

may be considered by the investigating officer appear in subsection (g) of this rule.

Mil. R. Evid. 412 evidence, including closed hearing testimony, must be protected pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a. Evidence deemed admissible by the investigating officer should be made a part of the report of investigation. See subsection (j)(2)(C), *infra*. Evidence deemed inadmissible, and the testimony taken during the closed hearing, should not be included in the report of investigation and should be safeguarded. The investigating officer and counsel representing the United States are responsible for careful handling of any such evidence to prevent indiscriminate viewing or disclosure. Although R.C.M. 1103A does not apply, its requirements should be used as a model for safeguarding inadmissible evidence and closed hearing testimony. The convening authority and the appropriate judge advocate are permitted to review such safeguarded evidence and testimony. See R.C.M. 601(d)(1)."

(h) The Discussion immediately following R.C.M. 703(e)(2)(B) is amended to read as follows:

"A subpoena may not be used to compel a witness to appear at an examination or interview before trial, but a subpoena may be used to obtain witnesses for a deposition or a court of inquiry. In accordance with subsection (f)(4)(B) of this rule, a subpoena

duces tecum to produce books, papers, documents, data, or other objects or electronically stored information for pretrial investigation pursuant to Article 32 may be issued, following the convening authority's order directing such pretrial investigation, by either the investigating officer appointed under R.C.M. 405(d)(1) or the counsel representing the United States.

A subpoena normally is prepared, signed, and issued in duplicate on the official forms. See Appendix 7 for an example of a subpoena with certificate of service (DD Form 453) and a Travel Order (DD Form 453-1)."

(i) The Discussion immediately following R.C.M. 703(e)(2)(D) is amended to read as follows:

"If practicable, a subpoena should be issued in time to permit service at least 24 hours before the time the witness will have to travel to comply with the subpoena.

*Informal service.* Unless formal service is advisable, the person who issued the subpoena may mail it to the witness in duplicate, enclosing a postage-paid envelope bearing a return address, with the request that the witness sign the acceptance of service on the copy and return it in the envelope provided. The return envelope should be addressed to the person who issued the subpoena. The person who issued the subpoena should include with it a statement to the effect that the rights of the witness