

SUBJECT: Preserving Article 32 Objections

It sometimes becomes an important question of fact what a defense counsel objected to at an Article 32 or even if the counsel objected at all.

And even if a clear objection was made, it might not appear in the report.

Failing to object or failing to preserve an objection can constitute waiver of an Article 32 issue.

A technique to help avoid this problem and one that can make the government stand up and take note of what it is the defense demands is to submit the written objections to the IO before the end of the 32.

It might be a good technique if the DC kept a running, neatly handwritten list of all overruled objections made at the 32 that the DC wishes to pursue. The DC should keep out a separate piece of paper for this purpose. At the end of the 32, the defense counsel offers the list of the objections as an exhibit. This seems to have several advantages:

1. The DC doesn't forget what objections were made.
2. The IO and government know precisely what the objections are, and if what the defense wants can be given to them, the 32 is still open and that can be done.
3. The problem of having objections omitted from the report seems to go away since the exhibit is part of the report.

Of course, the list you submit as an exhibit should be neat and you should be mindful to line through those objections that were resolved.

COL Hodges