



# PRACTICE ADVISORY

No. 7-21

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## Documenting Witness Statements for Command Investigations

**Purpose.** To clarify best practices for documenting witness statements obtained in the course of command investigations.<sup>1</sup> This practice advisory is not exhaustive, and is not a substitute for a thorough review of JAGINST 5800.7G (JAGMAN) or other applicable references prior to conducting or advising on a command investigation. Furthermore, this practice advisory does not create any new rights or avenues of redress for subjects of investigations.

### Discussion

1. Rights Advisements. JAGMAN, Chapter 2, Section 0207c discusses the furnishing of rights advisements in accordance with Article 31, Uniform Code of Military Justice (UCMJ). It separates witnesses into two general categories:

a. Witnesses Not Suspected of Misconduct or Improper Performance of Duty. These witnesses ordinarily should not receive rights advisements prior to being interviewed by the investigating officer.

b. Witnesses Suspected of Misconduct or Improper Performance of Duty. Judge advocates providing advice to investigators should alert them to the following best practices prior to any attempt to interview a witness suspected of misconduct or improper performance of duty:

(1) Ordinarily, an investigator should collect relevant information from all other sources before interviewing persons suspected of an offense, misconduct, or improper performance of duty.

(2) Investigators should conduct prior liaison with the cognizant judge advocate to ensure appropriate coordination with law enforcement officials and to ensure investigators will not impede any criminal investigations into the same incident. Additionally, investigators must consult law enforcement personnel if the witness is in custody, or consult the witness's defense counsel if one has been retained.

(3) Before the interview, military personnel suspected of a criminal offense must be advised of their rights in accordance with Article 31, UCMJ. Investigators should use the rights waiver form contained within JAGMAN, Appendix A-1-n. The JAGMAN can be accessed here: [https://www.jag.navy.mil/library/instructions/JAGINST\\_5800.7G.pdf](https://www.jag.navy.mil/library/instructions/JAGINST_5800.7G.pdf)

(a) Article 31, UCMJ, requires suspects be informed of the “nature of the accusation” against them. Prior to conducting any interview that may require a rights advisement, investigators should consult with the cognizant staff judge advocate to ensure the warning is sufficient to provide

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<sup>1</sup> This practice advisory does not address litigation-report investigations, which are covered by JAGMAN, Chapter 2, section 0210d.

the suspect with a frame of reference for the impending interview by generally explaining all known offenses.

(b) Absent exigent circumstances, investigators should advise suspects of their rights and have suspects complete and sign a rights acknowledgement form in the presence of a third-party witness. The third-party witness should also sign the acknowledgement form and provide identifying information sufficient to locate the individual, should their testimony become necessary at a later date.

(c) For further information on proper administration of Article 31 rights, see Judge Advocate Division Practice Advisory No. 4-21, "Article 31 Rights Advisories."

(4) Before interviewing Department of Defense (DoD) civilian employees suspected of misconduct, investigators should consult with DoD civilian personnel offices about collective bargaining requirements and additional regulations that may apply.

2. Documenting Witness Interviews. Investigators may document oral statements in summary or verbatim form. JAGMAN Chapter 2, section 0207c(1)(b) provides that, when an investigator takes an oral statement, "it should be reduced to writing and signed by the witness." While the JAGMAN permits the investigating officer to certify the accuracy of a statement, that approach can undermine the integrity of the investigation. The preferred practice requires the witness to attest to the accuracy of the statement. Such attestation can be done via electronic signature, scanned document with hand-written signature, or similar means when the tyranny of distance prohibits in-person review and attestation. If a witness refuses to sign his or her statement, the investigator should certify that the statement is accurate and document all opportunities provided to the witness to review the statement.

**Conclusion.** Properly documented witnesses statements form an essential component of useful and legally sufficient command investigations. Staff judge advocates are responsible for ensuring investigating officers comply with Article 31b and that witnesses properly attest to their statements.

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