_\_ in order to make initial determinations regarding the availability of witnesses and evidence for this preliminary hearing.*)**]  I have formed no opinion as to probable cause, jurisdiction or what I will recommend. I will make a recommendation to **(*rank and name of CA*)** solely on the basis of the evidence that I receive during this preliminary hearing. You will have an opportunity to review the report in which I will submit my recommendations, and will have an opportunity to object to it as well.  This preliminary hearing is not a trial. I am not here to determine your innocence or guilt. It is my duty to impartially weigh the evidence to determine probable cause, jurisdiction, and the form of the charges, and to formulate a recommendation. I will consider all matters within the scope of the hearing which tend to exonerate you, and all matters which tend to implicate you in violations of the UCMJ. I may recommend that the charges against you be referred for trial at a general court-martial, special court-martial, or summary court-martial. I also may recommend that the charges, or some of them, be dismissed or disposed of at a forum other than trial by court-martial, such as NJP.  ***(Rank and name of CA)*** is not bound by my recommendation. For example, if I recommend that a charge against you should be dismissed, **(*he/she*)** may still decide to send that charge to a court-martial. As my recommendations are only advisory in nature and are not binding on the convening authority, he or she will make the final decision on the disposition of the charges in this case.  Do you understand the purpose of this preliminary hearing? |
| ACC: | Yes/No, sir/ma’am. |
| *PHO can now check off box 10.d of the DD Form 457.* | |
| PHO: | ***(Rank and name of accused*)**, you have the right to be present throughout this preliminary hearing, so long as your conduct is not disruptive. Further, you are advised that should you voluntarily absent yourself from this preliminary hearing, you shall be considered to have waived the right to be present.  Do you understand these rights as I have explained them to you? |
| ACC: | Yes/No, sir/ma’am. |
| *PHO can now check off box 10.e of the DD Form 457.* | |
| PHO: | (If applicable) Evidence will be introduced in the preliminary hearing in the form of testimony from witnesses. As I understand it, the people who are going to testify at this preliminary hearing are **[PHO identifies witnesses the parties [and/or VLC(SVC)] have identified as testifying]**.  Other evidence may be presented in the form of exhibits. As I understand it, the exhibits that may be introduced at this preliminary hearing include **[PHO describes all exhibits of which the PHO is aware. PHO may also submit this information to the accused in writing]**.  You have the right to examine all of the exhibits and to make appropriate objections, through your defense counsel, to my consideration of them.  Do you understand the evidence I expect to be presented? |
| ACC: | Yes/No, sir/ma’am. |
| *PHO can now check off box 10.f of the DD Form 457.* | |
| PHO: | ***(Rank and name of accused*)***,* I am now going to advise you of other rights that you have at this preliminary hearing:    You will have the right at the proper time to cross-examine witnesses called to testify at this hearing; |
| *PHO can now check off box 10.g of the DD Form 457.* | |
| PHO: | Within the rules governing Article 32 preliminary hearings, you have the right call witnesses relevant to the issues for determination at this hearing under R.C.M. 405(a).  You have the right to present relevant documentary evidence on your own behalf, relevant to the issues for determination at this hearing under R.C.M. 405(a). |
| *PHO can now check off box 10.h of the DD Form 457.* | |
| PHO: | **(*Rank and name of accused*)***,* I advised you earlier that you have the right to remain silent, that you do not have to make any statement regarding the offenses of which you are accused, and that any statement that you do make may be used as evidence against you in a trial by court-martial.    You also have the right to testify under oath or to make an unsworn statement. If you testify under oath you may be cross-examined by the government counsel and questioned by me. If you decide to make an unsworn statement, you may not be cross-examined by government counsel or questioned by me. You may make an unsworn statement orally or in writing, personally or through your counsel, **(*you may make a statement with respect to some charges or specifications and not others*)**, or you may use a combination of these ways. If you do make a statement, whatever you say will be considered and weighed as evidence by me the same as the testimony of other witnesses.    You have the right to make a statement, however, if you decide to exercise your right to remain silent, then that cannot be held against you in any way.    Do you understand your right to make a statement at this preliminary hearing? |
| ACC: | Yes/No, sir/ma’am. |
| *PHO can now check off box 10.i of the DD Form 457.* | |
| PHO: | Do you have any questions about any of your rights, or anything that we have discussed up to this point of the preliminary hearing? |
| ACC: | Yes/No, sir/ma’am. |
| PHO: | Now, let me go over with you all the procedures I will use to conduct this preliminary hearing.  First, counsel for the government will present documents which are relevant to this preliminary hearing. Then the government will call any witnesses it intends to offer and will conduct direct examinations of those witnesses, and the defense will be permitted to cross-examine those witnesses. After each government witness has been examined by both sides, I may ask questions and then permit re-direct and re-cross as necessary.  Second, after the government documents and witnesses have been produced, the defense will be permitted to offer any documents and witnesses of its own which are relevant to this preliminary hearing. Any defense witness will be subject to cross-examination by government counsel. After each defense witness has been examined by both sides, I will ask questions, and then permit re-direct and re-cross as necessary.  I remind counsel that they may make objections to the evidence presented here. Note, however, that the rules of evidence applicable to courts-martial are not generally applicable at this proceeding. The exceptions to that are the rules governing privileges, degrading questions, and past sexual behavior by the victim of a sexual offense. I will also respond to objections based on relevancy grounds, and will not admit evidence that is not relevant under Military Rule of Evidence 401. I will be the sole judge of what evidence shall be admitted and considered. Generally, your objections will be noted for the record; however, I may rule on specific objections and you are to proceed accordingly. Finally, if either side or VLC/SVC makes any objection that you want me to note in the report of preliminary hearing, then you must notify me promptly, and file that objection with the Convening Authority, via me, in writing within 24 hours after the close of the preliminary hearing.  Do counsel for either side [or the VLC/SVC] have any questions regarding procedure or the way in which this preliminary hearing will be conducted? |
| GC/DC: | Yes/No, sir/ma’am. |
| *If potentially relevant, you should determine if either side intends to introduce evidence that is prohibited by Mil. R. Evid. 412, 513, or 514. If this is the case, the proponent of the evidence must have served written notice upon you and upon opposing counsel (and counsel for the government must have notified the victim, or counsel for the victim, as applicable) at least 5 days before the preliminary hearing. If there has been notice, at an appropriate time you must conduct a closed preliminary hearing to determine if the evidence is being offered under one of the permissible exceptions (note: Mil. R. Evid. 412(b)(1)(C) does not apply at Article 32 proceedings). The legal counsel for the relevant victim shall be permitted to argue matters involving Mil. R. Evid. 412, 513, and 514.* | |
| PHO: | Does counsel for the accused have any questions or wish to note any objections before we proceed with the preliminary hearing? |
| DC: | Yes/No, sir/ma’am. |
| 1. **GOVERNMENT CASE** | |
| PHO: | Is the government prepared to present evidence? |
| GC: | Yes, sir/ma’am. |
| PHO: | Does the government have any real or documentary evidence to present? |
| GC: | Yes/No, sir/ma’am. [**Government presents real or documentary evidence**]. |
| PHO: | ***(Rank and name of GC)****,* please list all of the witnesses that the government intends to call and the form of their testimony (live, telephonic, VTC, etc.). |
| GC: | [**Government lists all witnesses that the government intends to call at the preliminary hearing**]. |
| PHO: | The government may proceed. |
| GC: | **[Oath administered to each witness before testimony**]:    Do you swear **(*or affirm*)** that the evidence that you are about to give at this hearing will be the truth, the whole truth, and nothing but the truth **(*so help you God*)**? |
| *The typical order is for the GC to conduct direct examination, followed by cross examination by the DC. Questions to witnesses must be relevant to the limited purpose of the preliminary hearing; the determinations set out in R.C.M. 405(a). The PHO may ask questions at any time, but usually asks questions after both sides have questioned the witness. The PHO may permit re-direct and re-cross as necessary.*  *The GC should conduct the initial examination of all government witnesses; the Defense Counsel may then cross-examine. The PHO may then pose questions.*  *Counsel for the government should ask each witness to identify himself or herself by name, rank and/or rate, and duty station (or, in the case of civilian witnesses, city of residence, and occupation).* | |
| PHO: | Does counsel for either side desire further inquiry in light of my questions? |
| GC/DC: | Yes/No, sir/ma’am. |
| *After every witness, the PHO must determine availability for trial.* | |
| PHO: | **(*Rank and/or name of witness*)**,in the event this case goes to trial by court-martial do you have any pending PCS orders, TAD, leave, retirement, or other situation that might interfere with your availability to testify in this case over approximately the next three months? If your status changes over the next few months, then please inform the government counsel of the circumstances. |
| *After every witness, the PHO must give a witness warning.* | |
| PHO: | **(*Rank and/or name of witness*)**,you are instructed not to discuss your testimony, or the testimony of any other witness in this preliminary hearing with anyone except counsel for the government or counsel for the accused. You will not allow any witness in this preliminary hearing to talk to you about the testimony he or she has given or which he or she intends to give. If anyone other than government counsel or counsel for the accused attempts to talk to you about your testimony in this preliminary hearing, you should make the circumstances known to the counsel who originally called you as a witness, **(*rank and name of GC*)***.* |
| *If the witness is in the military, add the following:* | |
| PHO: | ***(Rank and name of witness*)**, note that my order instructing you not to discuss your testimony or the testimony of any other witness is a lawful order, the violation of which could subject you to penalties under the Uniform Code of Military Justice. |
| PHO: | **(*Name and rank of GC*)***,* does the government have any more evidence it wishes to introduce for my consideration in this preliminary hearing? |
| GC: | No, sir/ma’am. |
| 1. **DEFENSE CASE** | |
| *The defense may now present matters relevant to the matters for determination under R.C.M. 405(a).* | |
| PHO: | **(*Rank and name of accused*)***,* earlier I explained your right to present evidence and call witnesses to testify on your behalf in defense and mitigation.    Do you or your counsel have any evidence that you would like to present or witnesses that you would like to call? |
| ACC/DC: | Yes/No, sir/ma’am. |
| PHO: | Does the defense have any real or documentary evidence to present? |
| DC: | Yes/No, sir/ma’am. [**Defense presents real or documentary evidence.]** |
| PHO: | (***Rank and name of DC***)*,* please list the witnesses that the defense intends to call and the form of their testimony (live, telephonic, VTC, etc.). |
| DC: | [**Defense lists the witnesses that the accused intends to call at preliminary hearing**]. |
| PHO | The defense may proceed. |
| DC: | [**Calls witnesses for defense**] |
| GC: | **[Oath administered to each witness before testimony**]:    Do you swear **(*or affirm*)** that the evidence that you are about to give at this hearing will be the truth, the whole truth, and nothing but the truth **(*so help you God*)**? |
| *After every witness, the PHO must determine availability for trial.* | |
| PHO: | **(*Rank and/or name of witness*)**,in the event this case goes to trial by court-martial do you have any pending PCS orders, TAD, leave, retirement, or other situation that might interfere with your availability to testify in this case over approximately the next three months? If your status changes over the next few months, then please inform the government counsel of the circumstances. |
| *After every witness, the PHO must determine availability for trial.* | |
| PHO: | **(*Rank and/or name of witness*)**,you are instructed not to discuss your testimony, or the testimony of any other witness in this preliminary hearing with anyone except counsel for the government or counsel for the accused. You will not allow any witness in this preliminary hearing to talk to you about the testimony he or she has given or which he or she intends to give. If anyone other than government counsel or counsel for the accused attempts to talk to you about your testimony in this preliminary hearing, you should make the circumstances known to the counsel who originally called you as a witness, **(*rank and name of DC*)***.* |
| *If the witness is in the military, add the following:* | |
| PHO: | ***(Rank and name of witness*)**, note that my order instructing you not to discuss your testimony or the testimony of any other witness is a lawful order, the violation of which could subject you to penalties under the Uniform Code of Military Justice. |
| PHO: | **(*Rank and name of accused*)**, I previously advised you that, while you cannot be *compelled* to make any statement, you have the *right* to make a statement in any form you desire. I will not hold it against you in any way if you decide not to make a statement. Note, however, that I may consider anything that you do say, and any statements may also be used against you in the future. Bearing that advice in mind, consult with your counsel and advise me whether you wish to make a statement at this time or not. |
| DC/ACC: | **(*I/rank and name of accused*) (*do/do not/does/does not*)** desire to make a statement. |
| *If the accused makes an oral statement, or makes a statement through counsel, the PHO should summarize it and append it to the DD Form 457, as an exhibit. Any written statement by the accused should be similarly appended.* | |
| 1. **FINAL MATTERS** | |
| PHO: | I find that there are no reasonable grounds for inquiring into the mental capacity of the accused at the time of the charged offenses, and I find that there are no reasonable grounds for inquiring into the mental capacity of the accused at the time of this proceeding.    Do both sides agree? |
| GC/DC: | Yes/No, sir/ma’am. |
| *If the PHO receives any evidence that the accused was not mentally responsible or was not competent to assist in the defense, then the PHO must check “Yes” in Block 14 of the DD Form 457. In the report, the PHO must explain findings with respect to competence, cite supporting exhibits, and should discuss any evidence that bears on the accused’s responsibility for the alleged offenses.* | |
| PHO: | I will hear brief closing comments as to whether each specification alleges an offense; whether there is probable cause, and the disposition of the case. **(*I will also permit the submission of a closing statement in writing*)**.    Does either side desire to comment on the evidence and charges **(*or does either side wish to submit a closing statement in writing*)**? |
| GC/DC: | Yes/No, sir/ma’am. |
| PHO: | Counsel for the government may proceed with a closing comment. |
| GC: | **[Presents closing comments]*.*** |
| PHO: | Counsel for the accused may proceed with a closing comment. |
| DC: | **[Presents closing comments]*.*** |
| 1. **SUBMISSION OF MATTERS UNDER R.C.M. 405(k)** | |
| PHO: | No later than **(state the date and time 24 hours from the closure of the preliminary hearing)**, counsel for the government, defense counsel, and **(victim or victim’s counsel, if victim is named in a specification under consideration)** may submit to me, additional information that you deem relevant to the convening authority’s disposition of charges. Government counsel and defense counsel must be copied on all submissions.  No later than **(state the date and time 5 days from the closure of the preliminary hearing)**, defense counsel may submit to me additional matters that rebut the submissions of counsel for the government or the victim. Submissions may be made electronically.  Does either counsel (or victim or counsel for the victim) have any questions about such submissions? |
| GC/DC/VLC/SVC: | Yes/No, sir/ma’am. |
| PHO: | Unless counsel has anything further to offer, this preliminary hearing will now be closed. |
| *The PHO should await a copy of the recording of the preliminary hearing before completing the DD Form 457. After completing the DD Form 457, the PHO should forward it to the CA via the SJA or legal officer, together with all matters and the report required by R.C.M. 405(l). The PHO must ensure that all evidence gathered at closed hearings is properly sealed under R.C.M. 1113. Although it is the CA’s responsibility to furnish a complete copy of the report to the Accused under R.C.M. 305(l)(4), the local practice may be for the PHO to furnish such copies to both government counsel and to defense counsel.* | |
| 1. **SUBSCRIPT: ARTICLE 31 WARNINGS FOR MILITARY WITNESSES** | |
| PHO: | I advise you that you may be suspected of a violation of the Uniform Code of Military Justice in that **(*state nature of accusation or suspicion*)**.    I further advise you that under the provisions of Article 31 of the Uniform Code of Military Justice, you have the right to remain silent, that is, you have the right to say nothing at all. Any statement that you do make, oral or written, may be used as evidence against you in a trial by court-martial, or in other judicial or administrative proceedings.    You have the right to consult with a lawyer and to have a lawyer present. You have the right to military legal counsel free of charge. In addition to military counsel, you are entitled to civilian counsel of your own choosing, at your own expense. You may request a lawyer at any time during this proceeding. If you decide to answer questions, you may stop the questioning at any time.    Do you understand your rights?  (*If the answer is no, then explain rights*)    Do you want a lawyer?  (*If the answer is yes, cease all questions at this point*)    Are you willing to answer questions?  (*If the answer is yes, then you may proceed*) |
| *If the witness has potentially given previous statements, add the following:* | |
| PHO: | Although you have indicated a willingness to testify, I must make sure that you understand you are not required to testify simply because you have already made previous statements about this offense to other persons.    Regardless of the fact that you have talked about this potential offense before, you still have the right to remain silent now. The fact that you made those previous statements does not mean that you must testify at this preliminary hearing.    Do you understand your right to remain silent now, even though you have made previous statements? |