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*ADMINISTRATION OF MILITARY JUSTICE*

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This instruction implements the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial (MCM), United States, 1984, and Air Force Policy Directive 51-2, *Administration of Military Justice*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the UCMJ, MCM and applicable Department of Defense (DoD) Directives. It does not apply to Air National Guard units and members, unless in Federal service.

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**(AMC) AFI 51-201, 2 November 1999, is supplemented as follows.** This publication applies to all Air Mobility Command units and members. This supplement does not apply to Air National Guard and United States Air Force Reserve units.

*SUMMARY OF REVISIONS*

This change clarifies the procedures for a commander's decision and memorandum under RCM 305(h)(2) in pretrial confinement cases (paragraphs **3.2.3.**, **3.2.3.1.**, and **3.2.3.2.**); clarifies when a review by the pretrial confinement review officer under RCM 305(i)(2) may be conducted (paragraph **3.2.5.**); provides new guidance authorizing the detailing of military defense counsel to represent an accused in habeas corpus petitions in Federal court where the accused is sentenced to death by a court-martial (paragraph **11.1.4.**); and provides new guidance to ensure compliance with the sex offender registration requirements under Federal law (paragraphs **12.14.** and **12.15.**). A bar (|) indicates revision from the previous addition. See the last attachment for the complete IC.

**Chapter 1—PURPOSE, COMMAND INFLUENCE, PROFESSIONAL CONDUCT** **12**

1.1. Purpose. ..... 12

1.2. Unlawful Command Influence (RCM 104). ..... 12

1.3. Ethics and Standards of Conduct. ..... 12

**Chapter 2—JURISDICTION** **13**

Section 2A Authority to Convene Courts-Martial 13

2.1. Exercise of General Court-Martial Convening Authority (RCM 504[b][1]). ..... 13

2.2. Exercise of Special Court-Martial Convening Authority (RCM 504(b)(2)). ..... 13

2.3. Exercise of Summary Court-Martial Convening Authority (RCM 504[b][3]; RCM 1302). ..... 13

Section 2B Concurrent Jurisdiction 14

2.4. Jurisdiction in Joint Commands, RCM 201[e], JCS Pub O-2. ..... 14

2.5. Cases Involving State or Foreign Court Prosecution Interest. ..... 14

2.6. Cases Involving Federal Agencies. ..... 14

Section 2C Completion of Service 15

2.7. Effect of Completion of Period of Service (RCM 202). ..... 15

Section 2D Air Force Reserve and Air National Guard Members 15

2.8. Exercise of Jurisdiction Over Air Force Reserve and Air National Guard Members (RCM 202). ..... 15

Section 2E Retired Personnel 16

2.9. Trial of Retired Regular Air Force Personnel, RCM 202; Article 2(a)(4) and (5), UCMJ. ..... 16

Section 2F General Officers 16

2.10. Trial of General Officers. ..... 16

**Chapter 3—MILITARY MAGISTRATES, PRETRIAL RESTRAINT, PREFERRAL OF CHARGES** **17**

Section 3A Military Magistrates 17

3.1. Military Magistrate Program. ..... 17

Section 3B Pretrial Restraint 17

3.2. Pretrial Confinement (RCM 305). ..... 17

Section 3C Preferral of Charges (RCM 307) 19

3.3. Considerations Prior to Preferral. ..... 19

3.4. Preparation of the Charge Sheet. ..... 20

3.5. Forwarding Charges (RCM 401). ..... 21
3.6. Receipt for Charges (RCM 403). ..... 21
3.7. Discovery. ..... 21
Figure 3.1. Sample Pretrial Confinement Memorandum. ..... 21
Figure 3.2. Sample Specifications in Check Cases. ..... 22
Figure 3.3. Sample Transmittal Indorsement. ..... 25
Figure 3.4. Personal Data Sheet. ..... 27

**Chapter 4—FORWARDING AND DISPOSITION OF CHARGES 28**

Section 4A Article 32, UCMJ, Investigations 28
4.1. Article 32, UCMJ, Investigations, (RCM 405). ..... 28
Section 4B Courts of Inquiry 29
4.2. Courts of Inquiry (Article 135, UCMJ; MCM, Part I, Para 2(b)(3); RCM 703). ..... 29
Section 4C Depositions (RCM 702) 30
4.3. Counsel: ..... 30
4.4. Transcript and Format. ..... 30
Section 4D Referral and Disposition 30
4.5. Pretrial Advice (Article 34, UCMJ; RCM 406). ..... 30
4.6. Offenders With Outstanding Combat or Overseas Record. ..... 31
4.7. Referral of Charges to Courts-Martial (RCM 601). ..... 31
4.8. Withdrawing Charges (RCM 604). ..... 31
4.9. Re-referring Charges in Rehearings and Other Cases. ..... 31
4.10. Notification of Referral of Later Charges in Pending Cases. ..... 32
4.11. Docketing. ..... 32
Figure 4.1. Convening Order for Court of Inquiry. ..... 33
Figure 4.2. Oral Deposition Format. ..... 34
Figure 4.3. Authentication of Deposition. ..... 35

**Chapter 5—COURT-MARTIAL COMPOSITION AND PERSONNEL, REPORTERS, CONVENING COURTS-MARTIAL 36**

Section 5A Composition and Personnel 36
5.1. Detail of Military Judges, RCM 503(b). ..... 36

5.2. Detail of Counsel, RCM 503(c). ..... 36
5.3. Requests for Individual Military Defense Counsel, RCM **502(d)(3); RCM 506(b).** 37
5.4. Oaths. ..... 40
Section 5B USAF Court Reporter 40
5.5. General Information. ..... 40
5.6. Duties and Responsibilities. ..... 41
5.7. Enlisted Court Reporters. ..... 41
Section 5C Convening Orders (RCM 504), Detailing and Excusing Members (RCM 503; RCM 505) 41
5.8. Special Orders Convening Courts-Martial. ..... 41
Figure 5.1. Sample Convening Order. ..... 43
Figure 5.2. Sample Special Court-Martial Convening Order With a Savings Clause. ..... 44
Figure 5.3. Sample Amendment to Convening Orders. ..... 45
**Chapter 6—WITNESS TRAVEL, IMMUNITY, PRETRIAL AGREEMENTS 46**
Section 6A Witness Travel 46
6.1. Funding Authorities. ..... 46
6.2. Centralized Witness Funding. ..... 46
6.3. Military Witnesses. ..... 46
6.4. Civilian Witnesses. ..... 47
6.5. Expert Witnesses. ..... 48
Section 6B Immunity 48
6.6. Grants of Immunity (RCM 704). ..... 49
Section 6C Pretrial Agreements (RCM 705). 50
6.7. Authority to Conclude Agreement. ..... 50
6.8. Format and Terms. ..... 50
6.9. Withdrawal from PTAs. ..... 50
6.10. In-Court Inquiry. ..... 51
6.11. Jurisdiction. ..... 51
6.12. Authorization Required To Enter Into PTA Discussion in National Security And Related Cases. ..... 51
Figure 6.1. Sample Request for Central Witness Funding. ..... 52

Figure 6.2. Sample Letter to Accompany Subpoena. ..... 53
Figure 6.3. Sample Invitational Travel Order. ..... 55
Figure 6.4. Sample Letter to Civilian Witness for Article 32 Investigations/Overseas Travel. ... 56
Figure 6.5. Sample Memorandum of Agreement for Use With Civilian Expert Witness. ..... 58
Figure 6.6. Sample Grant of Immunity and Order to Testify. ..... 60
Figure 6.7. Sample Format for Offer of Pretrial Agreement and for Final Agreement. ..... 61
Table 6.1. Travel Funding Table. ..... 65

**Chapter 7—VICTIM AND WITNESS ASSISTANCE** **69**

Section 7A General 69
7.1. Purpose. ..... 69
7.2. Objectives. ..... 69
Section 7B Definitions 69
7.3. Victim. ..... 69
7.4. Witness. ..... 70
7.5. Offense. ..... 70
7.6. Responsible Official (RO). ..... 70
7.7. Local Responsible Official (LRO). ..... 70
7.8. Victim Liaison. ..... 70
Section 7C Victim's Rights 70
7.9. Crime Victim's Rights. ..... 70
Section 7D Services Provided to Crime Victims 71
7.10. LRO Responsibilities to Crime Victims. ..... 71
Section 7E Services Provided to Witnesses 73
7.11. Local Responsible Official's (LRO) Responsibilities to Witnesses. ..... 73
Section 7F Notification to Other Individuals 74
7.12. Others Entitled to Notice. ..... 74
Section 7G Post-trial Notice and Information 74
7.13. General. ..... 74
7.14. Witness Fees and Costs. ..... 75

7.15. Confidentiality of Administrative Disposition. ..... 76

Section 7H Training 76

7.16. Training. ..... 76

Section 7I Self-Inspection 77

7.17. Self-Inspection. ..... 77

Section 7J Reporting Requirements 77

7.18. Reporting Requirements. ..... 77

Figure 7.1. Victim/Witness Program Responsibilities. ..... 78

Figure 7.2. Model Victim Information Packet. ..... 79

Figure 7.3. List of References. ..... 81

Figure 7.4. Victim and Witness Assistance Checklist. ..... 83

**Chapter 8—TRIAL MATTERS 88**

Section 8A General. 88

8.1. Modification, Withdrawal or Dismissal of Charges and Specifications after Referral to Trial (RCM 603, RCM 604). ..... 88

8.2. Conditional Guilty Plea. ..... 88

Section 8B Evidentiary Matters. 88

8.3. Use of Confidential Drug or Alcohol Abuse Records. ..... 88

8.4. In Personam Jurisdiction of Reserves. ..... 89

Section 8C Presentencing Matters (RCM 1001) 89

8.5. Personal Data and Character of Prior Service. ..... 89

8.6. Previous Convictions. ..... 90

Section 8D Matters Requiring Air Force Legal Services Agency Assistance 90

8.7. Appeals by the United States from an Adverse Ruling by a Military Judge (RCM 908). ..... 90

8.8. Extraordinary Writs by Government Counsel. ..... 90

8.9. Officer Resignations for the Good of the Service (RILOs). ..... 90

8.10. Disclosure of Classified Information. ..... 91

8.11. Disclosure of Government Information other than Classified Information. ..... 91

Section 8E Findings and Sentencing Worksheets 91

8.12. Use of Findings and Sentencing Worksheets. ..... 91

Section 8F Preparing and Forwarding Records of Trial 91

8.13. Preparing Records of Trial. ..... 92

8.14. Forwarding Record of Trial. ..... 92

Section 8G Trial by Military Judge 92

8.15. Requesting Trial by Military Judge. ..... 92

**Chapter 9—POST-TRIAL PROCEDURE 93**

Section 9A Report of the Result of Trial (RCM 1101; RCM 1305). 93

9.1. Publication of Result of Trial. ..... 93

Section 9B Post-Trial Confinement 93

9.2. Effect of Pretrial Confinement. ..... 93

9.3. Confinement (RCM 1101; 1107(f)(4)(C); 1113(d)(2)). ..... 93

9.4. Return to Duty Program (RTDP). ..... 94

Section 9C Matters Submitted by the Accused (RCM 1105) 94

9.5. Notice and Forms Regarding Post-Trial Submissions. ..... 94

Section 9D SJA Recommendation (RCM 1106) 95

9.6. Preparation of SJA's Recommendation. ..... 95

Section 9E Action by the Convening Authority (RCM 1107). 96

9.7. Notifications of Adjudged Sentence, Action of the Convening Authority, and Deferment or Waiver. ..... 96

9.8. Action on Sentence. ..... 97

9.9. Contingent Confinement (RCM 1003(b)(3); RCM 1113(d)(3)). ..... 97

9.10. Application of Article 58(a), UCMJ. ..... 100

9.11. Disqualification of Convening Authority. ..... 100

9.12. Required and Voluntary Excess Leave. ..... 100

9.13. Suspension of Sentences and Proceedings to Vacate a Suspended Sentence (RCM 1108; RCM 1109). ..... 101

9.14. Notification and Distribution of Documents to Confinement Facilities. ..... 102

Figure 9.1. Submission of Matters by the Accused. ..... 102

Figure 9.2. Sample Notification of Adjudged Sentence or Convening Authority Action. ..... 103

Figure 9.3. Notification and Acknowledgment of Required Excess Leave. ..... 105

Figure 9.4. Staff Judge Advocate's Recommendation. ..... 107

**Chapter 10—COURT-MARTIAL ORDERS AND INMATE TRAVEL 109**

Section 10A - Court-Martial Orders 109

10.1. Issuance, Form and Distribution. ..... 109

10.2. Matters Unfit for Publication and Classified Matters. ..... 115

10.3. Orders in Trials Terminated Without Findings. ..... 115

10.4. Initial Orders. ..... 116

10.5. Final Supplementary Orders. ..... 117

10.6. Form and Contents of Supplementary Orders. ..... 117

10.7. Modification or Suspension of Sentence after Execution. ..... 122

10.8. Order Vacating Suspension. ..... 122

10.9. Vacation of Suspension and Execution of Punitive Discharge When Accused is Absent Without Authority. ..... 122

10.10. Issuance of Final Court-Martial Order in International Hold Situations. ..... 123

Section 10B Inmate Travel 123

10.11. Travel and Change in Designated Place of Confinement of Inmates. ..... 123

10.12. Travel of Personnel Awaiting Completion of Appellate Review (Excess) Leave. .... 123

Figure 10.1. Court-Martial Orders - Heading - First Order of the Fiscal Year. ..... 124

Figure 10.2. Court-Martial Orders and Action--Summarized Guilty Plea to Lesser Included Offense. ..... 125

Figure 10.3. Court-Martial Orders - Change of Pleas. ..... 126

Figure 10.4. Court-Martial Orders - Corrected Copy. ..... 127

Figure 10.5. Court-Martial Orders--Rehearing or New Trial. ..... 128

Figure 10.6. Court-Martial Orders--Final Supplementary Order. ..... 130

Figure 10.7. Court-Martial Orders - Final Supplementary Order Waiver/Withdrawal of Appellate Review. ..... 130

Figure 10.8. Court-Martial Orders - New Action. ..... 131

**Chapter 11—APPEALS AND REVIEW, REHEARINGS, CLEMENCY 133**

Section 11A General Information 133

11.1. Requests and Withdrawal of Requests for Appellate Counsel: ..... 133

11.2. Briefs and Affidavits to Support Arguments of Error. ..... 133

Section 11B Article 64(a), UCMJ, Judge Advocate Reviews (RCM 1112) 133

11.3. When Article 64(a) Reviews Are Required. ..... 133

11.4. Distribution of Article 64(a) Reviews. ..... 134

Section 11C Article 69, UCMJ, Reviews by the Office of The Judge Advocate General. 134

11.5. Examinations under Article 69(a), UCMJ (RCM 1201(b)(1)). ..... 134

11.6. Applications under Article 69(b), UCMJ (RCM 1201(b)(3)). ..... 134

Section 11D Review by the Air Force Court of Criminal Appeals (AFCCA) (RCM 1203) 135

11.7. Forwarding Records. ..... 135

11.8. Notification of Transfer or Excess Leave. ..... 135

11.9. Notification of the AFCCA's Decision. ..... 135

11.10. Convening Authority Action After Service of AFCCA Decision. ..... 135

Section 11E Petitions for New Trial (RCM 1210). 135

11.11. Filing and Form of Petition. ..... 135

Section 11F Rehearings and Other Remedial Actions 135

11.12. Notification of the Accused. ..... 135

11.13. Rehearing Procedures. ..... 136

11.14. DuBay Hearings. ..... 136

11.15. Records of Trial on Rehearing. ..... 136

Section 11G Exercise of Clemency Under Article 74, UCMJ (RCM 1108) 137

11.16. General Information. ..... 137

11.17. Authority of the Accused's Commander. ..... 137

11.18. Authority of TJAG. ..... 137

11.19. Authority Reserved to SAF. ..... 137

11.20. Publication of SAF Actions Under Article 74, UCMJ. ..... 138

Section 11H Waiver or Withdrawal of Appellate Rights 138

11.21. Waiver or Withdrawal of Appellate Rights. ..... 138

Figure 11.1. Sample Format for Defense Submission (Article 69, UCMJ). ..... 138

**Chapter 12—MISCELLANEOUS MILITARY JUSTICE MATTERS** **140**

Section 12A Staff Judge Advocate 140

12.1. Staff Judge Advocate-Title. ..... 140

Section 12B Explanation of the UCMJ (Article 137) 140

12.2. Required Explanation of Specified UCMJ Articles. ..... 140

Section 12C Direct Communications and Reports 141

12.3. AFLSA/JAJM Requests for Information. ..... 141

12.4. Local Responses to High Level Inquiries. ..... 142

Section 12D Extrajudicial Statements to the Public Relating to Criminal Proceedings and Release of Court-Martial Records. 142

12.5. General. ..... 143

12.6. Extrajudicial Statements. ..... 143

12.7. Documentation Pertaining to Criminal Proceedings. ..... 145

Section 12E Reporting Officer and Special Interest Cases 146

12.8. Reporting Officer and Special Interest Cases to HQ USAF. ..... 146

Section 12F Time Management Of Case Processing 148

12.9. Time For Processing Cases. ..... 148

Section 12G Specific Search, Seizure, and Apprehension Matters 148

12.10. Authorization to Administer Oaths for Search, Seizure, and Apprehension. ..... 148

12.11. US Mail. ..... 148

Section 12H Appointment of Judges to the Air Force Court of Criminal Appeals 149

12.12. Appointing Judges to AFCCA. ..... 149

Figure 12.1. Delegation of Military Justice Administrative Duties. ..... 149

12.13. Forms Prescribed. ..... 149

Section 12I Compliance with Sex Offender Registration under Federal Law. 150

12.14. General Provision. ..... 150

12.15. Base-level SJA Responsibilities. ..... 150

**Attachment 1—GLOSSARY OF ABBREVIATIONS AND ACRONYMS 151**

**Attachment 2—SUBJECT INDEX 154**

**Attachment 3—IC 97-1 TO AFI 51-201, ADMINISTRATION OF MILITARY JUSTICE, 1 SEP 96 165**

**Attachment 4— Interim Change (IC) 97-2, dated 3 Oct 97 to AFI 51-201, Administration of Military Justice, 25 Apr 97** **166**

**Attachment 5— IC 99-1 TO AFI 51-201, ADMINISTRATION OF MILITARY JUSTICE** **171**

# CHAPTER 1

## PURPOSE, COMMAND INFLUENCE, PROFESSIONAL CONDUCT

**1.1. Purpose.** This instruction sets forth requirements for the administration of military justice. Find primary sources of rules and guidance on military justice in the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM). Commands may supplement this instruction with approval of Air Force Legal Services Agency, Military Justice Division, (AFLSA/JAJM), 112 Luke Avenue, Room 343, Bolling AFB DC 20332-8000. This instruction requires the collection and maintenance of information protected by the Privacy Act of 1974. The authority to collect and maintain this information is in 10 U.S.C. 854 and 865. Privacy Act system notice F111 AF JA B, court-martial and Article 15 records, applies.

**1.1. (AMC)** This supplement has been coordinated and approved by AFLSA/JAJM.

**1.2. Unlawful Command Influence (RCM 104).** The military justice system must operate free of unlawful command influence. SJAs and their staffs must be sensitive to the existence, or appearance, of unlawful command influence, and they must be vigilant and vigorous in their efforts to prevent it and to respond appropriately to its occurrence. (See Articles 37 and 98, UCMJ). SJAs should periodically discuss with commanders the importance of avoiding even the appearance of unlawful command influence.

**1.3. Ethics and Standards of Conduct.** The Air Force Rules of Professional Conduct and Air Force Standards for Criminal Justice apply to all military and civilian lawyers, paralegals and nonlawyer assistants in The Judge Advocate General's Department, USAF. This includes foreign national lawyers employed overseas by the Department of the Air Force, to the extent those rules are not inconsistent with their domestic law and professional standards. They also apply to all lawyers, paralegals and nonlawyer assistants who practice in Air Force courts or other proceedings under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM), or assist others practicing in such proceedings, including, but not limited to, civilian defense counsel (and their assistants) who have no other connection to the USAF. Trial counsel shall provide copies of the Air Force Rules of Professional Conduct and the Air Force Standards for Criminal Justice to civilian defense counsel of record.

# CHAPTER 2

# JURISDICTION

## *Section 2A—Authority to Convene Courts-Martial*

**2.1. Exercise of General Court-Martial Convening Authority (RCM 504[b][1]).** Only the following may exercise general court-martial (GCM) convening authority:

2.1.1. Those authorized by Article 22 (a)(7), UCMJ, and Department of the Air Force Special Order. Commanders of units listed in Article 22(a)(7), UCMJ, and authorized to exercise general court-martial convening authority (GCMCA) by a Department of the Air Force Special Order may convene GCMs. (This does not preclude the exercise of convening authority as authorized by Article 22(a)(3) and governed by applicable DoD directives.)

2.1.2. Those authorized by Article 22(a)(7), UCMJ, and The Judge Advocate General (TJAG). Commanders of units listed in Article 22(a)(7), UCMJ, but who are not authorized to exercise GCMCA by a Department of the Air Force Special Order, may only convene GCMs with the express authorization of TJAG. Submit requests for TJAG authority to AFLSA/JAJM.

2.1.3. Those authorized by the Secretary of the Air Force (SAF) or the President. Commanders of units not listed in Article 22(a)(7), UCMJ, may only convene GCMs when designated and authorized to do so by SAF under Article 22(a)(8), UCMJ, or empowered by the President under Article 22(a)(9), UCMJ. Submit such requests to AFLSA/JAJM.

**2.2. Exercise of Special Court-Martial Convening Authority (RCM 504(b)(2)).** GCMCAs and other commanders as follows may exercise special court-martial (SPCM) convening authority:

2.2.1. Those authorized by Article 23, UCMJ, and Department of the Air Force Special Order.

2.2.2. Those authorized by Article 23(a)(4), UCMJ, and a major command (MAJCOM) commander. Except as provided in **2.2.3.** and **2.2.4.**, commanders of units listed in Article 23, UCMJ, but not authorized to exercise special court-martial convening authority (SPCMCA) by a Department of the Air Force Special Order, may only convene SPCMs when authorized by the MAJCOM commander. MAJCOM SJAs send a copy of all such authorizations to AFLSA/JAJM.

2.2.3. Those authorized by Article 23, UCMJ, and an Air Force component commander. Commanders of Air Force components of unified or specified combatant commands may authorize subordinate commanders to exercise SPCMCA, if the subordinate commander commands one of the units listed in Article 23, UCMJ, and the subordinate commander commands an organization or unit assigned or attached to the Air Force component commander's command. The Air Force component command SJA sends a copy of all such authorizations to AFLSA/JAJM.

2.2.4. Those authorized by SAF. Commanders of organizations not listed in Article 23, UCMJ, may convene SPCMs when empowered to do so by SAF under Article 23(a)(7), UCMJ. Submit requests for SAF action to AFLSA/JAJM.

**2.3. Exercise of Summary Court-Martial Convening Authority (RCM 504[b][3]; RCM 1302).**

**2.3.1. Convening Authority.** SPCMCAs and GCMCAs may convene summary courts-martial (SCM). Convene a SCM over members of organizations listed in Article 24(a)(3), UCMJ, only with

the express authorization of the Air Force GCMCA over the detached squadron or other detachment consistent with RCM 504[b][2][B].

**2.3.2. Reservists as Summary Courts-Martial Officers.** A reservist on active duty who is a commisioned officer may serve as a summary court-martial officer under RCM 1301. Reservists on inactive duty for training (IDTs) are not on active duty and cannot serve as summary court-martial officers. Air National Guard officers who are serving on active duty in federal service may serve as summary court-martial officers under RCM 1301.

***Section 2B—Concurrent Jurisdiction***

**2.4. Jurisdiction in Joint Commands, RCM 201[e], JCS Pub O-2.** The commander of a joint command, unified command, or joint task force is responsible for discipline in the command. The joint or unified commander should normally exercise disciplinary authority through the Air Force component commander or the senior Air Force officer (SAFO) to the extent practicable. While authority to convene courts-martial may exist in joint commands and takes precedence over Air Force authority for offenses related to joint concerns or matters, offenses committed by Air Force members of joint commands are preferably addressed by Air Force commanders and convening authorities. Similarly, Air Force commanders and convening authorities should only exercise jurisdiction over members of other Services when warranted by RCM 201. (AFI 25-201, *Support Agreement Requirements*, AFI 38-101, *Air Force Organization*, and AFI 51-202, *Nonjudicial Punishment Guide*).

**2.5. Cases Involving State or Foreign Court Prosecution Interest.**

**2.5.1. In General.** Trial in a state or foreign court is not a legal bar to a later prosecution in a federal court based on the same act or omission. Except as provided in **2.5.2.**, do not court-martial or punish under Article 15, UCMJ, any member of the Air Force for substantially the same act or omission for which a state or foreign court tried the member, regardless of the outcome. (This limitation does not apply to vacation proceedings held under RCM 1109 and Part V, paragraph 6a[4]). Follow the state or foreign law to determine when jeopardy attaches. At a minimum, jeopardy attaches when the jury is impaneled and sworn, or when the first witness testifies in a judge alone trial. *Crist v. Bretz*, 437 U.S. 28 (1978).

**2.5.2. Secretarial Exception.** Only SAF may approve initiation of court-martial or Article 15, UCMJ, action against a member who has been previously tried by a state or foreign court for the same act or omission. Permission will be granted in only the most unusual cases, when the ends of justice and discipline can be met in no other way. Send requests for exceptions, before trial and with full justification, to AFLSA/JAJM.

**2.5.2. (AMC)** Coordinate any request for Secretarial Exception through the appropriate Numbered Air Force and the HQ AMC legal offices.

**2.5.3. Discretion to Prosecute.** Convening authorities determine whether to seek the exercise of Air Force jurisdiction, considering the best interests of the Air Force. Such interests include a preference for consistent discipline of Air Force members, regardless of geographic location.

**2.6. Cases Involving Federal Agencies.**

**2.6.1. Department of Justice (DOJ).** The MCM, Appendix 3 and DoD Directive 5525.7, *Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes*, January 22, 1988, set forth DoD and DOJ responsibilities for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction.

**2.6.2. US Secret Service.** The US Secret Service (USSS) exercises primary investigative responsibility for all cases involving alleged threats against the President or successors to the Presidency (18 U.S.C. 871). The Chief, AFLSA/JAJM, or a designee, will meet with representatives of DOJ and USSS to decide whether military authorities or DOJ will exercise further jurisdiction in the case.

***Section 2C—Completion of Service***

**2.7. Effect of Completion of Period of Service (RCM 202).** Court-martial jurisdiction extends to those persons whose enlistments expired, but are awaiting discharge (Article 2(a), UCMJ; see also Article 3(a),UCMJ, and RCM 202). Take action as soon as practicable to preserve jurisdiction. If the matter results in trial by court-martial, the record of trial must include evidence establishing jurisdiction over the accused.

***Section 2D—Air Force Reserve and Air National Guard Members***

**2.8. Exercise of Jurisdiction Over Air Force Reserve and Air National Guard Members (RCM 202).**

**2.8.1. In General.** United States Air Force Reserve (AFRES) members are subject to UCMJ jurisdiction for offenses committed while on active duty or on inactive duty training status. Air National Guard (ANG) members are subject to UCMJ jurisdiction only when in federal service, and only then do the provisions of this instruction apply to them.

**2.8.2. Courts-Martial.** Once jurisdiction attaches, RCM 202[c], a member of a reserve component may either be retained on active duty pending disposition of the offense, or be released to reserve status and recalled as necessary for an Article 32 investigation, court-martial, or both. If the member is no longer on active duty when the offense is discovered, the member may be involuntarily ordered to active duty for an Article 32 investigation, trial by court-martial, or both. Use the procedures in paragraph **2.8.4.**, unless the member's military status completely terminated.

**2.8.3. Nonjudicial Punishment.** Do not involuntarily recall a reserve member to active duty solely to impose nonjudicial punishment or for trial by SCM. Initiate nonjudicial punishment or a SCM during the member's next period of inactive duty training or active duty. MAJCOM commanders or equivalents may grant waivers to this restriction in appropriate cases.

**2.8.3. (AMC)** The power of the AMC/CC to grant waivers is delegated to the AMC/CV.

**2.8.4. Recall Authority.** The following may order a reserve member to active duty:

2.8.4.1. The GCMCA for the regular component unit to which the member is attached for training purposes;

2.8.4.2. The GCMCA for the regular component unit in which the member performed duty when the offense occurred; or

2.8.4.3. The GCMCA of the regular component host unit, as designated in the applicable host-tenant support agreement or as otherwise specified in AFI 25-201, if the member is assigned to a reserve component unit for training purposes, or was attached to such a unit when the offense occurred.

**2.8.5. Confinement.** A reserve member recalled to active duty for court-martial may not be sentenced to confinement, or be required to serve a punishment consisting of any restrictions on liberty during the recall period of duty, without SAF approval. see Article 2(d)(5), UCMJ. A punishment of restriction to specified limits may be imposed only during periods of inactive duty training or active duty ordered for routine (non-disciplinary) purposes. Submit to AFLSA/JAJM a request for SAF approval to recall a reserve member for court-martial when the sentence may include confinement. Include the following information:

2.8.5.1. The preferred or anticipated charges and specifications.

2.8.5.2. A summary of the evidence relating to each offense.

2.8.5.3. Prior convictions and nonjudicial punishments.

2.8.5.4. Whether the member refused an offer for nonjudicial punishment.

2.8.5.5. The member's background, including civilian employment, family circumstances, and character of military service.

2.8.5.6. Coordination, if any, with the member's reserve component chain of command, such as, the unit commander (state adjutant general for an ANG member performing Federal service).

***Section 2E—Retired Personnel***

**2.9. Trial of Retired Regular Air Force Personnel, RCM 202; Article 2(a)(4) and (5), UCMJ.** Do not court-martial retired regular Air Force personnel unless their conduct clearly links them with the military or is adverse to a significant military interest of the United States. Do not prefer charges without SAF approval unless the statute of limitations is about to run. If the statute of limitations is about to run and charges are preferred, request SAF approval as soon as possible. Send requests for approval, with full justification, to AFLSA/JAJM.

***Section 2F—General Officers***

**2.10. Trial of General Officers.** Only commanders of Air Force MAJCOMs, and equivalents, or higher authority, may exercise court-martial convening authority over Air Force general officers. This limitation does not apply to the exercise of court-martial convening authority by the commanding officer of a unified command.

# CHAPTER 3

# MILITARY MAGISTRATES, PRETRIAL RESTRAINT, PREFERRAL OF CHARGES

## *Section 3A—Military Magistrates*

### 3.1. Military Magistrate Program.

**3.1.1. Appointment of Magistrate.** The commander of the lowest organizational level having command over an Air Force installation, who is either an SPCMCA or GCMCA, or, at AFRES bases and stations, the senior Air Reserve Technician commander, may appoint up to two officers of judicial temperament to serve as military magistrates for that installation. MRE 315 (d)(2). Appoint magistrates in writing and specify the installation over which the magistrates may exercise authority.

**3.1.2. SJA Duties.** The installation SJA briefs military magistrates on their duties.

**3.1.3. Qualifications.** Ordinarily appoint a military magistrate of the rank of lieutenant colonel or above. The appointment of any magistrate in the rank of major or below may only be made by, or with the concurrence of, the GCMCA over the installation. A chaplain, member of an office of a staff judge advocate having responsibility for that installation, security policeman, AFOSI member, or court-martial convening authority may not serve as a military magistrate. Officers appointed at AFRES installations must be serving a period of inactive duty training or active duty to perform magistrate duties.

**3.1.4. Authority.** A military magistrate is authorized to issue search and seizure (including apprehension) authorizations based upon probable cause. The magistrate exercises authority concurrently with the installation commander. The commander need not be unavailable for a magistrate to exercise this authority.

**3.1.5. Alternate Magistrate.** If a commander appoints two magistrates, designate one as the primary magistrate, and the other as the alternate. The alternate acts when the primary is unavailable (absent or incapacitated). A primary magistrate is not "absent," if the magistrate is in a duty status in the vicinity of the installation and can reasonably be reached by electronic communications. An alternate magistrate's authorization is not invalid solely because the primary magistrate was available.

## *Section 3B—Pretrial Restraint*

### 3.2. Pretrial Confinement (RCM 305).

**3.2.1. SJA Duties.** SJAs must ensure confinement personnel advise pretrial confinees in accordance with RCM 305(e). Consult AFI 51-703, *Foreign Criminal Jurisdiction: Policies and Procedures,* if a member is confined at the request of foreign host nation authorities. A judge advocate briefs reviewing officers on their duties when appointed, and as appropriate thereafter. The SJA notifies victims of a confinee's pretrial confinement and release from pretrial confinement.

**3.2.2. Appointment of Pretrial Confinement Reviewing Officers (PCRO).** Consult RCM 305(i)(2). The SPCMCA appoints, by letter, a reasonable number of officers to serve as PCROs. PCROs shall be mature officers, who are not judge advocates assigned to the convening authority's legal staff, and who have no connection with the court-martial referral process or the law enforcement function. Military magistrates appointed under paragraph **3.1.** who meet these qualifications may also be appointed as PCROs.

**3.2.3. Commander's Decision and Memorandum.** Within the 72-hour standard set forth in RCM 305(h)(2)(A), the confinee's commander shall decide whether pretrial confinement will continue. The commander must address the requirements for confinement in RCM 305(h)(2)(B) and should consider the factors in the discussion to that section. If pretrial confinement is continued, the commander must prepare a written memorandum documenting that decision in accordance with RCM 305(h)(2)(C). The memorandum is sent through the SJA to the SPCMCA. **Figure 3.1.** is a sample memorandum, which must be included in the ROT.

3.2.3.1. While the confinee's commander has 72 hours to make a decision under RCM 305(h)(2)(A), an earlier probable cause determination is required by RCM 305(i)(1). It provides that within 48 hours of imposition of confinement under military control, a neutral and detached officer must make a probable cause determination to decide whether pretrial confinement should be continued. See also *U.S. v. Rexroat*, 38 M.J. 292 (CMA 1993). If the confinee's commander is neutral and detached and acts within 48 hours of imposition of confinement, the commander's decision under RCM 305(h)(2) will satisfy the 48-hour probable cause determination under RCM 305(i)(1).

3.2.3.2. If the confinee's commander is not neutral or detached, another neutral and detached officer must make the 48-hour probable cause determination under RCM 305(i)(1). This 48-hour probable cause determination does not eliminate the requirement that the confinee's commander make a decision on continued pretrial confinement within 72 hours as provided in RCM 305(h)(2), unless the neutral and detached officer finds no probable cause to continue pretrial confinement and directs release.

**3.2.4. SPCMCA Forwards Memorandum.** The SPCMCA refers the memorandum to a PCRO or military judge, if a military judge is made available.

**3.2.5. PCRO's Review of Pretrial Confinement.** The PCRO's review under RCM 305(i) must be conducted within 7 days of the imposition of confinement. This review can be conducted earlier, and, if conducted within 48 hours of imposition of pretrial confinement, it will satisfy the 48-hour probable cause determination required under RCM 305(i)(1). However, the PCRO, before conducting the RCM 305(ii)(2) review, must first receive the RCM 305(h)(2)(C) memorandum of the confinee's commander since this is an item that must be considered by the PCRO when conducting the review. The pretrial confinement review is not an adversarial proceeding. The confinee and defense counsel have no right to cross-examine witnesses. The PCRO may approve continued confinement or order immediate release.

**3.2.6. Release From Pretrial Confinement.** If the PCRO orders the confinee released, the PCRO cannot impose conditions on release. Within 24 hours of the decision, the PCRO shall provide the SPCMCA with a written memorandum of the PCRO's conclusions and factual findings on which they are based. Attach a copy of all documents considered by the PCRO and summaries of all oral statements. Provide a copy of the memorandum, with attachments, to the accused on request.

**3.2.7. Retention in Pretrial Confinement.** If the PCRO approves pretrial confinement, the PCRO will, within 24 hours, provide the SPCMCA, SJA, confinement officer, and confinee, a written memorandum of the PCRO's conclusions and the factual findings on which they are based. Attach a copy of all documents considered by the PCRO and summaries of all witness statements.

**3.2.8. Pretrial Restraint Upon Release From Confinement.** Upon release from confinement, a commander may impose any alternative pretrial restraint authorized by RCM 304 (a)(1)-(3). Re-con-

finement after release is limited by RCM 305(l) circumstances. See *U.S. v. Mahoney*, 36 M.J. 679 (AFCMR 1992). Review the circumstances of re-confinement in accordance with RCM 305(h)(2) and (i).

**3.2.9. Pretrial Confinement for Mental Evaluation and Treatment.** A commander or convening authority may determine the place and condition of pretrial confinement, including confinement in a civilian facility, for purposes of mental evaluation and necessary treatment pending trial. The conditions may not be more harsh than necessary to ensure the accused's presence at trial, and the facility must be capable of rendering the competency evaluations and providing care and treatment of the military member. Such confinement is subject to review by the military judge for any abuses of discretion. See *Short v. Chambers*, 33 M.J. 49 (CMA 1991), 18 U.S.C. 4241.

***Section 3C—Preferral of Charges (RCM 307)***

**3.3. Considerations Prior to Preferral.**

**3.3.1. Accuser is Senior to the Convening Authority.** When the accuser is senior in rank to the convening authority consult RCM 303 and 504(c)(2) and (3).

**3.3.2. Accused With Access to Sensitive Information, Travel or Assignment Restrictions, or a Foreign National.** Before preferring charges or taking any other court-martial action concerning an accused with access to sensitive information, or who is under travel or assignment restrictions, consult AFI 31-501, *USAF Personnel Security Program*. See AFJI 51-707, *Consular Protections of Foreign Nationals Subject to the UCMJ*, for notification requirements whenever a member of the Armed Forces of the United States is (or claims to be) a national of a foreign country and is apprehended within the territory of the United States under circumstances likely to result in confinement or trial by court-martial within the United States.

**3.3.3. Preferral in Lengthy Absence Cases.** Effective 14 November 1986, the requirement was eliminated that the summary court-martial convening authority (SCMCA) receipt for charges alleging either desertion or absent without leave (AWOL) in order to toll the statute of limitations (P.L. 99-661, Section 805(a), (Article 43, UCMJ)). Notwithstanding any other regulation, preferral of charges in cases of absences initiated after 14 November 1986 is not required. However, for all lengthy absence cases for which charges were preferred and in which the accused has not yet returned to military authority, the SCMCA must receipt for the charges. Immediately upon preferral of charges, SJAs should obtain a written delay from the appropriate convening authority to stop the running of the RCM 707 speedy trial rule. Attach documentation of approved delays to the charge sheet in the member's personnel records before sending the records to the Air Force Personnel Center. See AFI 36-2911, *Desertion and Unauthorized Absence*, paragraph 9 and Table 1.

**3.3.4. Accused With Prior Adjudged Punitive Discharge.** If accused has an approved, but unexecuted, prior punitive discharge, the SJA for the SPCMCA over the accused immediately sends a message or fax notice to AFLSA/JAJM, with information copies to the appropriate GCM and MAJCOM SJAs, regarding preferral of new charges. This enables JAJM to prevent the execution of the previous punitive discharge and ensures continued court-martial jurisdiction over the accused.

**3.3.4. (AMC)** Send an information copy to HQ AMC/JAJ, 102 E. Martin St., Rm N-119, Scott AFB IL 62225-5012.

**3.4. Preparation of the Charge Sheet.**

**3.4.1. Charge Sheet.** Prepare charges and specifications on the DD Form 458, **Charge Sheet**.

**3.4.2. Blocks 3 and 4.** Enter the accused's rank in block 3; e.g., Captain, Staff Sergeant, A1C (abbreviations are acceptable). Enter the accused's grade in block 4; e.g., O-3, E-5, E-3. Use the rank and grade as of date charges are preferred. Change the charge sheet to reflect any change, in the accused's rank or grade by the time of arraignment.

**3.4.3. Block 5.** Enter the accused's assigned organization. Enter the MAJCOM in parentheses.

3.4.3.1. Personnel are "attached" to squadron sections, not "assigned." If an accused is a member of a headquarters squadron section, enter, for example, "Headquarters, 111th Air Base Group (USAFE)," not "Headquarters Squadron 111th Air Base Group (USAFE)" or "Headquarters Squadron Section, 111th Air Base Group (USAFE)." At squadron level, enter "111th Civil Engineering Squadron (USAFE)," not "111th Civil Engineering Squadron Section (USAFE)."

**3.4.4. Block 6.** The accused's current service is in the accused's personnel records or in the record review listing prepared by the servicing personnel office.

**3.4.5. Block 7.** Enter the accused's pay per month at the time the charge sheet is prepared. If the accused's pay changes by the date of arraignment, make a pen and ink change to the charge sheet to reflect the accused's current pay on the date of arraignment.

**3.4.6. Blocks 8 and 9.** Include any form of restraint, including restraint by civil authorities, if the accused was held for the Air Force. (For example, a member in an AWOL or deserter status apprehended by civilian police and incarcerated or detained until Air Force officials take custody of the accused.)

**3.4.7. Charges and Specifications.** Consult RCM 307 and refer to the sample specifications in MCM, Part IV.

**3.4.7.1. Format.** Type the words "CHARGE" and "ADDITIONAL CHARGE" in all capital letters. "specification" need not be capitalized.

**3.4.7.2. Additional Charges.** When additional charges are preferred, prepare an additional DD Form 458. If charges are preferred after preferral of **ADDITIONAL CHARGES,** label each new set of charges accordingly; e.g., **SECOND ADDITIONAL CHARGES**, **THIRD ADDITIONAL CHARGES**, etc. Number each set with Roman numerals, beginning with "I," if there are more than one.

3.4.7.3. In the specifications, identify the accused by present rank or grade, followed by the rank or grade on the date of the alleged offense, if different. Do not include the MAJCOM. List known aliases. For example: "In that TECHNICAL SERGEANT ADAM J. SMITH, United States Air Force, then MASTER SERGEANT ADAM J. SMITH, alias CAPTAIN JAY J. SMITH, United States Air Force, 401st Field Maintenance Squadron, did, . . . ."

**3.4.7.4. Identification of Victim.** If the victim is identified in the specification, do not put the victim's name or rank in all capital letters.

**3.4.7.5. Pleading Check Cases.** Where a check or other instrument appears regular in all respects, it is unnecessary to plead the check's contents verbatim. In such cases, consider using the sample specifications provided at **Figure 3.2.**, rather than those in MCM, 1984, Part IV, para-

graphs 49f and 68f. If in doubt about the pleading form to use, plead the check verbatim, but include only the portions applicable at the time of the offense.

**3.5. Forwarding Charges (RCM 401).** The commander forwards the charges to the convening authority by attaching an indorsement (**Figure 3.3.**) to the DD Form 458, Charge Sheet. Attach to the indorsement a personal data sheet on the accused (**Figure 3.4.**) and a copy of the OSI report of investigation or other evidence supporting the charges. The commander signs and dates the indorsement when preferring charges or when forwarding charges preferred by another. Address the indorsement to the officer exercising SPCMCA over the accused. If additional charges are later added, forward them with a new indorsement.

**3.6. Receipt for Charges (RCM 403).** A judge advocate may receipt for charges on behalf of the SCMCA when the convening authority delegates that authority. If delegated, receive the charges "FOR THE COMMANDER." (**Figure 12.1.** is a sample delegation letter.)

**3.7. Discovery.** SJAs are encouraged to provide basic discovery to defense counsel as soon as practicable, even before preferral of charges.

3.7.1. At the time charges are preferred, the SJA should, as a minimum, provide defense counsel the following matters:

3.7.1.1. A copy of DD Form 458;

3.7.1.2. A copy of the transmittal of charges with all attachments; and

3.7.1.3. A copy of any report of investigation and any signed or sworn statements relating to the offense charged, unless the government claims that the documents or portions thereof are protected from release, or disclosure will harmfully affect a law enforcement investigation.

3.7.2. When charges are preferred, or within a reasonable time thereafter, defense counsel will be provided the opportunity to inspect items of physical evidence upon request and when reasonably available.

3.7.3. This paragraph does not create any new substantive rights to discovery beyond those contained in the Rules for Courts-Martial. After referral of charges to trial, discovery shall be made by both trial counsel and defense counsel in accordance with the Rules for Courts-Martial.

**Figure 3.1. Sample Pretrial Confinement Memorandum.**

Letterhead

MEMORANDUM FOR _____/CC

FROM: _____/CC

402 Wing Avenue, Room 47

Any Air Force Base, Tx 64789-5013

SUBJECT: Pretrial Confinement of

1. I directed the pretrial confinement of (NAME, GRADE, UNIT) because I have reasonable grounds to believe (he) (she) committed the following offenses triable by court-martial:

Article Date of Offense Description of Offense

The attached documents support this conclusion.

2. Background Information:

a. Personal Data:

Age:

AFSC: (number and job description)

Total Service to Date:

DEROS:

Marital Status: (also include whether spouse is in local area)

Number of Children (if any):

b. Prior Disciplinary Action:

(1) Previous Convictions: (include type of court, date, charges on which member convicted, and punishment)

(2) Previous Nonjudicial Punishment: (include date and description of offense, as well as punishment imposed)

(3) Other Disciplinary Actions:

3. Continued pretrial confinement is appropriate because: (state reasons).

Signature Element

Attachments
1:
cc:

**Figure 3.2. Sample Specifications in Check Cases.**

**SAMPLE SPECIFICATION FORMS--CHECK CASES**

**I. MCM, paragraph 49f(1) (For the procurement of any article or thing of value, with intent to defraud):**

**A. Specification Form:**

In that _____, United States Air Force, (unit), did, (at), [on or about ____, 19_,] [on divers occasions, between on or about ____, 19_, and on or about , 19_,] with intent to defraud and for the procurement of [lawful currency](and)(or) [_____ (an article)(a thing) of value], wrongfully and unlawfully [(make)(draw)] [(utter)(deliver)] to [_____,] (a) certain (check/checks)(draft/drafts)(money order/money orders) for the payment of cash in the (total) amount of ____, dated ____, 19_, drawn upon the ___ Bank, made payable to the order of ____, and signed ____, then knowing that [(he)(she) (____)], the (maker)(drawer) thereof, did not or would not have sufficient funds in or credit with said bank for the pay-

ment of said (check/checks)(draft/drafts) (money order/money orders) in full upon (its)(their) presentment.

***EXAMPLES:***

(1) In that AIRMAN JOHN DOE, United States Air Force, 330 Training Maintenance Squadron, did, at Keesler Air Force Base, Mississippi, on or about 1 November 1995, with intent to defraud and for the procurement of lawful currency, wrongfully and unlawfully utter to the Army Air Force Exchange Service a certain check for the payment of money in the amount of $50.00, dated, 1 November 1995, drawn upon the First National Bank of Goldsboro, made payable to the Army Air Force Exchange Service, and signed John Doe, then knowing that he, the maker thereof, did not or would not have sufficient funds in or credit with said bank for the payment of said check in full upon its presentment.

(2) In that CAPTAIN JANE DOE, United States Air Force, Headquarters, 11th Wing, did, at Washington, D.C., on or about 10 June 1995, with intent to defraud and for procurement of a Ford automobile, wrongfully and unlawfully make a certain check for the payment of money in the amount of $1,500.00, dated 10/06/95, drawn upon the National Bank of Anacostia, made payable to Anacostia Ford, and signed Jane Doe, then knowing that she, the maker thereof, did not or would not have sufficient funds in or credit with said bank for the payment of said check in full upon its presentment.

(3) In that AIRMAN JOHN DOE, United States Air Force, Headquarters, 52d Fighter Wing, did, at Spangdahlem Air Base, Germany, on or about 12 March 1995, with intent to defraud and for the procurement of lawful German currency, wrongfully and unlawfully utter to the Noncommissioned Officers Open Mess a certain check for the payment of money in the amount of $20.00, dated 12 March 1995, drawn upon the First City Bank, made payable to Cash, and signed John Doe, then knowing that he, the maker thereof, did not or would not have sufficient funds in or credit with said bank for the payment of said check in full upon its presentment.

B. Specification Form:

In that _____, United States Air Force, (unit), did, (at) (on board), [on or about _____, 19__,] [on divers occasions, between on or about _____, 19__, and on or about _____, 19__,] with intent to defraud and for the procurement of [lawful currency] (and)(or) [(_____)(an article)(a thing) of value], wrongfully and unlawfully [(make)(draw)] [(utter)(deliver)] to, certain (checks)(drafts)(money orders) for the payment of money drawn upon the _____ Bank, as follows:

| [DATE] | [CHECK #] | [AMOUNT] |
|---|---|---|
| List checks | | |

of a (total) amount of _____, and signed _____, then knowing that [(he)(she)(_____)], the (maker)(drawer) thereof, did not or would not have sufficient funds in or credit with said bank for the payment of said (checks)(drafts)(money orders) in full upon (its) (their) presentment.

***EXAMPLE:***

(1) In that AIRMAN JOHN DOE, United States Air Force, 4th Wing, did, at or near Seymour Johnson Air Force Base, North Carolina, on divers occasions between on or about 12 November 1995 and on or about 15 December 1995, with intent to defraud and for the procurement of lawful currency, wrongfully and unlawfully utter to Bob's Cafe, certain checks for the payment of money, drawn upon the First National Bank of Goldsboro, as follows:

| Date | Check # | Amount |
|---|---|---|
| 08 Dec 95 | 102 | $123.45 |
| 11 Dec 95 | 104 | 150.00 |
| 15 Dec 95 | 105 | 23.00 |
| 03 Dec 95 | 115 | 20,00 |
| 12 Nov 95 | 120 | 183,55 |

of a total amount of $500.00, and signed John Doe, then knowing that he, the maker thereof, did not or would not have sufficient funds in or credit with said bank for the payment of said checks in full upon their presentment.

**II. MCM, paragraph 49f(2) (For the payment of any past due obligation, or for any other purpose, with intent to deceive):**

**A. Specification Form:**

In that _____, United States Air Force, (unit), did, (at) _____, on or about _____,19__, with intent to deceive and [(for) payment of a past due obligation, to wit: _____)(for the payment of_____)], wrongfully and unlawfully [(make)(draw)] and [(utter)(deliver)to _____], a certain (check)(draft)(money order) for the payment of money in the amount of _____, dated _____,19__, drawn upon the _____ Bank, made payable to the order of _____, and signed _____, then knowing that (he)(she)(_____), the [(maker)(drawer)] thereof, did not or would not have sufficient funds in or credit with said bank for the payment of said (check)(draft)(money order) in full upon its presentment.

***EXAMPLES:***

(1) In that CAPTAIN JANE DOE, United States Air Force, Headquarters, Fifth Air Force, did, at Okinawa, Japan, on or about 7 February 1995, with intent to deceive and for the payment of a past due obligation, to wit: a personal loan, wrongfully and unlawfully deliver to the American Express Bank a certain check for the payment of money in the amount of $140.00, dated 7 February 1995, drawn upon the Bank of America, made payable to American Express Bank and signed John Doe, then knowing that John Doe, the maker thereof, did not or would not have sufficient funds in, or credit with, said bank for the payment of said check in full upon its presentment.

*NOTE:* This is a sample of passing a check made by another person, with intent to deceive and knowing that the check would not be honored.

(2) In that AIRMAN JOHN DOE, United States Air Force, 30th Space Wing, did, at Vandenberg Air Force Base, California, on or about 27 August 1995, with intent to deceive and for the payment of a past due obligation, to wit: a bill for electric service, wrongfully and unlawfully utter to the California Electric

Cooperative a certain check for the payment of money in the amount of $27.15, dated 27 August 1995, drawn upon the National Bank of Fort Sam Houston, made payable to the California Electric Cooperative, and signed John Doe, then knowing that he, the maker thereof, did not or would not have sufficient funds in or credit with said bank for the payment of said check in full upon its presentment.

(3) In that CAPTAIN JANE DOE, United States Air Force, 9th Wing, did at Beale Air Force Base, California, on divers occasions, between on or about 1 April 1995 and on or about 6 May 1995, with intent to defraud and for the procurement of lawful currency or things of value, wrongfully and unlawfully utter to the Beale Officers' Open Mess, drafts for the payment of money, and things of value, for a total amount of $642.25, more or less, drawn upon the Sierra Central Credit Union, made payable to Beale Officers' Open Mess, and signed Jane Doe, then knowing that she, the drawer thereof, did not or would not have sufficient funds in or credit with said credit union for the payment of said draft in full upon its presentment.

**III. MCM, paragraph 68f (Check, worthless, making and uttering--by dishonorably failing to maintain funds):**

**A. Specification Form:**

In that _____, United States Air Force, (unit), did, (at)_____, on or about _____,19__, [(make)(draw)] [utter to] _____ a certain [(check)(draft)] in the amount of _____, dated _____19__, drawn upon the _____ Bank, made payable to the order of _____, and signed _____, [(for the purchase of _____)(in payment of a debt)(for the purpose of _____)], and did thereafter dishonorably fail to (place)(maintain) sufficient funds in said bank for payment of said check in full upon its presentment for payment.

***EXAMPLE:***

In that AIRMAN JANE DOE, United States Air Force, 2853rd Air Base Group, did, at San Antonio, Texas, on or about 10 May 1995, utter to San Antonio Jewelry, a certain check in the amount of $215.99, dated 10 May 1995, drawn upon the National Bank of El Paso, made payable to San Antonio Jewelry, and signed Jane Doe, for the purpose of obtaining a watch, and did thereafter dishonorably fail to maintain sufficient funds in said bank for the payment of said check in full upon its presentment.

**Figure 3.3. Sample Transmittal Indorsement.**

**SAMPLE TRANSMITTAL INDORSEMENT**

1st Ind, DD Form 458, Charge Sheet, dated _____, Staff Sergeant John Q. Doe, 222d Anyplace Squadron, Anywhere AFB, TX

222 AS/CC

TO: 222 AW/CC [SPCMCA]

[Briefly describe the accused's character of service prior to the date of the offense(s) charged. Include comments relating to duty performance, attitude, amenability to discipline, and rehabilitation potential.] I recommend the charges be referred to trial by (summary) (special) (general) court-martial. The [(security police) (AFOSI) report of investigation] (other evidence) is attached and supports the charges. (The accused was offered and declined nonjudicial punishment.) The victim(s) and witness(es) have been informed of the preferral of charges. Due to the (severity) (nature) of the charges, I (do) (do not) believe retention on active duty is appropriate if (he) (she) is convicted. The accused (is) (is not) subject to the

restrictions identified in AFI 31-501, paragraph 8.14. [A written request for permission to proceed with further processing of this case has been forwarded to the appropriate special access office.]

I.M. COMMANDER, Lt Col, USAF

Commander

222d Anyplace Squadron

Attachments:

1. Personal Data Sheet
2. Report of Investigation

**Figure 3.4. Personal Data Sheet.**

PERSONAL DATA SHEET

DATE PREPARED:

NAME OF ACCUSED:

ORGANIZATION:

SSAN: GRADE:

PAY GRADE: DATE OF BIRTH:

TAFMSD: LENGTH OF SERVICE (in months):

AFSC: MILITARY TEST SCORES:

BASIC PAY: FOREIGN DUTY PAY:

INITIAL DATE OF CURRENT SERVICE:

TERM OF CURRENT SERVICE:

PRIOR SERVICE (include all prior enlistments or periods of service):

FOREIGN SERVICE (include dates and locations):

COMBAT SERVICE (Include dates and locations):

NATURE OF PRETRIAL RESTRAINT (type of restraint, include date imposed, location, and number of days):

MARITAL STATUS: NO. OF DEPENDENTS:

NO. OF PREVIOUS CONVICTIONS:

NO. OF PREVIOUS ARTICLE 15 ACTIONS:

AWARDS AND DECORATIONS:

# CHAPTER 4

# FORWARDING AND DISPOSITION OF CHARGES

## *Section 4A—Article 32, UCMJ, Investigations*

### 4.1. Article 32, UCMJ, Investigations, (RCM 405).

**4.1.1. Investigating Officer.** The convening authority personally appoints the investigating officer (IO). (RCM 405(c)). The appointment of the IO should be done by separate letter from the convening authority to the IO. The convening authority may delegate authority to the IO to approve delays in the Article 32 investigation. When possible, the IO should be senior in rank to the accused.

4.1.1.1. If evidence is adduced in an Article 32 investigation that the accused committed an uncharged offense, the IO may investigate the uncharged misconduct prior to preferral of charges on that offense(s), if the accused is present at the investigation; is informed of the nature of each uncharged offense investigated; and is afforded the opportunities for representation, cross- examination, and presentation of evidence.

**4.1.2. Open Article 32 Investigations.** Article 32 investigations should ordinarily be open to the public. Because the public has an interest in attending Article 32 investigations, all efforts to keep the investigation open to the public should be explored before closing the investigation. Access by spectators to all or part of the proceeding may be restricted or foreclosed in the discretion of the commander who directed the investigation or the investigating officer (IO) when the interests of justice outweigh the public's interest in access. See R.C.M. 405(h)(3). For example, it may be necessary to close an investigation to encourage complete testimony of a timid or embarrassed witness, to protect the privacy of an individual or to ensure an accused's due process rights are protected. Make every effort to close only those portions of the investigation that are clearly justified and keep the remaining portions of the investigation open. If the hearing is closed, the commander or IO ordering it closed should provide specific, articulable reasons, in writing, for closure. These reasons should be attached to the IO's report of investigation. The commander directing the investigation may maintain sole authority over a decision to open or close an Article 32 investigation by giving the investigating officer procedural instructions at the time of appointment or at any time thereafter. See R.C.M. 405(c). Prior to issuing procedural instructions to open an Article 32 investigation that has been closed, the commander must consider the investigating officer's written specific, articulable reasons for closing the investigation.

**4.1.3. Tape Recordings and Verbatim Transcripts.** Verbatim transcripts and any recording of witness testimony at an Article 32 investigation may be done only with the advance approval of the SPCMCA's SJA.

**4.1.4. Report of Investigation.** The IO should attach the completed report of the Article 32 investigation as the first indorsement to the letter of appointment and forward the letter of appointment along with the Article 32 report to the convening authority. Provide a copy of the Article 32 investigation report to the accused and accused's defense counsel after providing the report to the convening authority directing the investigation. Inform the accused and counsel they must submit objections to the report to the commander who directed the investigation, through the commander's SJA, within 5 days of the report's receipt by the accused and counsel, whichever is later. Obtain dated receipts from the accused and counsel. A convening authority may refer charges to trial or take other action within the

5-day period. Forward any objections through the servicing SJA to the convening authority considering disposition of the charges or to the convening authority with authority over the case. Attach all receipts and objections to the report of investigation.

**4.1.5. Forwarding the Report of Investigation.** If the convening authority who directed the investigation decides to forward the Article 32 report of investigation to a superior court-martial convening authority for disposition, the convening authority who directed the investigation should forward a letter with a recommendation for disposition of the charges to the superior court-martial convening authority listing as attachments to the letter the charge sheet, the transmittal indorsement, the investigating officer appointment letter, a list of proposed court members with *Credit* data ( *U.S. v. Credit*, 2 MJ 631 (AFCMR 1976) and RCM 912) and the report of investigation.

***Section 4B—Courts of Inquiry***

**4.2. Courts of Inquiry (Article 135, UCMJ; MCM, Part I, Para 2(b)(3); RCM 703).**

**4.2.1. General.** A court of inquiry is one of several investigative methods available to ascertain the facts of a matter of importance to the Air Force. Only a GCMCA may convene a court of inquiry. Do not use a court of inquiry when specific investigative procedures for a matter are otherwise provided by statute or regulation. Do not use a court of inquiry in place of an Article 32 investigation, unless deemed necessary to produce evidence not otherwise reasonably available. If, however, a court of inquiry previously investigated the subject matter of an offense, and the requirements of RCM 405(b) are met, an Article 32 investigation may not be necessary.

**4.2.2. Members of the Court of Inquiry.** The senior member is the president and all members should be senior to any person whose conduct is the subject of an inquiry. A court of inquiry requires not less than three commissioned officers.

**4.2.3. Counsel for the Court of Inquiry.** The convening authority appoints a judge advocate certified under Article 27 (b), UCMJ, as legal advisor for the court of inquiry. The counsel assists the court of inquiry in matters of law, presenting evidence, and keeping the record.

**4.2.4. Party to the Court of Inquiry.** Designate any person subject to the UCMJ whose conduct is subject to inquiry as a party to the court of inquiry.

**4.2.5. Counsel for Parties.** A party to the court of inquiry is entitled to representation by a defense counsel certified under Article 27(b), UCMJ. A party may request individual military defense counsel, subject to the rules of reasonable availability applicable to trials by courts-martial. Any party may retain a civilian counsel at no expense to the government. See paragraph **5.3.**

**4.2.6. Convening Order.** Use a format similar to a court-martial convening order to convene a court of inquiry. (See **Figure 4.1.**). The order appoints the members and counsel for the court of inquiry, states the subject of inquiry, designates known parties, and directs a report of findings of facts on the issues involved. If the convening authority desires conclusions and recommendations, include that in the order. The president sets the time and place of the court of inquiry and notifies the parties and counsel in writing.

**4.2.7. Reporters.** A qualified court reporter records the proceedings and testimony, and prepares a record of the proceedings for authentication by the president. If the record of the proceedings is to be used as a substitute for an Article 32 investigation, it must comply with the requirements of RCM 405(j).

**4.2.8. Challenges.** Members of a court of inquiry may be challenged for cause only. The counsel for the court of inquiry rules on challenges.

**4.2.9. Oaths (see Article 135(e), UCMJ).** The members, counsel, the reporter, and interpreter take an oath or affirmation to faithfully perform their duties. The president and the counsel may administer oaths.

**4.2.10. Procedures and Rules of Evidence.** General principles of military law and procedural rules for trials by court-martial govern courts of inquiry, except where procedures are clearly inapplicable or a contrary procedural rule is expressly provided in this instruction. The rules of evidence governing trials by courts-martial apply in courts of inquiry.

**4.2.11. Witnesses.** The president may issue subpoenas for civilian witnesses. (RCM 703(e)(2)(C)). All persons testifying before a court of inquiry do so under oath or affirmation. A party may testify under oath only, but may not be compelled to testify. Members of the court of inquiry and the counsel to the court of inquiry may examine all witnesses, including a party.

**4.2.12. Written Report by the Court of Inquiry.** The court of inquiry makes findings of facts, and, if ordered by the convening authority, makes conclusions and recommendations. Dissenting views are authorized.

**4.2.13. Record of the Court of Inquiry.** Authenticate the record in accordance with Article 135(h), UCMJ. The president forwards the authenticated record to the convening authority who obtains a legal review from the servicing SJA. The legal review includes a summary of the proceedings, a determination of the legal sufficiency of the proceedings, and a recommended action.

**4.2.14. Revision.** The convening authority may reconvene the court of inquiry and direct it to take additional action the convening authority deems necessary.

***Section 4C—Depositions (RCM 702)***

**4.3. Counsel:** Include the qualifications of counsel for all parties.

**4.4. Transcript and Format.**

**4.4.1. Certificate.** The deposition officer certifies the transcript of the deposition as a true and accurate verbatim account of the proceeding. Use the format in **Figure 4.2.**

**4.4.2. Authentication.** Record and authenticate depositions taken on written interrogatories using a DD Form 456, **Interrogatories and Depositions**. Do not use the DD Form 456 for oral depositions.

**4.4.3. Oral Deposition Format.** Record and transcribe oral depositions verbatim, noting the opening and closing times and dates of recesses or adjournment. Follow the format in **Figure 4.2.** Prepare the last page of the deposition as shown in **Figure 4.3.**

***Section 4D—Referral and Disposition***

**4.5. Pretrial Advice (Article 34, UCMJ; RCM 406).**

**4.5.1. SJA's Advice.** A person other than the SJA may prepare the advice, but the SJA is, unless disqualified, responsible for it and must personally sign it. An assistant performing the duties of the SJA,

in the absence of, or because of the disqualification of the SJA, signs in the capacity of "Acting SJA." The SJA's advice is required for all GCMs and is optional for SPCMs.

**4.5.2. Capital Cases.** In a case referred as capital, the pretrial advice must specify the aggravating circumstances relied upon and provide the convening authority with conclusions as to whether capital referral is warranted based on the analysis as set forth in RCM 1004 (a)(4). In a case where the death penalty is authorized, but not mandatory, and the convening authority decides to refer the case as non-capital, the referral should include special instructions stating the case is referred as noncapital.

**4.6. Offenders With Outstanding Combat or Overseas Record.** When a member with an outstanding combat or overseas record is alleged to have committed an offense punishable under the UCMJ, a commander should give appropriate consideration to that military record before determining what, if any, disciplinary action to take. When a case is under consideration for referral to a general court-martial, include information about the accused's outstanding combat or overseas record in the SJA's advice. Failure to include such information in the advice is not a prejudicial error.

**4.7. Referral of Charges to Courts-Martial (RCM 601).** The convening authority must sign either the Charge Sheet, DD Form 458, indorsement or another document reflecting the intention to refer charges to trial. Such other documents may include concurrence with an SJA's pretrial advice recommendation to refer the case to trial or selection of court members. The SJA or another designated member of the SJA's staff may sign for the convening authority, or by the direction of the convening authority, if the convening authority provided written authorization. In such cases, use an authority line such as "For the Commander."

**4.7.1. Referral.** The designation of the convening authority on the charge sheet should be the same as on the convening order. Use the same date the convening authority refers the charges. If the convening authority personally signs the referral, strike out "by . . . of . . .," and include the convening authority's signature block. If the convening authority delegated authority to sign the referral block on the charge sheet to a judge advocate, the judge advocate signs the charges for the commander in the capacity explained in **3.6.** and **12.1.1.** When additional charges are referred, include the special instruction: "To be tried with the original (charge) (charges), dated _____." in the referral. (RCM 601(e)).

**4.7.2. Disqualification of Convening Authority.** When the SPCMCA is unable to refer the case to trial, forward the case to the GCMCA. If the GCMCA is unable to refer the case to trial, the MAJCOM commander determines who is the GCMCA. If there is no appropriate commander exercising GCMCA within the command, the MAJCOM SJA requests AFLSA/JAJM assistance in the designation of a commander to serve as the GCMCA.

**4.8. Withdrawing Charges (RCM 604).** Line through the original referral to withdraw a case from the court-martial to which it was referred. An officer authorized to sign referrals may withdraw charges at the direction of the convening authority. Date the withdrawal and reflect the name and status of the officer withdrawing the charges.

**4.9. Re-referring Charges in Rehearings and Other Cases.** If, after charges are referred to trial, it becomes necessary to refer them again on the same charge sheet, use the following procedures:

**4.9.1. New Referral Indorsement.** Complete a new referral indorsement in the same form as that on page 2 of the **Charge Sheet**, following the rules in paragraph **4.7.** The new referral may be accomplished by typing the entire indorsement on bond paper or by using the referral section from page 2 of another DD Form 458. When completed, attach it to the original referral. If a third or subsequent referral is necessary, attach it in the same way as the second. Never remove or obliterate prior referrals.

**4.9.2. Referral Instructions.** When referring a case for a rehearing (whether in full, for a limited purpose, or for a new trial [RCM 810]), incorporate the appropriate instructions in the referral form. For example, in a rehearing on sentence only, include the special instruction: "For a rehearing on sentence only, as ordered by General Court-Martial Order # __, Headquarters, 15 AF, dated 4 June 1995, as to the charge and specification of which the accused was found guilty and affirmed by the Air Force Court of Criminal Appeal's decision, dated 10 May 1995," or a similar instruction.

**4.10. Notification of Referral of Later Charges in Pending Cases.**

**4.10.1. Notify AFLSA/JAJM.** If charges are referred to trial against a person who is the accused in a case under review under Articles 66, 67, 67a or 69, UCMJ, the headquarters referring the new charges to trial must notify AFLSA/JAJM by facsimile or message. Identify the accused and the case currently under review and state the nature of the new charges. Include the date referred, type of court-martial, anticipated date of trial, a brief statement of facts of the case, and any other information which might affect disposition of the current review or exercise of clemency concerning the case.

**4.10.2. Follow-Up Messages.** Send follow-up messages to advise if the charges are withdrawn, when trial is completed (include the result), or other significant developments which may affect disposition of the case currently under review.

**4.11. Docketing.** Trial judges control and are responsible for docketing. However, trial counsel and defense counsel shall attempt to negotiate a trial date. Within five days of service of charges, trial counsel, defense counsel, and the docketing military judge shall conduct a teleconference to set the trial date. If the parties have agreed to a trial date in advance of the docketing teleconference, the docketing military judge will confirm the trial date with the parties during the conference. If no agreement has been reached, the docketing military judge shall set a trial date after considering the respective positions of each counsel. If the docketing military judge is also the detailed military judge, the parties may discuss other pretrial matters pursuant to RCM 802. If the docketing military judge is different than the detailed military judge, the detailed military judge may schedule a later teleconference to discuss other matters. Counsel will make arrangements to participate in the docketing teleconference even on days they are scheduled for other courts-martial, boards, or other hearings. Circuit court rules may provide additional guidance consistent with this policy.

**Figure 4.1. Convening Order for Court of Inquiry.**

**DEPARTMENT OF THE AIR FORCE**
**HEADQUARTERS 354TH FIGHTER WING**
**SHAW AFB, SOUTH CAROLINA 29152**

SPECIAL ORDER AA-1 15 April 1995

A court of inquiry is hereby convened. It will proceed at 0730 hrs on 20 April 1995 in the Shaw AFB, SC courtroom. The court will be constituted as follows:

**MEMBERS**

| | | | |
|---|---|---|---|
| COLONEL ALLEN L. GARRET, PRES | HQ 354 FW | ACC | THIS STATION |
| COLONEL GERALD F. SMITH | HQ 354 FW | ACC | THIS STATION |
| COLONEL JEFFREY A. SINGLETON | 2750 SPS | ACC | THIS STATION |

**COUNSEL FOR COURT**

| | | | |
|---|---|---|---|
| LT COL JOHN F. MILLER | HQ 354 FW | AFLSA | THIS STATION |

**COUNSEL FOR KNOWN PARTY**

| | | | |
|---|---|---|---|
| MAJ HELEN M. GREGORY | USAF JUDICIARY | ACC | THIS STATION |

**KNOWN PARTY**

| | | | |
|---|---|---|---|
| LT COL EDWARD J. SCHMIDT | HQ 354 FW | ACC | THIS STATION |

The court of inquiry is appointed to review the facts and circumstances (describe the matter to be investigated). (The court may name other parties in addition to the named party.) Further, the court is to (make findings of fact, render conclusions and submit recommendations) (include only a factual summary of the matter being investigated.) AUTHORITY: AFI 51-201.

ALLEN S. CURTIS, Brig Gen, USAF
Commander

ROBIN B. DUFFY, Colonel, USAF
Staff Judge Advocate

DISTRIBUTION
1 Ea Individual
1 Ea Orgn
15 354 FW/JA

**Figure 4.2. Oral Deposition Format.**

SAMPLE DEPOSITION

| | | |
|---|---|---|
| U N I T E D S T A T E S | ) | |
| | ) | |
| V. | ) | DEPOSITION |
| | ) | |
| A1C JOHN J. DOE | ) | |
| 21 SG | ) | |
| Elmendorf AFB, AK | ) | |

DO: The proceedings will now come to order at (time, date and place).

DO: The persons present are: (Name), Deposing Officer (DO); (Name), Trial Counsel (TC); (Name), Defense Counsel (DC); (Name), Accused (AC); (Name), Reporter.

DO: Counsel and the reporter have been previously sworn.

DO: The purpose of this proceeding is to take the deposition of (Name), to be used in evidence in the case of the United States versus (name of accused). Charges were referred to trial on (date), by order of (convening authority). Authority to take the deposition is vested in me, (deposing officer), as Deposing Officer, by order of (convening authority) by letter dated (date), a copy of which is furnished to the reporter for insertion in the record of this deposition as Exhibit 1. I am a judge advocate certified according to Article 27(b), UCMJ.

DO: (Name), a judge advocate certified according to Article 27(b), UCMJ, will represent the government in the taking of the deposition of (Name and Address).

DO: I will advise the accused and counsel for the government that objections are to be noted by the reporter and will be ruled upon at the time of the trial. However, objections as to the form of any question which could be corrected should be made at this time.

DO: Before we go any further, I will advise the accused of his rights to counsel. (Advise of right to counsel). Do you understand your rights to counsel? Do you wish to be represented by (Captain _____); Ms (civilian attorney) in this deposition?

DO: (Administer the oath to each witness)

**Figure 4.3. Authentication of Deposition.**

**AUTHENTICATION OF DEPOSITION**

**of**

**(Typed name of witness)**

**In the Case of**

**U N I T E D S T A T E S**

**V.**

**(Typed name of Accused)**

I certify that on the_____day of_____19__, at_____, the above deposition was duly taken by me in the presence of the accused and his counsel, and that the above-named witness, having been duly sworn by me, gave the foregoing testimony. I further certify that the detailed reporter, _____ , was duly sworn (by one-time oath at a time prior to the taking of such deposition) (during the deposition hearing) (_____) and that said reporter will sign in my presence the reporter's certificate appearing below.

_____

(Signature and Signature Block of Deposing Officer)

**REPORTER'S CERTIFICATE**

I certify that I recorded the above deposition and the foregoing transcript is a true, accurate and verbatim account of the testimony of the above-named witness.

_____

(Reporter's Signature and Signature Block)

# CHAPTER 5

# COURT-MARTIAL COMPOSITION AND PERSONNEL, REPORTERS, CONVENING COURTS-MARTIAL

## *Section 5A—Composition and Personnel*

### 5.1. Detail of Military Judges, RCM 503(b).

**5.1.1. Chief Trial Judge.** The Judge Advocate General's designee for detail of military judges to courts-martial within the Air Force is the Chief Trial Judge, USAF Trial Judiciary (AFLSA/JAJT),112 Luke Avenue, Room 343, Bolling AFB, DC 20332-8000.

**5.1.2. Detailing Military Judges.** The Chief Trial Judge, USAF Trial Judiciary, details military judges to SPCMs and GCMs. The Chief Trial Judge may delegate this authority to any person assigned as an Air Force military judge. A military judge with the authority to detail military judges may detail himself or herself as military judge to a court-martial. Orders detailing military judges may be oral, written, or in message form. Attach written orders or messages, if any, to the record of trial (ROT). Announce all orders detailing the military judge at trial.

5.1.2.1. A military judge from another Armed Force may be detailed to Air Force courts-martial according to the Armed Force's regulation applicable to military judges and with the approval of the Chief Trial Judge, USAF Trial Judiciary.

5.1.2.2. The Chief Trial Judge is TJAG's designee with authority to make Air Force military judges available for detail to trials convened by another Armed Force.

### 5.2. Detail of Counsel, RCM 503(c).

**5.2.1. Procedure.**

5.2.1.1. A Chief Circuit Defense Counsel (CCDC), Circuit Defense Counsel (CDC), or the Chief or Deputy Chief, Trial Defense Division (AFLSA/JAJD), 112 Luke Avenue, Room 343, Bolling AFB, DC 20332-8000, may detail defense counsel, assistant defense counsel, and associate defense counsel to any court-martial. The order detailing counsel may be oral, written, or in message form. Announce orders detailing counsel at trial. Attach written or message orders, if any, to the ROT.

5.2.1.2. An SJA, Chief Circuit Trial Counsel (CCTC), Circuit Trial Counsel (CTC), or the Chief or Deputy Chief, Government Trial and Appellate Counsel Division (AFLSA/JAJG) may detail trial counsel or assistant trial counsel to any court-martial. The order detailing trial counsel may be oral, written, or in message form. Announce orders detailing counsel orally on the record at trial. Attach written or message orders, if any, to the ROT.

5.2.1.3. RCM 503(c)(3) and other Armed Forces' regulations govern detailing counsel from other Armed Forces to Air Force courts-martial.

5.2.1.4. The Chief, Military Justice Division (AFLSA/JAJM), is TJAG's designee with authority to make Air Force counsel, with the exception of those assigned to AFLSA/JAJD, available for detail to trials convened by another Armed Force. AFLSA/JAJD exercises this authority over area defense counsel (ADC), CDCs and CCDCs.

**5.2.2. Qualifications.**

**5.2.2.1. General Court-Martial.** Attorneys detailed as trial counsel, defense counsel, or associate defense counsel for a GCM must be certified according to Article 27(b), UCMJ. Any person detailed as assistant trial counsel or assistant defense counsel must be designated as a judge advocate under 10 U.S.C. 8067(g) and AFI 51-103, *Designation and Certification of Judge Advocates.*

**5.2.2.2. Special Court-Martial.** Attorneys detailed as defense counsel for an SPCM must be certified according to Article 27(b), UCMJ. Any person detailed as trial counsel, assistant trial counsel, or assistant defense counsel for a SPCM must be designated as a judge advocate under 10 U.S.C. §8067(g) and AFI 51-103. In no event will a court-martial be legally constituted unless, before an Article 39(a) session or assembly of the court-martial, the accused has been afforded the opportunity to be represented by counsel qualified under Article 27(b) unless such counsel cannot be obtained because of physical conditions or military exigencies. (Article 27(c)(1), UCMJ.)

**5.2.2.3. Air Force Reserve Members.** The requirements of certification and designation set out in **5.2.2.1.** and **5.2.2.2.** apply to reserve judge advocates. Only those reservists assigned as circuit trial or defense counsel may be certified annually. Other reserve judge advocates are certified according to AFI 51-103.

**5.2.2.4. Summary Court-Martial.** An accused facing trial by SCM is entitled to military defense counsel certified according to Article 27(b), UCMJ. Do not designate defense counsel on orders. An accused may obtain representation by civilian counsel at the accused's own expense. Counsel may be detailed to represent the Government.

**5.2.2.5. Civilian Counsel (RCM 502[d][3]).** When a civilian counsel represents an accused at a court-martial, include the counsel's qualifications to serve as defense counsel on the record. Include information about the civilian counsel's civilian bar membership and standing.

**5.2.3. Disqualifications:**

5.2.3.1. A judge advocate who served as IO for the Article 32, UCMJ, investigation cannot perform any other duty in connection with the trial of the same case, except as defense counsel at the specific request of an accused after being fully informed of the IO's prior involvement in the case. An Article 32, UCMJ, IO may never serve as a member of the prosecution or as military judge in the same case. (Articles 26(d) and 27(a), UCMJ, and RCM 502(d)(4))

**5.3. Requests for Individual Military Defense Counsel, RCM 502(d)(3); RCM 506(b).** An accused may request representation by an individual military defense counsel (IMDC) in an Article 32 investigation or at a court-martial. The requested counsel represents the accused, if reasonably available. The right to request an IMDC does not extend to representation for actions under Article 15, UCMJ.

**5.3.1. Requests for ADCs, CDCs, or CCDCs.** IMDC requests for ADCs, CDCs, or CCDCs are forwarded through defense channels to the appropriate approval authority listed below. ADCs, CDCs and CCDCs may serve as IMDCs anywhere within the judicial circuit to which they are assigned if they are otherwise reasonably available. They may also serve as IMDCs in another judicial circuit if the expected site of the proceeding for which they are requested is within 300 miles of their base of assignment and they are otherwise reasonably available. The respective CCDCs determine the availability of ADCs and CDCs and take action on IMDC requests for ADCs or CDCs assigned to their circuits. The Chief, AFLSA/JAJD determines the availability of CCDCs and takes action on IMDC requests for CCDCs.

**5.3.2. Reasonably Available.** "Reasonably available" means that a counsel is available by the terms of the MCM, or this instruction, and the appropriate authority determines the requested counsel can perform the duties of IMDC without unreasonable expense or detriment to the United States and without unreasonable delay in the proceedings. The authority determining the reasonable availability of a counsel may consider the following:

5.3.2.1. The duties, workload, and assignment status of the requested counsel;

5.3.2.2. The experience level, duties, and workload of the military counsel detailed to represent the accused;

5.3.2.3. The nature and complexity of the charges and legal issues involved in the case;

5.3.2.4. Whether a certified assistant trial counsel is detailed to the case; and

5.3.2.5. The workload of the office to which the requested counsel is assigned and the availability of personnel to meet those demands.

**5.3.3. Availability of Certain Counsel.** In addition to those persons listed in RCM 506(b)(1), the following persons are not reasonably available to serve as IMDC because of the nature of their duties, positions, or geographic locations:

5.3.3.1. Medical Legal Consultants and Advisors.

5.3.3.2. Attorneys in the National Capital Region assigned to the Air Force Legal Services Agency, excluding any individual assigned to or serving as a CCDC, CDC or ADC.

5.3.3.3. Attorneys attending an Air Force Institute of Technology sponsored program such as a Master of Law (LLM) program.

5.3.3.4. Attorneys assigned or attached to the Air Force Office of Special Investigations (AFOSI).

5.3.3.5. Attorneys not assigned within 300 miles of the expected site of the proceeding for which requested. (see paragraph **5.3.1.** for ADCs, CDCs and CCDCs)

5.3.3.6. Trial Counsel. Trial counsel includes attorneys assigned as CTCs and CCTCs, as well as detailed trial and assistant trial counsel in the same or allied case.

**5.3.4. Exceptions--Attorney-Client Relationship.** When an attorney-client relationship exists, as determined by the authority determining reasonable availability, exceptions to **5.3.2.** and RCM 506 prohibitions should ordinarily be granted. An attorney-client relationship begins when the attorney becomes significantly involved as counsel in the same general matter for which the accused faces charges. This may include trial strategy planning, interviewing potential witnesses, or receiving the accused's confidences. A statement claiming the attorney-client relationship signed by that attorney and requester (or requester alone if the attorney does not agree) must accompany the IMDC request. The request must provide an overview of the relationship. If the attorney-client relationship arose solely because the counsel represented the accused on review under Article 70, this exception does not apply.

**5.3.5. Submission of IMDC Requests.** An IMDC request must be in writing, signed by the accused and detailed counsel, addressed to the convening authority through the trial counsel (except IMDC requests for ADCs, CDCs and CCDCs which go through defense channels), and shall include the following, as applicable:

5.3.5.1. The date of the investigation or trial;

5.3.5.2. Any special qualifications of the requested counsel relevant to the case;

5.3.5.3. Whether or not the accused is represented by other counsel and, if so, the name of that counsel;

5.3.5.4. Whether the accused previously entered into an attorney-client relationship with the requested counsel concerning the charges being investigated or tried (with the statement required by **5.3.4.**);

5.3.5.5. In the case of a requested counsel presently unavailable, whether the counsel is expected to be available before the investigation or trial; and,

5.3.5.6. A statement acknowledging the accused's understanding that, if the IMDC request is granted, the detailed defense counsel may be excused from further participation in the case at the sole discretion of the detailing authority.

**5.3.6. Action on IMDC Requests.**

**5.3.6.1. ADCs, CDCs and CCDCs.** All requests for ADCs, CDCs and CCDCs will be forwarded in accordance with paragraph **5.3.1.** for a determination of availability.

**5.3.6.2. Counsel Not Available.** If the requested counsel is not reasonably available because they are assigned to a position defined in paragraph **5.3.3.** or RCM 506(b)(1), and the accused did not assert an attorney-client relationship, the convening authority denies the request and notifies the accused.

**5.3.6.3. Forwarding Requests.** If the request asserts an attorney-client relationship, or the requested counsel may be reasonably available at the time of the proceeding, the convening authority forwards the request as follows:

**5.3.6.3.1. Attorneys Assigned to AFLSA/JAC, AFLSA/JAJ or HQ Air Force** . Send requests for attorneys in the Civil Law Directorate (AFLSA/JAC), Air Force Judiciary Directorate (AFLSA/JAJ), or HQ Air Force divisions to the respective director or division chief. The availability of attorneys assigned to those directorates or divisions will be determined by their respective directors or division chiefs.

**5.3.6.3.2. LLM Students.** Send requests for attorneys in an Air Force Institute of Technology (AFIT) sponsored LLM program to HQ USAF/JAX. The availability of attorney's enrolled in an AFIT sponsored LLM program will be determined by the Director, Professional Development Division.

**5.3.6.3.3. All Others.** For all other requests, if it appears the requested counsel may be reasonably available or if the request asserts an attorney client relationship, forward the request to the requested counsel's SJA, supervising officer or commander.

**5.3.6.3.4. Decision Officer.** The officer to whom the request is forwarded decides whether to grant the request and informs the forwarding convening authority of the decision and the reasons for the decision. The convening authority notifies the accused of the decision.

**5.3.6.3.5. Appeals.** The accused may request review of a disapproved IMDC request by the next higher commander or level of supervision of the officer who denied the request. The Deputy Judge Advocate General reviews disapprovals by Directors of AFLSA/JAJ and

AFLSA/JAC, or by HQ USAF division chiefs. There is no review of disapprovals made at any level of supervision above the Deputy Judge Advocate General.

**5.4. Oaths.**

**5.4.1. Judges and Counsel.** Military judges certified according to Article 26(b), UCMJ, and military counsel, certified according to Article 27(b), UCMJ, may take a one-time oath.

**5.4.2. Procedure for One-Time Oath.** Any person authorized by Article 136, UCMJ, may administer the one-time oath. The person administering the oath completes a certificate indicating the place and date the oath was administered. The oath contains the typed name, signature, and qualifications of the person administering the oath. Give a copy to the person taking the oath. Send the original and one copy to HQ USAF/JAX. Use the following oath:

I, [name of military judge], do (swear) (affirm) that I will faithfully and impartially perform the duties of military judge in any proceeding under the Uniform Code of Military Justice to which I am detailed to perform such duties, (so help me God).

I, [name of military counsel], do (swear) (affirm) that I will faithfully perform the duties of counsel in any proceeding under the Uniform Code of Military Justice to which I am detailed to perform such duties or in any court-martial in which I am to perform duties of individual defense counsel, (so help me God).

**5.4.3. Court Members.** Swear in court members for each court-martial to which they are detailed. The trial counsel administers the oath.

**5.4.4. Reporters and Interpreters.** The military judge administers an oath to the reporter and interpreter, unless the individual previously took a one-time oath. Refer to **5.4.2.** for procedures to administer the one-time oath. Give the original to the reporter or interpreter, and file one copy in the office where the individual is assigned. If the individual transfers to another Air Force legal office, forward a copy of the oath to the receiving SJA. Use the following oath:

I, [name of reporter or interpreter], do (swear) (affirm) that I will faithfully perform the duties of (reporter) (interpreter) in any proceeding under the Uniform Code of Military Justice to which I am detailed, (so help me God).

***Section 5B—USAF Court Reporter***

**5.5. General Information.**

**5.5.1. Duties.** The primary role of the Air Force court reporter is to report, transcribe, and assemble court-martial records, Article 32, UCMJ, investigations, and other proceedings, as required. SJAs detail court reporters to perform the functions specified in Article 28, UCMJ, and RCM 502(3)(b), and any other duties for which needed (RCM 501(c)). Reporters are normally detailed to all Air Force GCMs and SPCMs. Upon the prior approval of the military judge, court reporters may authenticate records of trial (ROT) in SPCMs, including acquittals, not involving a bad conduct discharge (BCD). When authenticating the ROT, use the page provided for in the DD Form 490, **Record of Trial**, package, delete the words "military judge" and substitute the words "court reporter."

**5.5.2. Methods of Reporting.** Any method of reporting may be used. Regardless of the method used both a primary and backup system must be used to ensure a record of trial can be accurately prepared.

**5.6. Duties and Responsibilities.**

**5.6.1. Generally.** The reporter is neutral and should not express personal opinions about the case being reported. The reporter records everything that is said or done verbatim, from the initial Article 39(a) session until the court adjourns. An updated court reporter's worksheet can be found in AFMAN 51-203.

**5.6.2. Retaining Notes and Recordings.** Maintain the reporter's notes and recordings according to AFMAN 37-139 (formerly AFR 4-20, Vol II), **Records Disposition Standards**.

**5.6.3. Other Duties.** As determined by the SJA, reporters assist counsel for both sides, hearing officers, and the military judge in preparing and marking documents associated with proceedings under the UCMJ.

**5.7. Enlisted Court Reporters.**

**5.7.1. Contingency Court Reporters.** A cadre of enlisted paralegals will be trained and qualified as enlisted court reporters for contingency operations. Each MAJCOM determines the number of personnel trained. AFLSA/JAJ validates that number annually, no later than 1 January each year. MAJCOMs will also establish a training plan outlining initial certification and proficiency requirements.

**5.7.1. (AMC)** The duties described shall be the responsibility of the Command Paralegal Manager.

**5.7.1.1. Qualification and Proficiency Requirements.** The SJA at each base with an enlisted court reporter position must ensure the enlisted court reporter is adequately trained.

5.7.1.1.1. As soon as possible after assignment to an enlisted court reporter position, personnel will be certified as qualified court reporters in accordance with (IAW) the MAJCOM training plan.

5.7.1.1.2. After being certified, personnel maintain proficiency IAW the MAJCOM training plan. As a minimum, personnel completely take and transcribe three proceedings requiring a verbatim transcript, including at least two courts-martial, each year. However, one administrative separation board may be substituted for one of the courts-martial.

**5.7.1.2. Mobility Court Reporter Kits.** Each enlisted court reporter establishes and maintains a mobility kit consisting of court reporting equipment, blank tapes, worksheets, and forms necessary to be self-supporting for a minimum period of three months.

***Section 5C—Convening Orders (RCM 504), Detailing and Excusing Members (RCM 503; RCM 505)***

**5.8. Special Orders Convening Courts-Martial.**

**5.8.1. Generally.** Prepare convening orders in accordance with RCM 504, 1302, and this chapter. Authenticate convening orders according to this instruction. If the convening authority has independent statutory authority to convene courts-martial under Articles 22(a)(7) and 23(a)(2) and (4), UCMJ, no introductory phrase is required. The order states instead: "A (general) (special) court-martial is hereby convened." (See **Figure 5.1.** and **Figure 5.2.**) For organizations listed in Articles

22(a)(8) and 23(a)(7), UCMJ, cite the current Department of the Air Force Special Order authorizing the commander to convene courts. Avoid publishing several amending orders to the initial convening order. (See **Figure 5.3.** figure). Avoid oral amendments, unless absolutely necessary, and ensure they are confirmed by written orders. Generally, issue no more than two amendments to the original order. If it is necessary to further amend the convening order, publish a new order convening the court-martial and transfer all cases in which the court has not yet been assembled to the new order. (See RCM 505) Convening orders must cite all orders amending the convening order. An appointing order containing a savings clause is not an amending order.

5.8.2. Give a copy of all convening orders to the military judge and attach to all copies of the ROT.

**5.8.3. Identification of Members.** Special orders convening a court-martial should contain the name, rank, and unit of all persons detailed. Do not include personal information, such as, members' social security numbers.

**5.8.4. Detailing and Excusing Members.** Before the court-martial is assembled, the convening authority may excuse members or change the members of a court-martial without showing cause. The convening authority may delegate to the principal assistant and servicing SJA the authority to excuse individual members of a court-martial before a court is assembled. No more than one-third of the members may be excused by anyone other than the convening authority. (See RCM 505(c)(1)(B)(i) and (ii).)

**5.8.5. Members of Same Squadron.** An enlisted court member may not be from the same unit as the accused. This limitation refers to the organization to which the individuals are assigned and does not apply to entities to which they are attached for administrative purposes. In no event does this limitation refer to an organization larger than a squadron or comparable organization.

**Figure 5.1. Sample Convening Order.**

(SO A-19 dated 28 December 1994, was the last Special Order of this headquarters published in 1994.) OR (There were no Special Orders published in 1994.)

**DEPARTMENT OF THE AIR FORCE**
**645TH AIR BASE WING (AFMC)**
**WRIGHT-PATTERSON AFB, OH 45433-5321**

SPECIAL ORDER 15 April 1995
A-1

*Pursuant to authority contained in Special Order GA-###, Department of the Air Force, dated, ____1994, a general court-martial is hereby convened. It may proceed at Wright-Patterson AFB, OH, to try such persons as may be properly brought before it. The court will be constituted as follows:

**MEMBERS**

| | | | |
|---|---|---|---|
| COLONEL ALONZO PETIT | 645 ABW | AFMC | THIS STATION |
| LIEUTENANT COLONEL JOHN SMITH | | AFMC | THIS STATION |
| **MAJOR DON F. WARREN | AFIT | AFMC | THIS STATION |
| FIRST LIEUTENANT SID J. PORTER | 645 ABW | AFMC | THIS STATION |
| SECOND LIEUTENANT WILLIAM RHODES | 645 ABW | AFMC | THIS STATION |

**With concurrence of commander concerned.

RICHARD T. EARLY, Colonel,USAF
Commander

FOR THE COMMANDER

CHARLES W. THOMAS, Major, USAF
Staff Judge Advocate

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1 Ea Individual
1 Ea Orgn
15-645 ABW/JA

SO A-1

*Use this language if the organization is not authorized to convene GCMs under Article 22(a)(7).

**Figure 5.2. Sample Special Court-Martial Convening Order With a Savings Clause.**

**DEPARTMENT OF THE AIR FORCE**
**645TH AIR BASE WING (AFMC)**
**WRIGHT-PATTERSON AFB, OH 45433-5321**

SPECIAL ORDER 15 April 1995
AB-6

A special court-martial is hereby convened. It may proceed at Wright-Patterson AFB, OH, to try such persons as may be properly brought before it. The court will be constituted as follows:

**MEMBERS**

| | | | |
|---|---|---|---|
| COLONEL ALONZO PETIT | 645 ABW | AFMC | THIS STATION |
| LIEUTENANT COLONEL JOHN SMITH | 645 ABW | AFMC | THIS STATION |
| **MAJOR DON F. WARREN | AFIT | AFMC | THIS STATION |
| FIRST LIEUTENANT SID J. PORTER | 645 ABW | AFMC | THIS STATION |
| SECOND LIEUTENANT WILLIAM RHODES | 645 ABW | AFMC | THIS STATION |

**With concurrence of commander concerned.

All cases referred to the special court-martial convened by Special Order AB-2, this headquarters, dated 10 January 1995, as amended by Special Order AB-3, this headquarters, dated 15 January 1995, and Special Order AB-5, dated 19 January 1995, in which the court has not yet been assembled, will be brought to trial before the court hereby convened.

RICHARD T. EARLY, Colonel, USAF
Commander

FOR THE COMMANDER

CHARLES W. THOMAS, Major, USAF
Staff Judge Advocate

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1 Ea Individual
1 Ea Orgn
15-645 ABW/JA

SO AB-6

**Figure 5.3. Sample Amendment to Convening Orders.**

**DEPARTMENT OF THE AIR FORCE**
**645TH AIR BASE WING (AFMC)**
**WRIGHT-PATTERSON AFB, OH 45433-5321**

SPECIAL ORDER 15 April 1995
A-3

The following members are detailed to the general court-martial convened by Special Order A-2, this headquarters, dated 25 March 1995, vice MAJOR DON F. WARREN, CAPTAIN JAY L. WRIGHT, and SECOND LIEUTENANT WILLIAM RHODES, relieved.

| | | | |
|---|---|---|---|
| CHIEF MASTER SERGEANT BOB L. GRAYSON | 645 ABW | AFMC | THIS STATION |
| MASTER SERGEANT J.W. JONES | 645 ABW | AFMC | THIS STATION |
| STAFF SERGEANT JOHN SMITH | 645 ABW | AFMC | THIS STATION |

RICHARD T. EARLY, Colonel,USAF
Commander

FOR THE COMMANDER

CHARLES W. THOMAS, Major, USAF
Staff Judge Advocate

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1 Ea Orgn
15-645 ABW/JA

SO A-3

# CHAPTER 6

# WITNESS TRAVEL, IMMUNITY, PRETRIAL AGREEMENTS

## *Section 6A—Witness Travel*

**6.1. Funding Authorities.** **Table 6.1.** prescribes the funding authorities for all types of witnesses.

**6.2. Centralized Witness Funding.**

**6.2. (AMC)** The duties of the AMC/CC are delegated to the AMC/CV.

**6.2.1. Funded Travel.** Inter-MAJCOM temporary duty (TDY) travel of Air Force active duty members and Department of the Air Force (DAF) civilian employees required at Article 32 investigations and courts-martial is centrally funded and managed by AFLSA/JAJM. Other trial participants or witnesses whose travel is funded under this program, include:

**6.2.1.1. Travel of Accused.** AFLSA/JAJM funds travel for Air Force active duty accused who are required to travel TDY inter-MAJCOM for their own Article 32 investigation or court-martial. AFLSA/JAJM does not fund PCS travel of accused. Inter-MAJCOM PCS moves of an accused for court-martial purposes are approved by the gaining and losing MAJCOM Commanders through the respective MAJCOM SJAs and coordinated through the Assignment Policy Branch, HQ AFPC/DPA1P1. See AFI 36-2110, *Assignments*.

**6.2.1.2. Trial Defense Counsel.** See **Table 6.1.**, rule 9, notes 3 and 4.

**6.2.2. Requesting Travel Funds.** RCM 703(c) governs the initial determination of whether to produce a witness. Once the determination is made to produce a witness whose travel is funded by AFLSA/JAJM (see **Table 6.1.**), including a witness required by the military judge, the SJA requests travel funds by letter sent by facsimile transmission to AFLSA/JAJM (fax DSN 754-8755, or commercial (202) 404-8755). Follow the format for the request in **Figure 6.1.** and include all information required. Send information copies of the request to the witness' unit commander, and for airmen [particularly those airmen traveling as accused or those airmen nearing a date eligible for return from overseas (DEROS) or an expiration of term of service (ETS)], to HQ AFMPC/DPMRPP2, Randolph AFB TX.. The witness' unit is responsible for preparing TDY orders, but the local SJA and requesting SJA are responsible for ensuring all TDY arrangements are made.

**6.2.3. Fund Citations.** AFLSA/JAJM furnishes fund citations and procedural instructions for witnesses funded by JAJM. Request witnesses by faxed letter to AFLSA/JAJM at least 10 calendar days before they are required to report when possible. Short-notice requests may be submitted by telephone, but also send a follow-up request by faxed letter to all required addressees, including JAJM.

**6.2.4. SJA Responsibility.** The SJA of the base where a witness is assigned ensures one copy of the TDY order is mailed or faxed to AFLSA/JAJM within 10 days of the order being published. If a witness' travel is canceled after the TDY order is published, mail or FAX a copy of both the TDY and revocation order. The SJA must certify the attendance of expert witnesses on the DD Form 1351-2 (see **6.4.6.**).

**6.3. Military Witnesses.**

**6.3.1. Foreign Area Clearance.** All requests for witnesses to testify in courts-martial convened outside the United States should include area clearance information. See DoD Directive 450054-G, Foreign Clearance Guide.

**6.3.2. AFOSI Agents, Threatened Airmen, and Confidential Sources.**

**6.3.2.1. Agents.** Submit requests for agents to the local AFOSI detachment. AFOSI funds the travel and makes travel arrangements. AFLSA/JAJM coordination is not necessary.

**6.3.2.2. Threatened Airman and Confidential Sources.** Submit requests for these witnesses to the local AFOSI detachment. Only AFOSI may contact another installation to request threatened airmen and confidential sources. Refer to **Table 6.1.** for funding.

**6.4. Civilian Witnesses.**

**6.4.1. Subpoenas and Invitational Travel Orders (ITO).** A civilian witness may not be subpoenaed to testify at a court-martial outside the United States, or at an Article 32, UCMJ, hearing. ITOs must be issued. Civilian employees of the United States can be required to testify incident to their employment. When a witness will appear voluntarily and a subpoena is issued, informal service of process may be made. Arrangements can be made for travel and advance travel pay. Use DD Form 453**, Subpoena for Court-Martial Witness**, and DD Form 453-1**, Travel Order**. See **Figure 6.2.** through **Figure 6.4.**

**6.4.2. Unwilling Witnesses.** If a witness is unwilling to attend the court-martial voluntarily, formally serve the witness with the subpoena. (See RCM 703(e)(2)(D).) Give the witness allowable fees and mileage when serving the subpoena to subject the witness to Federal prosecution under Article 47, UCMJ. If the witness refuses the subpoena and fees, the SJA or trial counsel may be designated as an accounting and finance certifying payment official in order to receive the witness travel funds for a personal service on the witness. In the alternative, the AFO may draft a check to the witness which then accompanies the subpoena for service or attempted service upon the witness. Serve the subpoena in person, either by the trial counsel or a designee when the witness is in the local area, or contact the SJA or commander of the military installation nearest the witness for assistance. Personal service may also be requested through the local law enforcement office nearest the witness.

**6.4.3. Failure to Appear.** When the witness fails or refuses to appear, exhaust every reasonable means to secure live testimony. If necessary, use a DD Form 454**, Warrant of Attachment**, to compel the witness to appear or produce evidence. The witness may be prosecuted for failure to comply. See RCM 703(e)(2) and *U.S. v. Ortiz*, 35 M.J. 391 (CMA 1992).

**6.4.4. Civilians Employed by the United States.** Generally, if an employee is called to present testimony involving the agency with which the employee is employed, the employing agency pays all witness expenses. See 28 CFR, Part 21, 21.2(d) and **Table 6.1.**

**6.4.5. Federal Bureau of Investigations (FBI) Witnesses.** If a witness is employed by the FBI as a technician or examiner assigned to the FBI Laboratory, Washington, DC, request the witness through AFOSI/JA, 2200 Duncan Avenue, Bolling AFB, DC 20332-6001. Submit requests for all other FBI personnel (including agents) directly to the special agent in charge of the local FBI field office where the witness is assigned.

**6.4.6. Civilians Not Employed by the United States.** Pay fees and allowances authorized under 28 U.S.C. 1821 (per diem, mileage, subsistence) using a DD Form 1351-2**, Travel Voucher or Sub-**

**voucher**, DD Form 1351, **Travel Voucher**, SF Form 1034, **Public Voucher for Purchases and Services Other than Personal**, and SF 1164, **Claim for Reimbursement for Expenditures on Official Business**. The SJA with administrative responsibility for the proceeding in which the witness testified, prepares, approves and certifies the forms. Submit the forms to the AFO servicing the base where the court convened. When using a DD Form 1351-2, the SJA certifies the dates of attendance and any scheduled witness fees (expert, attendance) IAW AFR 177-103, paragraph 16-10. The witness presents the payment voucher to the servicing AFO for payment.

**6.5. Expert Witnesses.**

**6.5.1. In General.** The convening authority funds the travel and expenses of expert witnesses, except as provided in **6.5.2.** and **Table 6.1.**, Note 6. See **Figure 6.5.** for a sample Memorandum of Agreement for Expert Witnesses.

**6.5.2. Urinalysis Cases.**

**6.5.2.1. Experts in Urinalysis Cases** (forensic experts; e.g., chemists, toxicologists, qualified physicians). AFLSA/JAJM centrally funds experts approved by the convening authority to testify at a court-martial relating to urinalysis testing. Before requesting a civilian expert witness, trial and defense counsel must first ascertain the availability of the forensic urinalysis experts at the Armstrong Laboratory, Brooks AFB, Texas, or any other experts under contract with the Air Force. Submit requests in the format of **Figure 6.1.** and include the witness fee per day and travel costs. The request must include a statement of the convening authority's approval for the expert and the amount of compensation. AFLSA/JAJM funding is limited to $500 per day, with a maximum of $2,000 per witness per case. Expert witness fees paid by JAJM will not include payment for days devoted to travel. Any agreement to pay amounts exceeding JAJM's per day or per case limits requires the convening authority to pay the difference. SJAs are encouraged to obtain written agreements with expert witnesses fixing their rate of compensation and reimbursement for expenses. A sample agreement is provided at **Figure 6.5.** [Note: Central funding by JAJM is for experts intended to be used as witnesses and not as consultants not testifying at trial. Although funding authority will not be revoked if changed circumstances result in the witness not testifying, the request constitutes a representation the witness is expected to testify in the trial itself].

**6.5.2.2. Inconvenience Fees.** AFLSA/JAJM may fund up to $500 per witness, per case, for inconvenience or cancellation fees for prior approved urinalysis experts. There must be a showing of actual inconvenience and financial loss to the witness, and cancellation within five days of the trial date. Expert witnesses are expected to mitigate any financial loss caused by cancellation. Normally, payment will not be considered appropriate, unless a written agreement provided for it at the time the witness' services were contracted.

6.5.2.3. The convening authority funds laboratory technicians in urinalysis cases.

**6.5.3. Consultants.** The Central Witness Fund program does not pay for expert consultants. This is a convening authority responsibility.

***Section 6B—Immunity***

**6.6. Grants of Immunity (RCM 704).** Only the GCMCA possesses the authority to grant immunity to witnesses testifying in courts-martial. All grants of immunity must be in writing and attached to the ROT as an allied paper.

**6.6.1. Witnesses Subject to the UCMJ.** The GCMCA grants or disapproves immunity requests for witnesses subject to the UCMJ and no further processing is necessary, unless DOJ approval is required by the conditions in **6.6.3.** and **6.6.4.**, (See **Figure 6.6.**).

**6.6.2. Witnesses Not Subject to UCMJ.** The GCMCA may disapprove immunity requests for witnesses not subject to the UCMJ, but may approve such requests only after receiving DOJ authorization. (18 U.S.C. 6004). Prepare requests for DOJ authorization in accordance with **6.6.5.**

**6.6.3. Witnesses Who May Be Considered for Federal Prosecution.** Prepare immunity requests for witnesses suspected of criminal activity, in which DOJ has an interest in investigating and prosecuting pursuant to DoD Directive 5525.7, *Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes*, 22 January 1985, (MCM, Appendix 3), according to paragraph **6.6.5.**, regardless of whether the witness is subject to the UCMJ.

**6.6.4. National Security Cases.** Process immunity requests for witnesses suspected of criminal activity involving national security, as specified in paragraph **12.8.2.2.**, according to paragraph **6.6.5.** regardless of whether the witness is subject to the UCMJ. AFLSA/JAJM is responsible for coordinating such cases with the DOJ and other interested United States agencies. NOTE: Make the additional reporting and processing requirements specified in paragraph **12.8.1.** for national security cases independently of immunity authorization requests.

**6.6.5. Requests for DOJ Authorization.** Follow this paragraph for all requests for immunity for civilian witnesses. Follow this paragraph for requests for immunity for witnesses subject to the UCMJ only if DOJ approval is required under paragraphs **6.6.3.** or **6.6.4.** The SJA administering the court-martial initiates the request. When the GCMCA wants to grant immunity, the GCMCA SJA forwards the request, preferably by facsimile, followed by hard copy, directly to AFLSA/JAJM, with information copies to the MAJCOM SJAs. Forward requests 30 days in advance of the date the witness is expected to testify. Include the following information in the request:

**6.6.5. (AMC)** Send an information copy to HQ AMC/JAJ, 102 E. Martin St., Rm N-119, Scott AFB IL 62225-5012.

6.6.5.1. Case name and nature of the proceeding for which requesting immunity;

6.6.5.2. Nature of the charges against the accused and anticipated date of the proceeding;

6.6.5.3. Name, social security number, date and place of birth, and address of the witness;

6.6.5.4. Witness' military status and organization, if any;

6.6.5.5. Whether the defense or prosecution requested the immunity;

6.6.5.6. Name, grade, organization, and mailing address of the GCMCA who will grant the immunity after receiving DOJ authorization. This applies only in cases in which DOJ authorization is necessary. Immunity is not actually granted until approved by the GCMCA after receiving DOJ authorization;

6.6.5.7. An explanation of why immunity is necessary, including whether any state or Federal charges are pending against the witness and a description of those charges, if any;

6.6.5.8. Whether the witness is currently incarcerated and, if so, the location, cause, and length of incarceration;

6.6.5.9. A summary of the witness' expected testimony;

6.6.5.10. Factual basis for believing the witness will assert the privilege against self-incrimination, including the nature of the offenses in which the witness may be incriminated;

6.6.5.11. The likelihood of the witness testifying, should immunity be granted; and

6.6.5.12. Name, title, address and telephone number of the representative from the local United States Attorney's Office, and the local state prosecuting attorney with whom trial counsel coordinated the request. Include information on whether the representative supports or opposes the request.

6.6.5.13. Send requests in the above format to JAJM only in cases requiring DOJ authorization for immunity.

***NOTE:*** Consider requesting a delay pursuant to RCM 707(c)(1), Speedy Trial, while authorization is pending.

***Section 6C—Pretrial Agreements (RCM 705).***

**6.7. Authority to Conclude Agreement.**

**6.7.1. GCMCAs and SPCMCAs.** Unless such authority is withheld by a superior competent authority, GCMCAs and SPCMCAs are authorized to enter into or reject offers to enter into PTAs with the accused. The decision to accept or reject a PTA offer submitted by an accused is within the sole discretion of the convening authority who referred the case to trial. See *U.S. v. Caruth*, 6 M.J. 184 (CMA 1979). The accused is entitled to have the convening authority personally act upon the offer before trial. See *U.S. v. Upchurch*, 23 M.J. 501 (AFCMR 1986).

**6.7.2. Consultation With DOJ.** Ensure that any consultation required by DoD Directive 5525.7, (MCM, Appendix 3) takes place before approval of a PTA. **6.12.** See for processing PTA offers in cases involving an offense (including attempt, conspiracy, and solicitation to commit such an offense) of espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States.

**6.8. Format and Terms.** PTAs must be in writing and signed by the accused and counsel. When a convening authority accepts a PTA, the convening authority personally signs it, unless the convening authority previously authorized another individual such as the SJA or trial counsel to sign. If the SJA or trial counsel signs the PTA, use an authority line such as "FOR THE COMMANDER." Oral PTAs are prohibited, as are promises to intervene on the accused's behalf in any manner in exchange for a guilty plea. Include all documentation and correspondence pertaining to a PTA, including Appendix A, changes, or modifications, in the ROT. **Figure 6.7.** is a sample PTA, but it may be modified to fit the circumstances of a case.

**6.9. Withdrawal from PTAs.** If either party withdraws from a PTA, it becomes void:

**6.9.1. Convening Authority.** The convening authority may withdraw from a PTA for any reason before arraignment, but should exercise this authority with due regard for fairness. See *Shepardson v. Roberts*, 14 M.J. 354 (CMA 1983). Withdrawals by the convening authority must be in writing and signed by the convening authority. Give a copy to the accused and defense counsel. See RCM 705(d)(5)(B).

**6.9.2. Accused.** Withdrawals by the accused must be in writing and given to the SJA or trial counsel.

**6.10. In-Court Inquiry.**

**6.10.1. In General.** Notify the military judge of a PTA before arraignment. The military judge must question the accused prior to accepting the plea to determine whether the accused understands and agrees to the meaning and effect of each PTA condition and the agreed upon sentence limitations. In trials by military judge alone, the military judge should not inquire into the actual sentence limitations specified in the plea agreement until after sentence announcement. PTAs, whether or not approved by the military judge, are appellate exhibits in the ROT.

**6.10.2. Stipulations of Fact.** In order to make members and the military judge, when sitting alone, sufficiently aware of the circumstances of the offenses with which an accused is charged, the convening authority may require the accused and counsel to enter into stipulations of fact or testimony as a part of the PTA. See *U.S. v. Keith*, 17 M.J. 1078 (AFCMR 1984). See RCM 705(e) for PTA nondisclosure requirements.

**6.11. Jurisdiction.** Failure to comply with the provisions of this chapter does not constitute a jurisdictional defect.

**6.12. Authorization Required To Enter Into PTA Discussion in National Security And Related Cases.**

**6.12.1. In General.** The Chief, Military Justice Division (AFLSA/JAJM), must grant permission to enter into PTA discussions in cases involving an offense (including attempt, conspiracy, and solicitation to commit such an offense) of espionage, subversion, aiding the enemy, sabotage, spying, or violation of punitive rules or regulations and criminal statutes concerning classified information or the foreign relations of the United States. AFLSA/JAJM ensures coordination with DOJ according to DoD Directive 5525.7 (MCM, Appendix 3).

**6.12.2. Defense Offer.** The SJA, trial counsel, and counsel for the accused may clarify the terms of a defense PTA offer to obtain sufficient information to enable the convening authority to decide whether to reject the offer or request permission to negotiate. AFLSA/JAJM permission is not required for the convening authority to reject a PTA offer.

**6.12.3. Request for Permission to Negotiate.** The GCMCA requests permission to negotiate a possible PTA from AFLSA/JAJM by priority message. Include the following information in the request:

6.12.3.1. Background information on the accused including name, rank and organization;

6.12.3.2. The offenses charged with a summary of evidence against the accused;

6.12.3.3. Terms of the accused's PTA offer; and,

6.12.3.4. Factors warranting a PTA.

**6.12.4. Permission to Proceed.** A grant of permission to enter into PTA discussions does not amount to approval of the terms or conditions of any PTA which may result from the negotiations.

**Figure 6.1. Sample Request for Central Witness Funding.**

**SAMPLE REQUEST FOR CENTRAL WITNESS FUNDING**

Date

MEMORANDUM FOR AFLSA/JAJM

FROM: Requesting Unit

Street Address

Base

SUBJ: Request for Witness - [GCM] [SPCM] - U.S. v. (Rank and name of accused)

Request witness: [Rank and name, ssan, unit of assignment, base, MAJCOM]; Request has been coordinated with (sending base/MAJCOM).

Trial is due to begin on [Date]. Witness is required to report NLT _____ hours on [day, date], to [Rank and name of trial counsel (Defense Counsel if defense witness)], legal office, building _____, _____AFB, ___, phone _____. Witness will be required approximately [number of days], including travel. Proposed unit of attachment for witness during TDY: [_____].

NOTE: Describe the mode of transportation from nearest airport if the witness is to fly. Provide information on reservations for quarters/locations for meals.

Witness should be advised to ensure (he)(she) has sufficient funds to defray expenses of TDY or to draw advance TDY pay. Should witness encounter problems after duty hours, contact [_____] at [phone number]. (Optional): Witness should not travel until contacted by this office to confirm date of court proceeding.

(If applicable): Request for expert witness and amount of compensation has been coordinated and approved by the convening authority. Inconvenience fees of (Amount) have been negotiated if cancellation is within five or fewer days before the reporting date. [Tailor as appropriate.]

[For overseas TDY, include foreign clearance IAW DOD 450054-G.]

Funding info: Total cost of travel (per witness): _____; total cost of per diem (per witness): _____; Total cost of expert witness fees, if any: _____.

The witness unit administrative section voice number: (DSN and Comm. number)

The witness unit administrative section fax number: (DSN and Comm. number)

Witness base legal office voice number: (DSN and Comm. number)

Witness base legal office fax number: (DSN and Comm. number)

(Explanation for short notice request, if within 10 duty days of trial date): Request for this witness was received by this office on (Date). Witness required will be (Prosecution/defense).

Expected testimony of witness: (summary of why witness' testimony is relevant and necessary)

(Signature block)

cc:

Witness' Unit/CC

Serving SJA of Sending Base Unit/JA

**Figure 6.2. Sample Letter to Accompany Subpoena.**

**SAMPLE LETTER TO ACCOMPANY WITNESS SUBPOENA**

Name of Witness

Street or P.O. Box Address

City, State, Zip Code

Dear (Mr.) (Mrs.) (Ms.)

[SJA Note: Mark subpoena as indicated] I enclosed two copies of a subpoena, officially summoning you to this proceeding. On the first copy (marked "copy 1"), please complete the place and date you received this subpoena, and sign your name on the line marked by the "X." Please mail this copy back to me immediately in the enclosed stamped, addressed envelope.

The trial is set to begin at (time A.M./P.M., day, date). You will need to be (present at that time) (time A.M./P.M., day, date). Please come to the Legal Office, Room _____, Building _____, located at _____ Air Force Base. For your convenience, I enclosed maps on how to get to _____ Air Force Base and how to get around on base.

[Optional] The Government prepaid for your ticket so you can fly _____ from _____ to _____ and _____ Air Force Base. Please present appropriate identification at the airport to pick up your (flight tickets)(boarding pass). Please retain a copy of these documents and bring them with you. Your flight schedule is as follows:

| | Place | Time | Day & Date | Airline |
|---|---|---|---|---|
| Depart: | | | | |
| Arrive: | | | | |

[Optional] Since you are flying into _____ Airport, you will need transportation to the base. (Give details of mode to get to base, e.g. private cab, government transportation.) (Explain reimbursement.) While on base, we will provide you transportation.

[Optional] Your return flight arrangements can be made on base.

[Optional] While at _____ Force Base, you may eat at _____.

[Optional] I regret that you will be unable to reside on base. To assist you, I enclosed the names and addresses of several nearby lodging facilities. You may wish to consider these or others of your choosing. The Air Force will reimburse you for your lodging as detailed below.

[Optional] I made reservations for you to stay in the _____ quarters on base. You should, however, check into the billeting office at Building _____, located at _____. After checking in, the billeting office will assign you quarters. Since those quarters may be some distance from the billeting office, you should have your transportation wait for you while you check in.

Enclosed you will find a check for $_____. This is an advance payment for your trip. You will be paid an attendance fee of $_____ per day. You will also be paid a subsistence allowance for food and lodging up to $_____ per day. You may submit a claim each day you are here, or you may send in your claim after you return home.

[Optional] Since you will be driving to _____ from your private residence and back in your private vehicle, you will be paid ____ cents per mile.

I hope the above information will assist you. Your testimony will be very important in this case, and I appreciate your coming. If I can assist you further, please call me. My office phone number is _____, and my home phone number is _____. My mailing address is [unit/JA], Attn: [rank/name].

NAME, Rank, USAF

Trial Counsel

Attachments

1. Subpoena
2. Return Envelope
3. Advance Payment Check
4. Transportation Request
5. Map of Area
6. Map of Base
7. Listing of Housing Accommodations

**Figure 6.3. Sample Invitational Travel Order.**

**DEPARTMENT OF THE AIR FORCE**

**HEADQUARTERS 11th WING**

**BOLLING AIR FORCE BASE DC 20332**

SPECIAL ORDER TA-

MR JOHN H. SMITH, 3479E Scott Way, Chicago, IL 20445, is invited to proceed on or about 24 March 1996 from 3479E Scott Way, Chicago, IL to Bolling AFB, DC for approximately four (4) days to testify in the general court-martial of *U.S. v. Brown* and, on completion, return to 3479E Scott Way, Chicago, IL 20445. Travel by military aircraft or common carrier (air, rail, or bus) is authorized. If transportation is not procured by U.S. Government transportation requests, you will be reimbursed for the actual transportation expenses for travel by commercial carriers. First class air may only be used if a less costly class of service is not available. Obtain receipts or retain ticket stubs and seat or berth checks for travel by common carrier. Also obtain receipts for other reimbursable expenses, including official long-distance telephone calls. These receipts and copies of transportation requests, if used, will be filed with your claim voucher for reimbursement of expenses. Payment of fees, mileage, and per diem is controlled by 28 U.S.C. §1821. No mileage will be paid for any portion of transportation provided by the government in kind or by Government transportation requests. Travel is necessary in the public service. (Fund Cite) Authority: DoD 4515.13-R paragraph 3-3e. Special Order M-1, (Convening Order) 18 March 1996. Submit travel voucher within five workdays after completion of travel. Turn in all promotional items e.g.; gifts, bonus tickets, etc., to the AFO.

FOR THE COMMANDER

RICHARD M. SMITH, Lt Col, USAF

Staff Judge Advocate

**Figure 6.4. Sample Letter to Civilian Witness for Article 32 Investigations/Overseas Travel.**

SAMPLE LETTER TO ACCOMPANY INVITATIONAL TRAVEL ORDERS

Name of Witness

Street or P.O. Box Address

City, State, Zip Code

Dear (Mr.) (Mrs.) (Ms.)

This letter confirms our recent phone conversation about your participation as a witness in the [Article 32 pretrial investigation] [(special) (general) court-martial] of (Rank and Name of accused).

Enclosed are copies of invitational travel orders authorizing you to travel at government expense. Please bring these with you.

[Optional] The Government prepaid for your ticket so you can fly _____ from _____ to _____ and _____ Air Force Base. Please present appropriate identification at the airport so to pick up your (flight tickets)(boarding pass). Please retain a copy of these documents and bring them with you. Your flight schedule is as follows:

| | Place | Time | Day & Date | Airline |
|---|---|---|---|---|
| Depart: | | | | |
| Arrive: | | | | |

[Optional] Since you are flying into _____ Airport, you will need transportation to the base. (Give details of mode to get to base, e.g. private cab, Government transportation.) (Explain reimbursement.) While on base, we will provide you transportation.

[Optional] Your return flight arrangements can be made on base.

[Optional] While at _____ Force Base, you may eat at _____.

[Optional] I regret you will be unable to reside on base. To assist you, I enclosed the names and addresses of several nearby lodging facilities. You may wish to consider these or others of your choosing. The Air Force will reimburse you for your lodging as detailed below.

[Optional] I made reservations for you to stay in the _____ quarters on base. You should, however, check into the billeting office at Building _____, located at _____. After checking in, the billeting office will assign you quarters. Since those quarters may be some distance from the billeting office, you should have your transportation wait for you while you check in.

You will be paid an attendance fee of $_____ per day. You will also be paid a subsistence allowance for food and lodging up to $_____ per day.

[Optional] Since you will be driving to _____ from your private residence and back in your private vehicle, you will be paid ____ cents per mile.

I hope the above information will assist you. Your testimony will be very important in this case, and I appreciate your good citizenship in coming. If I can assist you further, please call me. My office phone number is _____, and my home phone number is _____. My mailing address is [unit/JA], Attn: [rank/name].

NAME, Rank, USAF

(Article 32 Investigating Officer)

(Trial Counsel)

Attachments:

1. Invitational Travel Orders
2. Advance Fees
3. Transportation Request
4. Map of Area
5. Map of Base
6. Listing of Lodging Accommodations

**Figure 6.5. Sample Memorandum of Agreement for Use With Civilian Expert Witness.**

SAMPLE MEMORANDUM OF AGREEMENT

FOR USE OF CIVILIAN EXPERT WITNESS

1. (Dr.)(Mr.)(Ms.) _____ is hereby retained as an expert witness to provide review, analysis, consultation, and testimony, as needed, in the court-martial case of United States v. _____, on behalf of the (government) (defense).

2. The expert witness agrees to provide the following services:

a. To review all documentation relevant to the area of expertise which pertains to the guilt or innocence of the accused, and which has been provided by the (trial counsel) (defense counsel).

b. To act as an expert technical consultant for the (government) (defense).

c. To assist the (trial counsel) (defense counsel) to prepare for the expert witness' in-court testimony, and to be available for pretrial interview by opposing counsel.

d. To travel to the location of the trial on invitational travel orders and to testify on behalf of the (Government) (defense), and, if requested by the (trial counsel) (defense counsel), to sit in on and evaluate the testimony of any expert witness for the opposing side.

e. To provide a copy of the expert's resume or curriculum vitae to the (trial counsel) (defense counsel).

f. To submit a Government travel voucher for payment, following the instructions provided, and accompanied by required documentation of travel, lodging, and other expenses.

g. To certify that the fee charged for expert services is no greater than the expert's normal professional rate.

3. The Government agrees to pay the expert witness, as follows:

a. To reimburse actual travel costs, either coach air travel, or mileage, according to the Joint Travel Regulation.

b. To pay per diem for meals, and the lesser of actual cost of lodging or the government local lodging rate, including payment for all travel days, according to the Joint Travel Regulation.

c. To pay a fee of $___.__ per day for in-court testimony.

d. To pay a fee of $___.__ when professional advice and services are rendered, but no travel or in-court testimony is involved.

e. To pay an inconvenience fee of up to $___.__ if the travel and testimony of the expert witness is canceled or rescheduled within 5 days prior to the expert's scheduled travel day. The witness is expected to reasonably mitigate any financial loss caused by cancellation. This fee is to be reduced to the extent other gainful activities may be undertaken.

4. Payment under this agreement has been approved by the Air Force Legal Services Agency, Military Justice Division, AFLSA/JAJM. Payment will be made from the Air Force Central Witness Fund, up to a maximum of $_____.__. The balance has been approved and will be paid by the general court-martial convening authority in this case. Payment will be under AFR 177-103, paragraphs 16-10 and 24-22.

| | |
|---|---|
| Staff Judge Advocate (date) | Expert Witness (date) |

[or Trial Counsel]

**Figure 6.6. Sample Grant of Immunity and Order to Testify.**

SAMPLE GRANT OF IMMUNITY

MEMORANDUM FOR (Rank, name, SSAN of witness)

FROM: (GCM Convening Authority unit and address)

SUBJECT: Grant of [Testimonial] [Transactional] Immunity and Order to Testify

1. An investigation revealed you have knowledge of offenses allegedly committed by (rank, name, unit, station of accused). The offenses in question involve (describe general nature of offenses pertaining to the witness' knowledge).

[For witness subject to UCMJ]

2. By authority vested in me in my capacity as a general court-martial convening authority, under Rules for Court-Martial 704(c)(1), Manual for Courts-Martial, United States, 1984,

[For witness not subject to UCMJ]

2. By authority vested in me in my capacity as a general court-martial convening authority, by Rules for Court-Martial 704(c)(2), Manual for Courts-Martial, United States, 1984, and by the Attorney General of the United States pursuant to Title 18, United States Code, Section 6004,

[For witness subject to UCMJ, under paragraph **6.6.3.**]

2. By authority vested in me in my capacity as a general court-martial convening authority, by Rule for Court-Martial 704(c)(1), Manual for Courts-Martial, United States, 1984, and by the Attorney General of the United States pursuant to Title 18, United States Code, Section 6004,

I hereby grant you [testimonial] [transactional] immunity and order you to answer any questions posed to you by investigators and counsel pertaining to, and to testify at any proceeding held pursuant to the Uniform Code of Military Justice (Title 10, United States Code, Sections 801, et seq.) concerning, any offenses alleged against the military member identified above.

[For testimonial immunity (preferred)]

3. Under this immunity, your testimony and statements, as well as information directly or indirectly derived therefrom, may not be used against you in a later [trial by court-martial] [criminal proceeding conducted by any federal, state, or military authority]. However, this immunity does not bar the use of your testimony, or information derived from it, in prosecuting you for perjury, giving a false statement, or otherwise failing to comply with this order to testify.

[For transactional immunity]

3. Under this immunity, you may not be prosecuted for offenses to which your testimony relates. Specifically, [you may not be tried by court-martial for offenses under Articles [list articles] of the Uniform Code of Military Justice] [you may not be tried by any federal, state, or military authority for criminal violations of [list criminal offenses and statutory citation, if applicable]]. However, this immunity does not bar the use of your testimony, or information derived from it, in prosecuting you for perjury, giving a false statement, or otherwise failing to comply with this order to testify.

(Name of GCM convening authority)

(Rank), USAF

Commander

**Figure 6.7. Sample Format for Offer of Pretrial Agreement and for Final Agreement.**

| | | |
|---|---|---|
| U N I T E D S T A T E S | ) | |
| | ) | |
| V. | ) | Place: |
| | ) | |
| GRADE, NAME, SSN, ORGANIZATION | ) | |

OFFER FOR PRETRIAL AGREEMENT

I, (grade, name, SSN) , am presently the accused under court-martial charges, dated _____ (and_____ ). I read the charge(s) and specification(s) alleged against me, and they have been explained to me by my defense counsel, (rank, if military, and name). I understand the charge(s) and specification(s), and I am aware I have a legal and moral right to plead not guilty and to leave the prosecution with the burden of proving my guilt beyond a reasonable doubt by legal and competent evidence. Understanding the above and under the conditions set forth below, and in consideration of agreement by the convening authority to approve a sentence in accord with the limitations set forth in Appendix A (and to) (withdraw Charge _____, Specification _____) (modify Specification _____ of Charge _____ to the lesser offense of) (refer the case to a special court-martial), I offer to plead Guilty

To all Charges and Specifications

or

To the Charge and Specification(s)

or

To the following Charge(s) and Specification(s):

(set forth by number or in full the charge(s) and specification(s) to which the guilty plea will apply. If the plea is to be a lesser included offense as to one or more specifications, set forth the exceptions and substitutions correctly and in full; see MCM, Appendix 10.)

I understand that this offer, when accepted by the convening authority, constitutes a binding agreement. I assert that I am, in fact, guilty of the offense(s) to which I am offering to plead guilty, and I understand that this agreement permits the government to avoid presentation in court of sufficient evidence to prove my guilt. I offer to plead guilty because it will be in my best interest that the convening authority grant me the relief set forth above and in Appendix A. I understand that I waive my right to a trial of the facts and to be confronted by the witnesses against me, and my right to avoid self-incrimination insofar as a plea of guilty will incriminate me.

In making this offer, I state that:

1. I am satisfied with the defense counsel who advised me with respect to this offer and consider (him) (her) (them) competent to represent me in this court-martial.

2. No person or persons made any attempt to force or coerce me into making this offer or to plead guilty.

3. My counsel fully advised me of the nature of the charges against me, the possibility of my defending against them, any defense which might apply, and the effect of the guilty plea which I am offering to make, and I fully understand (his) (her) advice and the meaning, effect, and consequences of this plea.

4. I understand the signature of the convening authority to this offer and to Appendix A, or to any modified version of Appendix A which I also sign, will transform this offer into an agreement binding upon me and the Government.

5. I understand that I may withdraw my plea of guilty at any time before sentence but not after sentence is announced and that, if I do so, this agreement is canceled and of no effect. This agreement will also be canceled and of no effect, if any of the following occurs:

a. Refusal of the court to accept my plea of guilty, as set forth above, or modification of the plea by anyone during the trial to not guilty or to a lesser degree of guilt.

b. Withdrawal by either party to the agreement before the trial.

c. My failure to agree with the trial counsel on stipulations concerning facts and circumstances.

6. I understand the convening authority's obligation to approve a sentence no greater than that provided in Appendix A to this agreement may be canceled after a hearing following the guidelines in RCM 1109(c)(4), if I commit any offense chargeable under the UCMJ between the announcement of sentence and the convening authority's approval of any sentence (or fail to provide restitution to _____ in the amount of _____ by _____) (fail to return _____ to _____ by _____) (fail to refrain from _____ between the announcement of sentence and the convening authority's approval of any sentence). (See note 4.)

7. I understand that if this agreement is canceled for any reason stated above, this offer for an agreement cannot be used against me in any way or at any time to establish my guilt of the offense(s), and the limitations upon disposition of my case set forth in Appendix A will have no effect.

This document and Appendix A include all of the terms of this pretrial agreement, and no other inducements have been made by the convening authority or any other person which affect my offer to plead guilty.

_____ _____

Date Signature

I certify I gave the accused the advice referred to above, I explained to him or her the elements of the offense(s) and I witnessed his or her voluntary signature to this offer for a pretrial agreement. (I am a member of the bar of _____) (I am a judge advocate) (certified/not certified under Article 27(b)).

_____ _____

Date Defense Counsel

I recommend (acceptance) (rejection) of this offer.

_____ _____

Date Name, Rank, USAF
Staff Judge Advocate

The foregoing instrument, including Appendix A, dated _____, is (approved and accepted) (disapproved).

_____ _____

Date Name, Rank, USAF
Commander

| | | |
|---|---|---|
| UNITED STATES | ) | Place: |
| | ) | |
| v. | ) | |
| | ) | |
| GRADE, NAME, SSN, ORGANIZATION | ) | Date: |

APPENDIX A TO OFFER FOR PRETRIAL AGREEMENT

As consideration for the offer of the accused to plead guilty as set forth in the Offer for Pretrial Agreement, dated _____ , the convening authority will undertake that:

(The approved sentence will not exceed _____)

or

(No punitive discharge will be approved.)

(This is the original Appendix A submitted with the Offer for Pretrial Agreement.)

or

(This Appendix A replaced the original submitted with the Offer for Pretrial Agreement.)

_____ _____

Date Signature

I certify I advised the accused of the effect of the foregoing and I witnessed his or her voluntary signature to this Appendix A.

_____ _____
Date Name, Rank (if applicable)
Defense Counsel

I recommend (acceptance) (rejection) of this Appendix A.

_____ _____
Date Name, Rank, USAF
Staff Judge Advocate

The foregoing Appendix A is approved in conjunction with the Pretrial Agreement, dated _____.

_____ _____
Date Name, Rank, USAF
Commander

**NOTES:**

1. The convening authority signs Appendix A only if approving the agreement.

2. If the negotiation results in agreement on different relief for the accused than that included in the original offer, prepare and sign a different offer and or Appendix A reflecting the agreed terms. If only a new Appendix A is prepared, the date of the original offer will appear in the first paragraph and the date of the new Appendix A appears next to the accused's signature.

3. If another Appendix A or offer is prepared, attach the original Appendix A or offer to the record of trial as an allied paper.

4. The clauses contained in paragraph 6 of this figure are optional. If used, carefully tailor them to include adequate protections against arbitrary revocation of the agreement to prevent their being declared void as against public policy. See *U.S. v. Dawson*, 10 M.J. 142 (CMA 1982), and *U.S. v. McConnell*, 13 M.J. 156 (CMA 1983); MCM, Appendix 1, Analysis, RCM 705(c)(2)(D).

5. Overall sentence caps may be confusing. If the parties wish to cap the sentence in the aggregate (allowing substitution of punishments for those specifically adjudged, so long as the aggregate effect does not exceed the aggregate adjudged), the pretrial agreement should be specific on this point. Otherwise, to avoid confusion consider, using the following, or similar, language when limiting more than one form of the punishment:

"He will approve no punitive discharge, if one is adjudged, worse than a BCD; he will approve no confinement, if confinement is adjudged, in excess of [state time in months or years]; he will approve no forfeiture with a monthly amount in excess of $500 per month, nor a number of months in excess of 36 months. There are no restrictions on his ability to approve other forms of punishment that may be adjudged."

**Table 6.1. Travel Funding Table.**

| RULE | A | B | | C | | D |
|---|---|---|---|---|---|---|
| | If individual requested is | and the type of case is | | and type of travel is | | then travel is funded by |
| | | Art 32 | GCM or SPCM | Inter-command | Intra-command | |
| | | | | | | |
| 1 | involved with aircraft accident investigation | N/A | N/A | N/A | N/A | see AFI 65-601, vol 1 |
| 2 | for administrative board | N/A | N/A | X | X | convening authority |
| 3 | the accused | X | X | X | N/A | AFLSA/JAJM |
| 4 | (see note 2) | X | X | N/A | X | convening authority |
| 5 | military judge | X | X | X | X | USAF Judiciary assigned circuit |
| 6 | circuit trial counsel | X | X | X | X | USAF Judiciary assigned circuit |
| 7 | defense counsel | X | X | X | X | (notes 3 & 4) |
| 8 | investigating officer | X | X | X | X | USAF Judiciary funds judiciary members; convening authority funds all others |
| 9 | IMDC | X | X | X | X | (notes 3 & 4) |
| 10 | court member | X | X | X | X | Convening authority |
| 11 | DAF civilian | X | X | X | N/A | AFLSA/JAJM |
| 12 | employee | X | X | N/A | X | convening authority |
| 13 | other DOD civilian employee | X | X | X | X | convening authority |
| 14 | member of other services | X | X | X | X | convening authority |
| 15 | AF active | X | X | X | N/A | AFLSA/JAJM |
| 16 | duty | X | X | N/A | X | convening authority |
| | | | | | | |

| RULE | A | B | | C | | D |
|---|---|---|---|---|---|---|
| | If individual requested is | and the type of case is | | and type of travel is | | then travel is funded by |
| | | Art 32 | GCM or SPCM | Inter-command | Intra-command | |
| | | | | | | |
| 17 | threatened | X | X | X | N/A | AFLSA/JAJM (note 7) |
| 18 | airmen | X | X | N/A | X | convening authority |
| 19 | (AFOSI) confidential. | X | X | X | N/A | AFLSA/JAJM |
| 20 | source | X | X | N/A | X | convening authority |
| 21 | AFOSI agent | X | X | X | X | HQ AFOSI (note 10) |
| 22 | non-DOD federal, civilian employee | X | X | N/A | N/A | (notes 5 &6) |
| 23 | Lab tech (urinalysis) | X | X | X | X | convening authority (note 8) |
| 24 | prisoner | X | X | | | use Rules 3,4,15, or 16 (note 9) |
| 25 | prisoner escort | X | X | X | X | convening authority (note 9) |
| 26 | reservist on | X | X | N/A | X | convening authority |
| 27 | active duty | X | X | X | N/A | AFLSA/JAJM |
| 28 | reservist not on active duty | X | X | X | X | convening authority |
| 29 | government representative | X | X | X | X | USAF Judiciary funds judiciary members; convening authority funds all others |
| 30 | ANG member | X | X | N/A | N/A | convening authority |
| 31 | consultant | X | X | X | X | convening authority |

| RULE | A | B | | C | | D |
|---|---|---|---|---|---|---|
| | If individual requested is | and the type of case is | | and type of travel is | | then travel is funded by |
| | | Art 32 | GCM or SPCM | Inter-command | Intra-command | |
| | | | | | | |
| 32 | other civilian | X | X | N/A | N/A | convening authority |

***NOTES:***

1. AFLSA/JAJM funds intracommand travel to and from the following bases: Howard AFB, Panama; Keflavik NAS, Iceland; and Lajes Field, Azores. These are the only exceptions to the general rule.

2. Travel of members in connection with disciplinary action is covered in Joint Federal Travel Regulation, Volume I, part O, paragraph U7450. Statement that member is not entitled to per diem expenses in connection with disciplinary action is required on TDY orders for members traveling as an accused.

**3. Judiciary funded.**

**a. Continuation of an existing attorney-client relationship by a defense counsel now assigned outside the judiciary.** When a judiciary defense counsel represents someone as a part of a continuing attorney-client relationship, the judiciary funds the defense counsel. For example, if a defense counsel enters into an attorney-client relationship with a client and the defense counsel is then reassigned to another job outside the judiciary, but later returns to finish up the original representation, the original judiciary office funds the travel and expenses.

**b. Continuation of an existing attorney-client relationship by a defense counsel assigned to another judiciary position.** If a defense counsel enters into an attorney-client relationship with a client and the defense counsel is then reassigned to another job within the judiciary (for example, going from an ADC to a CDC or CCDC position), but later returns to finish up the original representation, the original judiciary office funds the travel and expenses.

**c. IMDC request for a judiciary attorney - no existing attorney-client relationship.** If an accused requests representation by an attorney assigned to the judiciary (for example, in a circuit other than the client's), and there is no pre-existing representation from a previous judiciary position, the circuit to which the attorney is assigned, funds the travel and expenses.

**4. AFLSA/JAJM funded.**

**a. IMDC requests for counsel NOT assigned to judiciary position.** JAJM funds all IMDC requests for a counsel not assigned to a judiciary position at the time of the request. This DOES NOT include a representation which is a continuation of an attorney-client relationship on a defense matter which originated while that attorney served in a judiciary position.

**b. Representation of a former client, but on a matter on a matter unrelated to the original representation.** JAJM funds defense counsel travel and expenses in cases in which the defense counsel represented a client on a matter, completed the representation on that matter, is reassigned outside the judiciary and is then requested by the client to represent the client on an unrelated matter. There is no

continuation of the pre-existing attorney-client relationship and representation is subject to the reasonable availability of the requested counsel. See paragraph **5.3.2.**

5. AFLSA/JAJM funds if witness testimony is beyond scope of witness' assigned duties in agency.

6. Non-DoD civilians are funded by the convening authority. At the discretion of the Chief, Military Justice Division, AFLSA/JAJM may fund chemists, toxicologists, and other experts required in urinalysis cases or other high level interest cases. Request AFLSA/JAJM funding using standard witness funding request format and include a statement that the convening authority has approved the employment of the expert and the amount of expert fees. All fees in excess of AFLSA/JAJM funded level shall be paid by the convening authority.

7. Threatened airman requests are submitted through local AFOSI detachments.

8. The convening authority funds Lab technicians. Travel arrangements and orders are the responsibility of the organization to which the member is assigned.

9. Funding of prisoners and prisoner escorts is outlined in (AFR 177-103). Funding for escorts is paid by the convening authority requesting the appearance of the prisoner.

10. AFOSI agents assigned to an accused and counsel as defense investigators are funded by the convening authority.

# CHAPTER 7

# VICTIM AND WITNESS ASSISTANCE

## *Section 7A—General*

**7.1. Purpose.** This chapter describes the Air Force Victim and Witness Assistance Program (VWAP), implements the Victim and Witness Protection Act of 1982 (42 U.S.C. 10601-10605), the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10606, 10607), DoD Directive 1030.1, *Victim and Witness Assistance*, November 23, 1994, and DoD Instruction 1030.2, *Victim and Witness Assistance Procedures*, December 23, 1994. It establishes responsibility for the VWAP at the Headquarters Air Force and installation levels. It provides guidance for the treatment of victims and witnesses of offenses under the UCMJ, and victims and witnesses of offenses under the jurisdiction of local, state, other federal, or foreign authorities during those stages of the criminal justice process conducted primarily by Air Force. This chapter provides guidance for the protection and assistance of victims and witnesses, enhances their roles in the military criminal justice process, and preserves the constitutional rights of an accused. These provisions create no cause of action or defense in favor of any person arising out of a failure to comply with the VWAP. The VWAP places no limitations on the lawful prerogatives of Air Force personnel.

**7.1.1. Application of the VWAP.** The VWAP applies in all cases in which criminal conduct adversely affects victims or in which witnesses provide information regarding criminal activity. Pay special attention to victims of serious, violent crime, but ensure all victims and witnesses of crime who suffer physical, financial, or emotional trauma receive the assistance and protection to which they are entitled. While various Air Force agencies retain much of the responsibility for the VWAP, it is to be a coordinated effort among all agencies providing services to individuals.

**7.2. Objectives.** Within available resources and in accordance with applicable law, the following are objectives of the Air Force VWAP:

7.2.1. Mitigate the physical, psychological, and financial hardships suffered by victims and witnesses of offenses investigated by US Air Force authorities;

7.2.2. Foster cooperation of victims and witnesses within the military criminal justice system; and

7.2.3. Ensure best efforts are made to accord to victims of crime certain enumerated rights.

## *Section 7B—Definitions*

**7.3. Victim.** A person who suffered direct physical, emotional, or financial harm as the result of an offense, including:

7.3.1. All military members and their family members, and DoD civilian employees and their family members when stationed outside the continental United States;

7.3.2. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of priority):

7.3.2.1. Spouse;

7.3.2.2. Legal guardian;

7.3.2.3. Parent;

7.3.2.4. Child;

7.3.2.5. Sibling;

7.3.2.6. Another family member; or

7.3.2.7. Another person designated by a court.

7.3.3. In the case of an institutional entity, an authorized representative of the entity.

**7.4. Witness.** A person who has information or evidence of an crime and provides that information or evidence to an Air Force official. When the witness is a minor the term includes an appropriate family member as discussed in **7.3.2.** The term "witness" does not include an individual allegedly involved in a crime as a conspirator, accomplice, or principal.

**7.5. Offense.** An offense is a crime punishable under the UCMJ committed by a person subject to the UCMJ.

**7.6. Responsible Official (RO).** The Air Force official responsible for coordinating, implementing and managing the Air Force VWAP. The Judge Advocate General (TJAG) is the Air Force RO.

**7.7. Local Responsible Official (LRO).** The individual responsible for identifying victims and witnesses of crimes and providing the services required by the VWAP. Each installation commander is the LRO. Installation commanders may delegate the LRO duties and responsibilities to the SJA. The delegation must be in writing and specifically identify the SJA. References in this chapter to the LRO include individuals tasked by the LRO to assist with the VWAP.

**7.8. Victim Liaison.** An individual appointed by the LRO, or the LRO's designee, to assist a victim during the military justice process. The designation need not be in writing. The liaison may be a medical or mental health care provider, judge advocate, paralegal, or other person appropriate under the circumstances of a particular case. A liaison is responsible for making contact between victims and service agencies and arranging for those services, when appropriate.

**7.8.1. Central Repository.** A central organization for confinee information, charged with establishing procedures to ensure victims, who so elect, are notified of changes in confinee status. The USAF central repository is Headquarters Air Force Security Police Agency, Directorate of Corrections, HQ AFSPA/SPC, 8601 F Avenue SE, Kirtland AFB, NM 87117-5516.

***Section 7C—Victim's Rights***

**7.9. Crime Victim's Rights.** A crime victim has the following rights:

7.9.1. To be treated with fairness and respect for the victim's dignity and privacy;

7.9.2. To reasonable protection from a suspect or the accused;

7.9.3. To notification of all court-martial proceedings;

7.9.4. To be present at all public court-martial proceedings, unless the military judge determines the victim's testimony would be materially affected if the victim heard other testimony;

7.9.5. To confer with trial counsel in the case;

7.9.6. To appropriate restitution, when available; and

7.9.7. To information about an accused's conviction, sentencing, confinement and release.

***Section 7D—Services Provided to Crime Victims***

**7.10. LRO Responsibilities to Crime Victims.** The LRO, or other officials designated in this chapter, shall:

7.10.1. Inform the victim of the place where the victim may receive emergency medical and social service, and when necessary provide appropriate assistance in securing the care; and

7.10.2. Inform the victim of any restitution or other relief to which the victim may be entitled and how to obtain the relief.

7.10.2.1. Restitution may be available from, or offered by, an accused as a condition in the terms of a PTA, during the sentencing process, as a part of post-trial mitigation (RCM 1105), or as a term or condition of parole or clemency. SJAs provide information on possible restitution from local, state or federal crime victims funds, including procedures for applying for such funds.

7.10.2.2. SJAs inform victims that Article 139, UCMJ, may provide relief if the property loss or damage resulted from wrongful taking or willful damage by a member of the Armed Forces. Ensure an Article 139 investigation does not interfere with any criminal investigation or court-martial proceedings.

7.10.3. Inform the victim of available public and private counseling, treatment, or support programs.

7.10.4. Assist the victim in contacting agencies responsible for providing necessary services and relief.

7.10.5. Inform the victim concerning protection from intimidation or similar threats, and, if appropriate, arrange for the victim to receive reasonable protection from an accused and from individuals acting in concert with or at the behest of the accused.

Inform the victim to immediately report any intimidation, harassment or similar conduct to military authorities. (Reference 18 U.S.C. 1512 and 1513).

7.10.5.1. In cases where a victim's life, well-being or safety is jeopardized or threatened by participation in the military justice process, the LRO ensures immediate notification of appropriate law enforcement agencies. Air Force law enforcement agencies promptly take measures to provide protection for the victim, as allowed by jurisdictional restrictions. Assist victims in obtaining restraining orders or similar protections available from civilian agencies.

7.10.6. Upon the victim's request, provide the victim with earliest possible notice of:

7.10.6.1. The status of the investigation of the crime, to the extent it will not interfere with the investigation and is appropriate;

7.10.6.2. The accused's pretrial status and any subsequent change in that status, including but not limited to, the accused being placed in pretrial confinement, being released from pretrial confinement, or escaping from pretrial confinement;

7.10.6.3. Preferral of charges;

7.10.6.4. The acceptance of a guilty plea or announcement of findings; and

7.10.6.5. The sentence imposed, including the date on which the accused becomes eligible for release from confinement, or parole, if applicable.

7.10.7. During trial proceedings:

7.10.7.1. Provide the victim with a waiting area removed from and out of the sight and hearing of the accused and defense witnesses; and

7.10.7.2. Provide the victim with appropriate assistance in obtaining available services such as transportation, parking, child care, lodging, and courtroom translators or interpreters.

7.10.8. Safeguard any of the victim's property held as evidence and return it as soon as possible.

7.10.9. If requested by the victim, take reasonable steps to inform the victim's employer of the reasons for the victim's absence from work. In appropriate cases, assist a victim subjected to serious financial strain directly resulting from a crime, or cooperation in the investigation or prosecution of an offense, in explaining reasons for financial strains to creditors. This does not entitle victims to formal legal assistance.

7.10.10. Under ordinary circumstances, consult with the victim and obtain the victim's view concerning:

7.10.10.1. Decisions not to prefer charges;

7.10.10.2. Dismissal of charges;

7.10.10.3. Pretrial restraint or confinement, particularly an accused's possible release from any pretrial restraint or confinement;

7.10.10.4. Pretrial agreement negotiations, including PTA terms;

7.10.10.5. Plea negotiations;

7.10.10.6. Discharge in lieu of trial by court-martial; and

7.10.10.7. Scheduling of judicial proceedings where the victim is required or entitled to attend.

7.10.11. Consultation may be limited when justified by the circumstances, such as to avoid endangering the safety of the victim or a witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying disposition of an offense.

7.10.11.1. Although the victims' views should be considered, nothing in the VWAP limits the responsibility and authority of officials involved in the military justice process from taking any action deemed necessary in the interest of good order and discipline and of preventing service-discrediting conduct.

7.10.12. The Family Support Center (FSC) maintains information on available treatment, counseling, and support programs, acting as the focal point between victims and those programs. The FSC director works with other installation agencies to identify victims' needs and determine appropriate forms of assistance and resources available through military and community services. The FSC provides information to victims on available medical, financial, legal, and other social services, and assists victims in obtaining those services. At installations without a FSC, the LRO appoints an individual to provide information to victims.

7.10.12.1. In cases where referring a victim to the FSC for information may potentially cause undue embarrassment for a victim, SJAs are encouraged to provide VWAP information directly to the victim.

7.10.13. The LRO may designate a victim liaison to assist individual victims when necessary.

7.10.14. Law enforcement and investigative personnel, when circumstances dictate, promptly inform all victims of the availability of emergency medical and social care. When necessary, provide assistance in obtaining care through the FSC or a victim liaison. See figure **Figure 7.3.** for examples of services potentially available to victims. For victims ineligible for military services, or in those cases in which military services are unavailable, the FSC or victim liaison assists victims in obtaining available services in the civilian community.

7.10.15. The government trial counsel or designee provides the victim with a DD Form 2702, **Court-Martial Information for Victims and Witnesses**, explaining the victim's rights and access to services. The date the form is given must be reported and shall be annotated on the DD Form 1569, **Incident Complaint Report.**

7.10.16. Assistant Secretary of Defense (ASD) CHAMPUS Victim and Witness Assistance Guide. In order to assist victims, the SJA maintains a copy of the ASD CHAMPUS Victim and Witness Assistance Guide.

7.10.17. LROs are encouraged to enter into an appropriate memorandum of agreement with local civilian agencies to ensure cooperative relationships in identifying, reporting, investigating, and providing services and treatment to victims and witnesses.

***Section 7E—Services Provided to Witnesses***

**7.11. Local Responsible Official's (LRO) Responsibilities to Witnesses.** The LRO or other officials designated in this chapter shall:

7.11.1. Inform a witness concerning protection from intimidation or similar threats, and, if appropriate, arrange for the witness to receive reasonable protection from an accused and from individuals acting in concert with or at the behest of the accused. Advise a witness to immediately report any intimidation, harassment, or similar conduct to military authorities.

7.11.1.1. In a case where a witness' life, well-being, or safety is jeopardized or threatened by participation in the military justice process, the LRO ensures immediate notification of appropriate law enforcement agencies. Air Force law enforcement agencies promptly take measures to provide protection for the witness, as allowed by jurisdictional restrictions. Assist witnesses in obtaining restraining orders or similar protections available from civilian agencies. Inform witnesses of any changes in accused's pretrial status, including but not limited to, the accused being placed in pretrial confinement, being released from pretrial confinement, or escaping from pretrial confinement.

7.11.1.2. If requested by a witness, take reasonable steps to inform the witness' employer of the reasons for the witness' absence from work. In appropriate cases, assist a witness subjected to serious financial strain directly resulting from a crime, or cooperation in the investigation or prosecution of an offense, in explaining reasons for financial strains to creditors. This does not entitle a witness to formal legal assistance.

7.11.1.3. Provide the witness with appropriate assistance in obtaining available services such as transportation, parking, child care, lodging, and courtroom translators or interpreters.

7.11.1.4. To the extent possible and when appropriate, afford a witness the opportunity to wait in an area separate from the accused or other defense witnesses to avoid embarrassment, coercion, or similar emotional distress.

7.11.1.5. Inform the witness of the time and place of each trial proceeding the witness is either required or entitled to attend. Promptly notify the witness of any scheduling changes.

7.11.2. Determine the extent to which witnesses are provided services or information under this paragraph in each individual case. For example, active duty military, expert, or character witnesses ordinarily do not require all these services.

7.11.3. Provide information and services to witnesses for a suspect or accused, if requested by defense counsel, and authorized by the LRO.

***Section 7F—Notification to Other Individuals***

**7.12. Others Entitled to Notice.** Witnesses, relatives of victims and witnesses who are minors, and relatives of homicide victims are entitled to receive prompt notification of information concerning cases. Notify the individuals of the following:

7.12.1. Apprehension of a suspect or an accused.

7.12.2. Initial appearance of an accused before a military magistrate or other judicial official.

7.12.3. Pretrial release of an accused, or any changes in pretrial restrictions.

7.12.4. Court-martial proceedings, including:

7.12.4.1. Any pleas by the accused;

7.12.4.2. Findings; and

7.12.4.3. The sentence imposed, including the date on which the accused becomes eligible for release from confinement, or parole, if applicable.

***Section 7G—Post-trial Notice and Information***

**7.13. General.**

7.13.1. The government trial counsel or designee provides a victim with a DD Form 2703, **Post-Trial Information for Victims and Witnesses of Crime**, explaining the victim's post-trial rights.

7.13.2. For all cases resulting in a sentence to confinement, the government trial counsel or designee completes DD Form 2704, **Victim/Witness Certification and Election Concerning Inmates Status**. Send one copy of the form to the Central Repository, Headquarters Air Force Security Police Agency, Directorate of Corrections, HQ AFSPA/SPC, 8601 F Avenue SE, Kirtland AFB NM 87117-5516, and one copy to the confinement facility where the accused is in post-trial confinement and give a copy to the victim.

7.13.2.1. The date the DD Form 2704 is given to the victim or witness must be reported and shall be annotated on the DD Form 1569-3, or computer generated equivalent. Until the DD Form

1569-3 is available, the date the victim or witness elects to be notified may be annotated on existing result of trial forms.

7.13.2.2. Do not attach a copy of the DD Form 2704 to any portion of any record to which the convicted member has access. Doing so could endanger the victim or witness. The DD Form 2704 is exempt from release under the Freedom of Information Act (FOIA).

7.13.3. If the sentence includes confinement, the SJA is responsible for informing the victim of the convening authority's action on the findings and sentence of the court-martial, regardless of where the accused is confined when action is taken.

7.13.4. Upon entry of an offender into confinement, the victim and witness assistance coordinator at the military confinement facility shall obtain the DD Form 2704 to determine victim or witness notification requirements. If the form is unavailable, inquire of HQ AFSPA/SPC whether any victim or witness has requested notification of changes in the confinee status in the case. Clearly mark an individual's confinement records to indicate the case involves a victim wanting to be informed of the prisoner's disposition.

7.13.5. If an accused is confined at or near the installation where tried, the installation SP commander notifies the victim of an accused's escape, any form of release from custody, or death.

7.13.6. When a victim or witness has requested notification of changes in confinee status on the DD Form 2704, and that status changes as listed below, use the DD Form 2705, **Victim and Witness Notification of Changes in Confinee Status**, to notify the victim or witness. The date of such notifications must be reported and shall be annotated on the appropriate form. Provide the earliest possible notice of:

7.13.6.1. The scheduling of a clemency or parole hearing for the inmate.

7.13.6.2. The transfer of the inmate from one facility to another.

7.13.6.3. The escape (and subsequent return to custody), work release, furlough, or any other form of release of the inmate from custody.

7.13.6.4. The release of the inmate to parole supervision.

7.13.6.5. The death of the inmate if the inmate dies while in custody

7.13.6.6. Changes in confinee status for any emergency or special temporary home release granted the inmate.

7.13.7. On transfer of a confinee to another military confinement facility, forward the DD Form 2704 to the gaining facility, with an information copy to the Central Repository, HQ AFSPA/SPC.

7.13.8. Report the status of victim and witness notification requests to the Central Repository, HQ AFSPA/SPC annually.

7.13.9. Victims are entitled to provide input to an accused's disposition board prior to a parole eligibility date or the accused going before the Air Force Clemency and Parole Board. It is each victim's responsibility to keep HQ AFSPA/SPC informed of the victim's current address.

**7.14. Witness Fees and Costs.** Witnesses requested or ordered to appear at Article 32 investigations or courts-martial may be entitled to reimbursement for their expenses under Articles 46 and 47, UCMJ; RCM 405(g). Provide victims and witnesses assistance in obtaining prompt payment of witness fees and

related costs. When possible, establish local procedures for paying vouchers after normal duty hours when necessary to avoid undue hardship. (See, generally, **Chapter 6**, paragraphs **6.2.** to **6.5.**)

**7.15. Confidentiality of Administrative Disposition.** In cases where allegations against a suspect are disposed of other than by trial, a victim may want to be informed of the alternate disposition. In these situations, balance the legitimate interests of the victim with the privacy rights of the suspect. As a general rule, a victim may not be told an individual received punishment under Article 15, UCMJ, or the individual received some form of adverse administrative action (e.g., reprimand). Exercise care in these cases to explain to the victim the general options available to the suspect's commander and of the restrictions placed on disclosure of action taken. Explain to the victim that, "the suspect's commander took appropriate administrative action," or that "the suspect's commander took no adverse administrative action."

***Section 7H—Training***

**7.16. Training.**

7.16.1. General. All personnel involved in the military criminal justice process and those responsible for providing required services to victims and witnesses must be familiar with the requirements of the Air Force VWAP. The LRO is responsible for developing and implementing a program at each installation. The LRO is also responsible for ensuring the accomplishment of required training by all local agencies.

7.16.2. Development of the Training Program. The installation SJA, chief of security police (SP), Air Force Office of Special Investigations (AFOSI) detachment commander, medical facility commander (SG), Family Support Center director (FSC), installation chaplain (HC) and representatives from commanders and first sergeants develop local training programs to ensure compliance with the VWAP.

**7.16.3. Accomplishment of Training.** Each individual agency is responsible for training personnel on their responsibilities under this chapter. The SJA trains commanders and first sergeants. The LRO coordinates all training required by this chapter and ensures the provisions of this chapter are publicized to all military and civilian agencies providing victim and witness services within their communities.

**7.16.4. Preparation of Victim Information Packet.** Prepare a victim information packet at each installation through the coordinated efforts of the SJA, SP, AFOSI, SG, FSC, HC and commanders and first sergeants. Provide the packet to each identified victim or witness. A model packet is at **Figure 7.2.**

**7.16.5. Training Requirements for Investigative and Law Enforcement Personnel.** Investigative and law enforcement personnel are often the first individuals to have contact with the victim. Their training must emphasize their responsibilities, at the earliest opportunity after detection of a crime and without interfering with the investigation, to make reasonable and best efforts to:

7.16.5.1. Identify the victim of a crime:

7.16.5.2. Inform the victim of the name, title, business address and telephone number of the FSC director or the victim liaison to whom a request for services should be addressed and assist the victim in making contact with those individuals when necessary.

7.16.5.3. Inform the victim of available emergency medical and or social services.

7.16.5.4. Inform the victim of the right to receive reasonable protection for the victim or witness whose life, well-being, or safety is jeopardized by participation in the military justice process.

7.16.5.5. Funding for victim and witness assistance programs is an operations and maintenance-type expense.

### *Section 7I—Self-Inspection*

**7.17. Self-Inspection.** Responsible officials should develop a system for assessing the effectiveness of their victim and witness assistance program. For example, a questionnaire may be sent to victims and witnesses soliciting their opinions about the assistance provided. SJAs should keep a checklist for each case involving a victim, showing; e.g., the dates information packets and notifications were provided (with copies of all notification letters and indorsements).

7.17.1. Staff assistance visits will examine the effectiveness of victim and witness assistance programs, as well as compliance with this instruction.

**7.17.2. (Added-AMC)** Article 6, UCMJ-type visits by the Staff Judge Advocate (SJA), Air Mobility Command, will normally include an assessment of responsible installation officials' awareness and compliance with AFI 51-201 requirements, as well as the effectiveness of installation victim and witness assistance program.

### *Section 7J—Reporting Requirements*

**7.18. Reporting Requirements.** TJAG shall submit an annual report using the DD Form 2706 to the Under Secretary of Defense for Personnel and Readiness, Attention Legal Policy Office (OUSD (P&R) LLP) 4000 Defense Pentagon, Washington, DC 20301-4000. Submit the report by 15 March for the preceding calendar year and address the assistance provided victims and witnesses of crime. Derive the data from DD Forms 1569 and 1569-3, or computer generated equivalents. Use these forms as soon as available in forms distribution. Each base SJA or equivalent reports the information required to be reported by **7.18.1.** through **7.18.4.** through JA channels to their major command or equivalent. Major commands, FOAs and DRUs consolidate the reports and forward them to AFLSA/JAJM to arrive no later than 15 February of each year. The report shall include:

7.18.1. The number of victims and witnesses who received a DD Form 2701 from law enforcement or criminal investigations personnel. Obtain this number from the DD Form 1569 or existing incident report forms.

7.18.2. The number of victims and witnesses who received a DD Form 2702 from the government trial counsel or designee. Obtain this number from the DD Form 1569-3 or appropriate forms.

7.18.3. The number of victims and witnesses who received a DD Form 2703 from the government trial counsel or designee. Obtain this number from the DD Form 1569-3 or appropriate forms.

7.18.4. The number of victims and witnesses who elected via the DD Form 2704 to be notified of changes in confinee status. Obtain this number from the DD Form 1569-3 or appropriate forms.

7.18.5. Each confinement facility reports the information required to be reported by paragraphs **7.18.6.** and **7.18.7.** to the central repository at HQ AFSPA/SPC, who will forward a consolidated report to AFLSA/JAJM to arrive no later than 15 February of each year.

7.18.6. The number of victims and witnesses who were notified by confinement facility Victim Witness Assistance Coordinators via the DD Form 2705 of changes in confinee status. Obtain this number from appropriate forms.

7.18.7. The cumulative number of confinees for whom victim or witness notifications must be made by each confinement facility. Obtain this number by totaling the number of confinees with victim or witness notifications requirements as of 1 Jul 95, adding the number of new confinees with the requirement, and then subtracting the number of those confinees who were released, deceased, or transferred to another facility (federal, state, or sister service) during the reporting year.

7.18.8. AFLSA/JAJM consolidates the numbers from the major commands, FOAs, DRUs and HQ AFSPA/SPC, record them on the DD Form 2706, and forward the DD Form 2706 to TJAG.

**Figure 7.1. Victim/Witness Program Responsibilities.**

VICTIM/WITNESS PROGRAM RESPONSIBILITIES

| Responsibility | Responsible Agencies |
|---|---|
| Responsible Official, USAF | TJAG |
| Local Responsible Official | Installation Commander; or SJA, if delegated |
| Develop training syllabus | JA, SP, AFOSI, SG |
| Accomplish training | JA, SP, AFOSI, SG, FSC, HC |
| Prepare notice forms | JA |
| Identify victims | SP, AFOSI, JA, Commanders, First Sergeants, FSC, SG, HC |
| Notify victims of rights/services | SP, AFOSI, JA, SG, FSC |
| Notify victims of state crime victims funds | JA |
| Coordinate/deliver services | FSC, SG, other base agencies |
| Maintain copy of ASD CHAMPUS Victim and Witness Assistance Guide and copy of ASD State Fund Guide | JA |

| | |
|---|---|
| Pretrial arrangements/dispositions, decisions, victim consultation (e.g., PTAs)..... | JA |
| Care of evidentiary property..... | SP, AFOSI |
| Protection from offender..... | SP, AFOSI, civilian authorities |
| Separate waiting area..... | JA |
| Preferral of charges, pleas or dismissal..... | JA |
| Schedule judicial proceedings..... | JA |
| Notify victim of release/detention status of suspect..... | JA, SP |
| Notice of trial results..... | JA |
| Notice of victims's post-trial rights..... | JA |
| Central Repository of information of prisoner status..... | AFSPA/SPC |

**Figure 7.2. Model Victim Information Packet.**

MODEL VICTIM INFORMATION PACKET

Best efforts will be made to afford the services listed below, upon request, to any person who suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense investigated or prosecuted by US Air Force authorities.

1. Information. The services below may be available. If assistance is needed in contacting the providers, please notify: _____

_____

a. Emergency medical services:_____

_____

b. Social services:_____

_____

c. Restitution (or other relief):_____

_____

d. For further information and referrals concerning victim counseling, treatment, and support programs:_____

_____

2. Protection. Reasonable protection from a suspected offender may be requested by contacting:

_____

_____

3. Notice. The earliest possible notice of the following stages of the criminal investigation and prosecution shall be provided by contacting:_____

_____

a. Status of investigation (to the extent appropriate without interfering with investigation).

b. Arrest of suspected offender.

c. Preferral of charges against suspected offender.

d. Schedule of judicial proceedings (where required or entitled to attend).

e. Release or detention status of suspected offender.

f. Acceptance of guilty plea or verdict after trial.

g. Sentence imposed.

4. Consultation. Consultation with the appropriate commander or designee concerning pretrial decisions, such as negotiated pleas or dismissal of charges, is available under certain circumstances (see AFI 51-201, paragraph **7.10.10.**), by contacting:_____

_____

5. Care of Evidentiary Property. Property of a victim being held for evidentiary purposes will be maintained in good condition and returned as soon as no longer needed for such purposes. Direct questions as to the care or return of evidentiary property to:_____

_____

6. Separate Waiting Area. During court proceedings, a waiting area removed from and out of the sight and hearing of the accused and defense witnesses shall be provided by contacting:

_____

7. Convening Authority Action. The convening authority, (name of convening authority), reviews the record of trial of any court-martial that may be held regarding this offense. The convening authority has the authority to reduce any sentence imposed by the court-martial and the authority to overturn any findings of guilty.

a. If you wish to submit matters for the convening authority's consideration, you must do this as soon as possible after the court-martial. Submit such matters in writing to (name of convening authority's SJA) at (address).

b. If you desire to be informed of the convening authority's action on any court-martial held regarding this offense, request this information from:

8. Post-Trial Notice. To receive general information about the corrections process, and the earliest possible notice of the following events, contact:_____

_____

a. Consideration of the offender by the Air Force Clemency and Parole Board.

b. Escape, deferment, parole, or any other form of release from confinement of the offender.

c. Death of offender, if occurring while in confinement.

**NOTE:** Where the offender is serving a sentence to confinement of a year or more, obtain notice by providing a current address or telephone number to HQ AFSPA/SPC, 8201 H Avenue SE, Kirtland AFB, NM 87117-5664. It is the victim's responsibility to keep Air Force officials informed of a current address.

9. Appeals. To receive the earliest possible notice of any appellate court proceedings, contact:

_____

10. Disclaimer. Failure to provide the information or services above does not create a cause of action or defense in favor of any person. No limits are hereby placed on the lawful prerogatives of the Air Force or its officials.

**Figure 7.3. List of References.**

REFERENCE LIST

A. General References:

1. Victim and Witness Protection Act of 1982, 42 U.S.C., sections 10601 to 10605.

2. Victims' Rights and Restitution Act of 1990, 42 U.S.C., sections 10606, 10607.

3. DOD Directive 1030.1, Victim and Witness Assistance Procedures

4. DoD Instruction 1030.2, Victim and Witness Assistance Procedures

B. Sources of Applicable Services:

1. Emergency Medical Services:

USAF medical treatment facilities (AFI 41-115)

SAF authorization for extraordinary medical assistance (abused dependents and certain former spouses) (AFI 41-115)

Waiver of charges for emergency medical treatment and examination for evidentiary purposes (AFI 41-101)

Locally available civilian medical and psychiatric services

2. Social Services:

Family Advocacy Program (AFI 40-301)

Abuse shelters (liaison with civilian agencies)

Rape counseling (liaison with civilian agencies)

Air Force Aid Society Financial Assistance Program (AFI 36-3105)

American Red Cross (AFI 36-3105)

JAG Legal Assistance Program (AFI 51-504)

Local community, county, and/or state social services

3. Restitution:

USAF Claims Program (AFI 51-502) (very limited application in CONUS)

Other legal methods

Article 139, UCMJ (AFI 51-502)

Possible condition of a pretrial agreement (RCM 705(c)(2)(C))

Potential clemency factor for convening authority's consideration

Private lawsuits, civilian sources, congressional special relief bills

State crime victim fund

Eligible state programs receive Federal funds for victim compensation (see 42 U.S.C. 10601-10602)

To be eligible, states cannot discriminate between otherwise compensable crimes on basis of State or Federal jurisdiction. Most States receiving funds pay medical and funeral expenses, and loss of wages

4. Victim Counseling, Treatment, Support Programs:

Chaplain services (AFI 52-101)

Clinical psychologist and/or clinical social worker (mental health services) (AFI 44-103)

Information and referral counseling (AFI 36-3009)

Family support center

5. Corrections Process for Offender:

Security Police (AFI 31-208)

AFLSA/JAJR

6. Other Services:

Security Police activities (military law enforcement) (AFI 31-201)

Coordination with civilian law enforcement and prosecutors

Coordination with civilian community services

Early return of dependents from overseas (AFI 36-2110)

Humanitarian reassignment (AFI 36-2110)

C. Reasonable Protection From a Suspected Offender:

1. Security Police (AFI 31-201)
2. AFOSI (AFI 71-104)
3. Threatened Airman Program (AFI 36-2110)
4. Local, State, or Federal law enforcement agencies

**Figure 7.4. Victim and Witness Assistance Checklist.**

VICTIM AND WITNESS ASSISTANCE CHECKLIST

1. Has the installation commander established a victim and witness assistance program according to AFI 51-201?

2. Has the installation commander delegated program administration responsibility?

a. Has the SJA been named the Local Responsible Official for the installation?

b. Do all other installation agencies involved with victims and witnesses have a focal point or point of contact designated for coordination and provision of services to victims and witnesses?

3. Are commanders, first sergeants, JA, SG, AFOSI, HC, DP (Family Support Center), and others, as necessary, fully trained to meet their responsibilities? Does training include informing them of their responsibility to:

a) identify crime victims;

b) promptly inform victims of available medical and social care;

c) direct victims to SJA's office for complete information regarding assistance;

d) provide or coordinate reasonable protection for the victim or witness whose life, well-being, or safety is jeopardized by participation in the military justice process; and

e) inform SJA in advance of offender's anticipated release from post-trial confinement (duration of one year or less), where notice is requested by the victim?

4. Has effective liaison been established with the local community to ensure victims receive coordinated assistance and compensation from both military and civilian communities?

a. When feasible, has the installation responsible official for victim and witness assistance established a memorandum of agreement to ensure a cooperative relationship with local communities to identify, report, investigate, and provide services and treatment to victims and witnesses?

b. Does the responsible official maintain a list of points of contact for the provision of services to victims and witnesses in the local community?

5. Are victims and witnesses effectively and timely informed of their rights and how they can assert them?

a. Are victims personally notified of their rights including:

1) the right to be treated with fairness and with respect for the victim's dignity and privacy;

2) the right to be reasonably protected from the accused offender;

3) the right to be notified of court proceedings;

4) the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial;

5) the right to confer with the trial counsel in the case;

6) the right to restitution; and

7) the right to information about the conviction, sentencing, imprisonment, and release of the offender?

b. Are victims informed of the name, duty title, and duty address and telephone number of the responsible official to whom the victim should address a request for each of the services described in this chapter?

c. Does the responsible official ensure that:

1) the victim is informed of the place where the victim may receive emergency medical and social services;

2) the victim is informed of any restitution or other relief to which the victim may be entitled under this or any other law and how such relief may be obtained;

3) the victim is informed of the public and private programs that are available to provide counseling, treatment, and other support (including state compensation programs) to the victim; and

4) receives the necessary assistance in contacting the persons who are responsible for providing the services and relief described in subparagraphs 1), 2) and 3) above?

6. Are victims consulted or notified concerning the disposition of all cases relevant to them?

a. Is the victim informed of the status of the investigation of the crime to the extent appropriate and to the extent that it will not interfere with the investigation?

b. Is the victim informed of the arrest/apprehension of a suspected offender?

c. Is the victim informed of the preferral of charges against a suspected offender?

d. Is the victim informed of the scheduling of each court proceeding that the victim is required or entitled to attend?

e. Is the victim informed of the release or detention status of an offender or suspected offender?

f. Is the victim informed of the acceptance of a plea of guilty or the rendering of a verdict after trial?

g. Is the victim informed of the sentence imposed on an offender, including the date on which the offender will be eligible for parole?

h. Does the installation commander or SJA ordinarily consult with victims and consider their inputs concerning:

1) a decision not to prefer charges;

2) decisions concerning pretrial restraint of the alleged offender or the offender's release;

3) pretrial dismissal of charges;

4) negotiations of pretrial agreements and their potential terms;

5) a discharge in lieu of court-martial; and

6) a convening authority's decision to set aside findings or provide sentence relief?

7. Have effective procedures been established to ensure that victim and witness requests for notification of case and prisoner status are recorded, properly acted upon and/or forwarded to the appropriate authorities for action?

a. Are victims provided the earliest possible post-trial notice of:

1) consideration of the offender by the Air Force Clemency and Parole Board;

2) escape, deferment, parole, or any other form of release from confinement of the offender; and

3) death of the offender, if occurring while in confinement?

b. Are victims immediately notified of any post-trial appellate relief or clemency granted an offender?

8. Are separate waiting areas provided for victims and prosecution witnesses at military justice proceedings?

9. Are installation personnel prepared to provide reasonable protection to victims and witnesses, and/or arrange for civilian protection, as necessary?

a. Does each victim receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender?

b. Is each victim informed that criminal sanctions may be imposed on individuals who violate their interests either through tampering, threatening, intimidating, retaliating against, or otherwise obstructing or attempting to obstruct their testimony?

c. Does the responsible official notify military and/or civilian law enforcement agencies, when appropriate, of the need to take the measures necessary to provide reasonable protection for the victim or witness?

d. Are victims and witnesses advised that any attempted intimidation, harassment, or other tampering should be promptly reported to the military authorities and that their complaints will be promptly investigated and appropriate action will be taken?

10. Has the installation commander established an effective means of regularly evaluating the quality of the victim and witness assistance program?

# CHAPTER 8

# TRIAL MATTERS

## *Section 8A—General.*

**8.1. Modification, Withdrawal or Dismissal of Charges and Specifications after Referral to Trial (RCM 603, RCM 604).**

8.1.1. If an accused is not arraigned on all the charges and specifications referred to trial, indicate the disposition of the other charges in the ROT. The SJA or trial counsel makes and initials the necessary changes to the charge sheet. Include an explanatory comment in the SJA recommendation and in the promulgating order.

8.1.2. If charges are withdrawn or dismissed, trial counsel renumbers any remaining charges and specifications, if necessary.

8.1.2.1. If charges and specifications are withdrawn before arraignment, renumber the remaining charges and specifications on the charge sheet and throughout the ROT.

8.1.2.2. In a trial with members, when charges and specifications are withdrawn or dismissed after arraignment and before the court members are aware of the charges, renumber the remaining charges and specifications and refer to the changes throughout the ROT.

8.1.2.3. When charges and specifications are withdrawn or dismissed after arraignment and after court members (or the military judge sitting alone) are made aware of the charges, do not renumber the remaining charges and specifications.

**8.2. Conditional Guilty Plea.** (RCM 910 (a) (2) and *U.S. v. Phillips*, 32 M.J. 955 (AFCMR 1991). Accept a conditional guilty plea only when the issue preserved for appeal is case dispositive. A conditional plea must be in writing, signed by the accused, and must specify the issue being preserved for review or appeal. The SJA or Acting SJA must consent, in writing, to the accused entering a conditional guilty plea.

## *Section 8B—Evidentiary Matters.*

**8.3. Use of Confidential Drug or Alcohol Abuse Records.** Federal statutes and regulations restrict the disclosure of records as to the identity, diagnosis, prognosis, or treatment of drug and alcohol abusers under the Federal drug and alcohol abuse prevention programs. Refer to 42 U.S.C. 290dd-3.

8.3.1. Although these statutes and the federal regulations exempt from their prohibitions the interchange of records entirely within the Armed Forces (42 CFR §2.12 (1982)), the Air Force adopted the standards as a matter of policy, with the limited exceptions in AFI 36-2702, Social Actions Education Program.

8.3.2. Disclosure of these records is permitted at the request of, and with written consent of, the accused-patient:

8.3.2.1. As evidence for the defense before findings.

8.3.2.2. As evidence in mitigation or extenuation in presentencing proceedings.

8.3.2.3. After trial in support of clemency or clemency petitions to TJAG or SAF.

8.3.3. Follow the procedure outlined in 42 CFR §2.31 in authorizing release of the records by the accused-patient. Avoid discussion of the records in open court to the extent feasible.

8.3.4. Only release necessary and relevant portions of the records for purposes of paragraph **8.3.2.** An accused cannot selectively authorize disclosure of the records to mislead the court or other parties to the trial (e.g., disclosing favorable early records, but not later ones indicating regression). If there is reason to believe an accused is selectively authorizing disclosure, either resolve the matter among counsel, or by an in camera review of the records by the military judge.

8.3.5. Drug and alcohol abuse records may be disclosed at trial without the consent of the accused to rebut or impeach evidence presented by the accused. See *U.S. v. Evans*, 20 M.J. 504 (AFCMR 1985). *U.S. v. Fenyo*, 6 M.J. 933 (AFCMR 1979), *pet. denied*, 7 M.J. 161 (CMA 1979).

**8.4. In Personam Jurisdiction of Reserves.** In any case in which the accused is a member of an AFRES or ANG component, trial counsel must introduce sufficient evidence to establish in personam jurisdiction over the accused at the time of the offense.

***Section 8C—Presentencing Matters (RCM 1001)***

**8.5. Personal Data and Character of Prior Service.**

8.5.1. "Personnel records of the accused," as referenced in RCM 1001(b) and (d), includes all those records made or maintained in accordance with Air Force directives that reflect the past military efficiency, conduct, performance, and history of the accused, as well as any evidence of disciplinary actions, including punishment under Article 15, UCMJ. The DD Form 493, **Extract of Military Records of Previous Convictions,** may be used to introduce evidence of an accused's previous conviction.

8.5.2. Relevant material contained in an accused's unit personnel information file (PIF) may be admitted pursuant to RCM 1001(b) if:

8.5.2.1. Counsel provided a copy of the document to opposing counsel prior to trial; and

8.5.2.2. There is some evidence on the document or attached to it that:

8.5.2.2.1. The accused received a copy of the correspondence (a document bearing the signature of the accused, or a witnessed statement regarding the accused's refusal to sign, would meet this criterion) and had the opportunity to respond to the allegation; and,

8.5.2.2.2. The document is not over 5 years old on the date the charges were referred to trial.

8.5.2.3. Relevant material contained in an accused's PIF may be admitted under RCM 1001(d) for rebuttal purposes, even if it does not comply with **8.5.2.2.1.** and **8.5.2.2.2.**, if, in the military judge's discretion, other competent means of authenticating the material have been presented to the court. See *U.S. v. Strong*, 17 M.J. 263 (CMA 1984).

8.5.3. Records of punishment under Article 15, UCMJ, from any file in which the record is properly maintained by regulation, may be admitted if not over 5 years old on the date the charges were referred. Measure this time period from the date the commander notified the accused of the commander's intent to impose nonjudicial punishment. Exclude periods in which the accused is absent

without authority in computing the 5 year period. If the PIF contains an AF Form 366**, Record of Proceedings of Vacation of Suspended Nonjudicial Punishment**, which meets this five-year requirement, a copy of the Article 15 record imposing the punishment vacated is also admissible, regardless of whether the original Article 15 action was served on the accused within this time period. Nothing in this paragraph precludes use of Article 15 actions over five years old as rebuttal evidence pursuant to RCM 1001(d).

**8.5.4. Introduction of Accused's Performance Reports.** Trial counsel offers all Airman or Officer Performance Reports maintained according to departmental directives, as evidence of the character of the accused's prior service (RCM 1001(b)(2)). See *U.S. v. Wingart*, 27 M.J. 128 (CMA 1988).

**8.6. Previous Convictions. (RCM 1001).** Do not offer evidence of a previous conviction by SCM, in which the accused was not represented by counsel, unless the accused waived the right to counsel. *U.S. v. Booker*, 5 M.J. 238 (CMA 1977). A conviction by SCM is not admissible until reviewed pursuant to Article 64(a), UCMJ.

***Section 8D—Matters Requiring Air Force Legal Services Agency Assistance***

**8.7. Appeals by the United States from an Adverse Ruling by a Military Judge (RCM 908).**

8.7.1. Trial counsel may file a notice of appeal by the United States under Article 62, UCMJ, and RCM 908 only after consultation with the Government Trial and Appellate Counsel Division (AFLSA/JAJG). The SJA decides whether to file such notice of appeal with the convening authority's concurrence.

8.7.2. After filing a notice of appeal conforming to the requirements of RCM 908(b) with the military judge, trial counsel promptly and expeditiously sends the notice to AFLSA/JAJG, requesting that office file the appeal with the Air Force Court of Criminal Appeals (AFCCA). In the request, identify the ruling or order to be appealed and include the following:

8.7.2.1. A copy of the charges and specifications;

8.7.2.2. An original and seven copies of the verbatim record of the applicable proceedings, or, if not available, a summary of the evidence and facts;

8.7.2.3. Trial counsel's certification on the appeal is not taken to delay the case;

8.7.2.4. Trial counsel's certification that, if the order or ruling excludes evidence, the excluded evidence is substantial proof of a fact material in the proceeding; and

8.7.2.5. A memorandum opinion on the law applicable to the issues appealed, including an explanation why the issues appealed are significant enough to require appeal by the United States.

8.7.3. AFLSA/JAJG decides whether to file the appeal with AFCCA, and notifies the trial counsel and SJA.

**8.8. Extraordinary Writs by Government Counsel.** A petition for extraordinary relief by the prosecution in a court-martial is, and should remain, a rare course of action.

**8.9. Officer Resignations for the Good of the Service (RILOs).** Forward officer RILOs expeditiously to AFLSA/JAJM through the command channels outlined in AFI 36-3207, chapter 2, section C. Forward

RILOs with the original and two copies of the RILO package. In addition to the officer's resignation and any supporting documents submitted by the officer, the RILO package should include (as applicable) copies of: any reports of investigation, statements, or other documents supporting the charges or accusations against the officer; the charge sheet; any transmittal letters, including the personal data sheet on the officer; the report of the Article 32 investigation with attachments; recommendations on disposition of the RILO from each commander required to review the RILO; and a comprehensive legal review from the base level (or equivalent) legal office where the RILO originated. Written legal reviews are not required at intermediate levels of command between the base legal office and AFLSA/JAJM, unless the intermediate level legal office disagrees with a lower level legal review or needs to add and discuss omitted matters. Otherwise, written coordination indicating concurrence is all that is required. MAJCOMs may require additional legal reviews if they desire. Do not delay processing court-martial charges through referral solely because a RILO is pending.

**8.9.1. Requests to Proceed to Trial Pending Action on Officer Resignation.** Prior authorization from AFLSA/JAJM is required before proceeding to trial in all officer cases in which action on a RILO is pending. In the request to proceed, include justification why the trial should proceed before a decision on the resignation. See AFI 36-3207. If permission to proceed is granted, **do not,** under any circumstances, prepare a convening authority action before SAF issues a decision on the resignation.

**8.9.2. Seven Day Rule for RILOs.** AFLSA/JAJM will normally approve requests to proceed to trial while a RILO is pending, if the RILO is submitted more than seven days after service of charges on the accused under RCM 602. In those cases, the only justification necessary in the request to proceed to trial is the untimely submission of the RILO, but additional reasons may be submitted if they exist. If a RILO is submitted within seven days of service of charges under RCM 602, requests to proceed to trial pending action on the RILO will normally be disapproved by AFLSA/JAJM absent compelling circumstances warranting trial while the RILO is pending. RILO processing should not be stopped or delayed, nor should the RILO be rejected for processing, based solely upon the time submitted. The RILO must still be forwarded through channels for Secretarial action, even if submitted more than seven days after service of charges under RCM 602. Do not proceed to trial in any officer case with a RILO pending without prior authorization from JAJM.

**8.10. Disclosure of Classified Information.** Only SAF may claim the privilege from disclosure of classified information (MRE 505). Forward requests for assertion of the privilege to AFLSA/JAJM.

**8.11. Disclosure of Government Information other than Classified Information.** Immediately notify AFLSA/JAJM if a case involves assertion of the privilege against disclosure of government information (MRE 506).

***Section 8E—Findings and Sentencing Worksheets***

**8.12. Use of Findings and Sentencing Worksheets.** Use the AF Form 1092, **Court-Martial Findings Worksheet, AF Form 1093, Sentence Worksheet (Special Court-Martial)**, and AF Form 835, **Sentence Worksheet (General Court-Martial)**, to assist court members in putting court-martial findings and sentences in the formats required by the Manual for Court-Martial.

***Section 8F—Preparing and Forwarding Records of Trial***

**8.13. Preparing Records of Trial.** Refer to AFMAN 51-203, *Records of Trial***,** for guidance in preparing and assembling court-martial records of trial (ROT).

**8.14. Forwarding Record of Trial.** Send original ROTs to AFLSA/JAJM using the most cost effective method that provides a means to track them.

***Section 8G—Trial by Military Judge***

**8.15. Requesting Trial by Military Judge.** Use the DD Form 1722, **Request for Trial Before Military Judge Alone**, for an accused to request trial by military judge. Refer to RCM 903.

# CHAPTER 9

# POST-TRIAL PROCEDURE

## *Section 9A—Report of the Result of Trial (RCM 1101; RCM 1305).*

**9.1. Publication of Result of Trial.** Publish the result of trial on an AF Form 1359, **Report of Results of Trial**. See paragraph **9.7.** for further reporting requirements on the sentence.

## *Section 9B—Post-Trial Confinement*

**9.2. Effect of Pretrial Confinement.**

9.2.1. Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Use the DD Form 497, **Confinement Order**, or equivalent, to enter an accused into post-trial confinement.

9.2.2. An accused receives day-for-day credit for any pretrial confinement (military or civilian) served for which the accused has not received credit against any other sentence. *U.S. v. Allen*, 17 M.J. 126 (CMA 1984), and *U.S. v. Murray*, 43 M.J. 507 (A.F. Ct. Crim. App. 1995). Annotate AF Form 1359 and DD Form 497 to credit civilian and military pretrial confinement.

**9.3. Confinement (RCM 1101; 1107(f)(4)(C); 1113(d)(2)).**

9.3.1. HQ AFSPA/SPC is responsible for the confinement and rehabilitation of Air Force inmates not ordered to serve sentences in local corrections facilities. Refer to AFI 31-205, *The Air Force Corrections Program*, for confinement rules and practices.

9.3.2. HQ AFSPA/SPC selects the corrections facility for post-trial confinement and rehabilitation. Use the following in the convening authority's action to designate confinement: "The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as the Director, Air Force Corrections, may direct."

**9.3.2.1. Excess Leave.** Include the following in the convening authority's action to place a member with an approved, unsuspended and unexecuted dismissal, dishonorable discharge (DD) or bad conduct discharge (BCD) on excess leave upon completion of the term of confinement: "Unless competent authority otherwise directs, upon completion of the sentence to confinement, (Name of accused) will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review of the conviction."

**9.3.3. Convening Authority Action after Sentence to Confinement Completed.** Use the following in cases in which the action executes a term of confinement completely served, suspended, or remitted: "The remaining period of confinement having been (served) (remitted) (suspended), no place of confinement is designated."

**9.3.4. Other Places of Confinement.** Corrections facilities other than those in the Air Force Corrections System may be used to confine inmates. HQ AFSPA/SPC sends detailed instructions covering selection of inmates for these assignments, details of transfer, and other administrative matters. The GCMCA over an inmate transferred to such a facility exercises the same responsibilities as those

assigned in this chapter to the Commander, 11th Wing, Bolling AFB, DC, for inmates in the Air Force Corrections System.

**9.4. Return to Duty Program (RTDP).** The RTDP offers selected inmates the opportunity to improve their conduct, attitude and productivity for continued service. The accused's defense counsel assists an accused wanting to volunteer for the RTDP by obtaining and submitting information to the convening authority to obtain direct entry into the program. (See AFI 31-205)

9.4.1. An inmate adjudged a punitive discharge, who volunteers and is approved by the convening authority for the RTDP, must have a minimum of 30 days remaining to serve on the approved sentence to confinement upon arrival at the corrections facility where the RTDP is conducted. An inmate without an adjudged punitive discharge must have a minimum of 60 days remaining to serve upon arrival. An inmate may waive the right to good conduct time to meet the minimum time requirements. HQ AFSPA/CC may waive the minimum time requirements.

9.4.2. Use the following in the convening authority's action to direct entry into the RTDP: "The Air Force Corrections System is designated for the purpose of rehabilitation, and the confinement will be served therein or elsewhere as the Director, Air Force Corrections, may direct."

9.4.3. An eligible inmate who volunteers, but is not approved for entry into the RTDP, and whose sentence to confinement is less than 12 months, may apply to the Air Force Clemency and Parole Board for entry into the RTDP. The inmate must submit the application within 30 calendar days of notification of the convening authority's action on the sentence, unless good cause for delay is shown.

9.4.3.1. In the application, include copies of all clemency matters previously submitted to the convening authority, the SJA's recommendation, action of the convening authority, and any new or additional information not considered by the convening authority.

9.4.3.2. Forward the application through the convening authority to the Director, Air Force Personnel Council (AFPC, 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB MD 20331-7002) for action by the Air Force Clemency and Parole Board. There is no appeal from a decision of the Air Force Clemency and Parole Board.

9.4.4. A convening authority may suspend a punitive discharge regardless of the intended place of confinement. A convening authority should carefully evaluate suspending the punitive discharge of an inmate sent to the Air Force Corrections System for confinement (not for the RTDP). That confinement indicates the inmate failed to demonstrate sufficient potential for return to duty. Suspending the punitive discharge of an inmate entered into the RTDP makes disposition difficult if the member is not returned to duty.

9.4.5. Inmates sent to a facility within the Air Force Corrections System for the purpose of confinement may enter the RTDP by direction of the AFSPA Commander, TJAG, or the Air Force Clemency and Parole Board.

***Section 9C—Matters Submitted by the Accused (RCM 1105)***

**9.5. Notice and Forms Regarding Post-Trial Submissions.**

9.5.1. The SJA, trial counsel, or assistant trial counsel provides the accused and defense counsel a letter (**Figure 9.1.**), informing the accused of the right to submit matters, including clemency matters, for the convening authority's consideration, and the time period for making such submissions. Include a

copy of the notification letter, with the accused's receipt, in the ROT at the place provided for the matters submitted by the accused. If the accused waives the right to submit matters, include the written waiver. Direct the SJA's letter to the defense counsel who accepted responsibility for the response to the SJA's recommendation. If no recommendation is required, provide the letter to the detailed military defense counsel, unless the accused requested otherwise.

9.5.2. An AF Form 138, **Post-Trial Clemency Evaluation**, may be used for the purpose of submitting clemency evaluations.

***Section 9D—SJA Recommendation (RCM 1106)***

**9.6. Preparation of SJA's Recommendation.**

9.6.1. The SJA's recommendation must clearly indicate the SJA submitted it. An assistant performing the duties of the SJA signs as "Acting Staff Judge Advocate". When an assistant prepares the recommendation, the SJA indicates the full extent of his or her participation. The following is suggested language: "I reviewed the record of trial and the foregoing recommendation(s). I concur in the recommendation(s)." No one who participated in the court-martial as a trial counsel, defense counsel or investigating officer may prepare, draft or sign the SJA's recommendation or addendum or otherwise act as the SJA in that case. (see RCM 1106 for further guidance).

9.6.2. The **Staff Judge Advocate's Recommendation** should be a clear and concise recommendation written in memorandum format containing the information required by RCM 1106(d). Attach copies of the, AF Form 1359, **Report of Result of Trial**, and the personal data sheet of the accused (see **Figure 3.4.**) directly to the SJA's recommendation. **Figure 9.4.** is the recommended format for the SJA's recommendation.

**9.6.3. Addendum to the SJA's Recommendation.** When the SJA receives defense matters submitted under RCM 1105(b) or 1106(f)(4), the SJA should prepare an addendum to the recommendation. This addendum can address matters raised by the defense submissions, and must advise the convening authority that he must consider all matters submitted by the defense prior to taking action on the findings and sentence. For charges referred to trial after 10 Feb 96, the addendum must advise the convening authority that he must consider all written matters submitted by the defense and may consider other matters submitted by the defense prior to taking action on the findings and sentence (Article 60(b)(1), UCMJ). List each defense submission as a separate attachment to the addendum. If the addendum includes new matters, comply with RCM 1106(f)(7). New matters ordinarily do not include the SJA's discussion of the correctness of the defense counsel's comments on the recommendation. New matters include any reference to matters which are not in the ROT or served on defense counsel and the accused with the SJA's Recommendation.

**9.6.4. Staff Summary Sheets.** Avoid use of a staff summary sheet in conjunction with the SJA's Recommendation when possible. If a staff summary sheet or other document is used to forward the record (SJA's Recommendation, RCM 1105 or RCM 1106 matters from the defense, Addendum to the SJA's Recommendation, if used, and the record of trial) to the convening authority for action, it must be served on the accused and counsel for comment and attached to the record of trial. *U.S. v. Leslie*, 16 M.J. 714 (AFCMR 1983).

**9.6.5. Procedures in the Event of Disqualification.** If all judge advocates on the GCMCA's staff are disqualified from preparing the SJA's recommendation, follow the general procedures in paragraph **4.7.2.** to select another SJA.

9.6.5.1. If all judge advocates on the SPCMCA's staff are disqualified from preparing the SJA's recommendation, send the record to the GCMCA's SJA. That officer may prepare a recommendation for the action of the SPCMCA or designate another SJA to prepare the recommendation for the SPCMCA's action.

9.6.6. Include the original SJA's Recommendation with all attachments (including the AF Form 1359 and the personal data sheet) in the original ROT. The attachments must follow immediately behind the SJA's Recommendation in the ROT. Place a copy of the SJA's Recommendation and attachments in each copy of the ROT.

***Section 9E—Action by the Convening Authority (RCM 1107).***

**9.7. Notifications of Adjudged Sentence, Action of the Convening Authority, and Deferment or Waiver.**

**9.7.1. Reporting by Base Level SJA** . In all courts-martial with automatic forfeitures under Article 58b, UCMJ, or adjudged forfeitures, or reduction in grade, **the SJA of the office which tried the case** must send a priority message to HQ AFPC/DPPPWM and the member's finance office, with informational copies to HQ AFSPA/SPCI and DFAS-DE/FJPC in the format set out in **Figure 9.2.** The referenced message must be sent within 24 hours of the effective date of the punishments or automatic forfeitures. The effective date of the punishments or automatic forfeitures is the earlier of when the convening authority takes action under RCM 1107 or 14 days after the sentence is adjudged. If any portion of the punishment or automatic forfeiture is deferred or if any portion of the automatic forfeiture is waived by the convening authority prior to the date of the message, the message must include the terms of such deferment or waiver (see paragraph **9.7.3.**).

**9.7.2. Reporting by Convening Authority's SJA.** A second priority message must be sent by **the SJA of the convening authority** within 24 hours after the convening authority takes action under RCM 1107 in any case where the approved sentence includes a reduction in grade or forfeitures (automatic or adjudged), if the action is taken more than 14 days after the sentence is adjudged. If any portion of the punishment or automatic forfeiture is deferred or if any portion of the automatic forfeiture is waived by the convening authority after the message in paragraph **9.7.1.** is sent, the second message must include the terms of such deferment or waiver (see paragraph **9.7.3.**). Send the message to the same addressees listed in paragraph **9.7.1.** using the format in **Figure 9.2.** For members who enter a prisoner status requiring a permanent change of station, also send the message to the gaining AFO.

**9.7.3. Deferment Prior to Action and Waiver [Art 57(a) & Art 58b, UCMJ].** Upon request by the accused, the convening authority may defer forfeitures (automatic or adjudged) or reduction in grade until the convening authority takes action under RCM 1107. If the accused has dependents, the convening authority may waive any part or all of the automatic forfeitures under Article 58b, when the accused is actually serving a sentence to confinement, for up to six months at any time prior to action or when action is taken. The waived portion of the automatic forfeitures shall only be paid to the accused's dependents. This waiver provision applies only to automatic forfeitures based on confinement under Article 58b. Automatic forfeitures take precedence over adjudged forfeitures. Adjudged forfeitures cannot be waived, but the convening authority retains his full range of options with regard

to his action on the sentence under RCM 1107. The terms of any deferment or waiver must be reported as required in paragraphs **9.7.1.** or **9.7.2.** and must be included in the action as required in paragraphs **9.8.4.**

**9.8. Action on Sentence.**

**9.8.1. Limitations on Forfeitures [RCM 1107(d)(2)].** If no confinement is adjudged and a forfeiture exceeding two-thirds pay per month is adjudged, reduce the approved forfeiture to not more than two-thirds pay per month to run for a specified period of time or up until the punitive discharge is executed.

**9.8.2. Combat or Overseas Record.** Convening and reviewing authorities should consider the accused's combat or overseas record in determining the punishment to be approved. Where the sentence of an accused with an outstanding combat or overseas record extends to a punitive discharge, convening and reviewing authorities should give appropriate consideration to the suspension or remission of the discharge, provided that return to duty is in the best interest of the Air Force. In the case of a relatively minor offense, where restoration to duty is inappropriate, convening and reviewing authorities should consider recommending administrative, rather than punitive, separation under Article 74(b), UCMJ. Contact AFLSA/JAJR, 112 Luke Avenue, Room 343, Bolling AFB, DC 20332-8000 for assistance and coordination on such recommendations.

**9.8.3. Illegal Pretrial Confinement.** Reflect illegal pretrial confinement in the following manner in the court-martial action, RCM 1107(f)(4)(F):

In the case of (rank, name) (SSN), United States Air Force, (unit), (the sentence is approved and will be executed) (only so much of the sentence as provides for _____ is approved and will be executed). The accused will be credited with _____ days for illegal pretrial confinement.

**9.8.4. Deferred Confinement, Forfeitures or Reduction in Grade and Waiver of Automatic Forfeitures.** If a convening authority deferred confinement, forfeitures or reduction in grade, the court-martial action and all later orders should reflect the time period of deferment and the portion of the sentence deferred. If the convening authority waived any portion of automatic forfeitures, the court martial action and all later orders should reflect the time period of the waiver (not to exceed six months) and the portion of the automatic forfeitures waived (see paragraph **9.7.3.**).

**9.8.5. Action While RILO is Pending.** The convening authority must not, under any circumstances, take action under RCM 1107 on any officer case in which an accused's resignation for the good of the service (RILO) is pending final SAF decision (see paragraph **8.9.**).

**9.9. Contingent Confinement (RCM 1003(b)(3); RCM 1113(d)(3)).**

9.9.1. Contingent confinement is confinement authorized by a court-martial in the form of a fine-enforcement provision.

**9.9.2. Confinement or Other Punishment in Lieu of Fine in General.** A fine enforcement provision may be ordered executed, or alternative punishment may be substituted for it, in accordance with the procedures below.

**9.9.3. Authority to Execute Contingent Confinement.** A fine does not become effective until ordered executed (Article 57(c),UCMJ). Fines may be ordered executed in the convening authority's initial action (Article 71(c)(2),UCMJ). The accused is not required to pay a fine before that time and

may not be required to serve contingent confinement until the fine is ordered executed and the requirements of **9.9.5.** are met.

**9.9.4. Enforcement.** Once court-martial jurisdiction attaches, an accused remains subject to the UCMJ through the execution and enforcement of a sentence. Article 2(a)(1), UCMJ, confers jurisdiction over members of a regular component of the armed forces, including those awaiting discharge after the expiration of terms of enlistment. Jurisdiction continues for the purpose of enforcing an adjudged sentence for individuals discharged as the result of a court-martial conviction, but no longer in custody. *Carter v. McClaughry*, 183 U.S. 365 (1902); *Peebles v. Froehike*, 46 CMR 266 (1973).

**9.9.5. Procedures for Executing Contingent Confinement.** Contingent confinement may be executed in accordance with the following procedures:

9.9.5.1. When the fine is ordered executed, the accused is notified in writing the fine is due and payable.

9.9.5.2. When the convening authority finds probable cause to believe a fine is unpaid, the convening authority orders a contingent confinement hearing. The convening authority for this hearing is the officer exercising GCMCA over the command to which the accused is assigned, or if no longer a member of the Air Force, 11 WG/CC, the officer exercising GCMCA over the Air Force Corrections System. The purpose of the hearing is to determine whether the fine is delinquent, whether the delinquency, if any, resulted from the accused's indigence and whether the contingent confinement should be executed.

9.9.5.3. A military judge is detailed to conduct the contingent confinement hearing in the same manner as detailed to a court-martial.

9.9.5.4. Give the accused written notice of the time and place of the hearing. The convening authority provides the accused with temporary duty orders or invitational travel orders if the accused is not in confinement and the hearing is beyond reasonable commuting distance from the accused's residence. (**Table 6.1.**, Note 2 applies). The notice informs the accused of the following:

9.9.5.4.1. The accused's alleged failure to pay the fine;

9.9.5.4.2. The purpose of the hearing is to determine whether the fine is delinquent and whether the delinquency, if any, is the result of the accused's indigence;

9.9.5.4.3. The accused is entitled to present witnesses and documentary evidence;

9.9.5.4.4. The accused is entitled to representation by military defense counsel; and

9.9.5.4.5. The evidence relied upon in issuing the notice of hearing and the options available to the convening authority.

9.9.5.5. The hearing officer makes findings on whether payment of a fine is delinquent and whether any delinquency resulted from the accused's indigence. Payment of a fine is delinquent if not made within the period specified by the sentencing authority or, if no period is specified, within a reasonable time. An accused's failure to pay a fine is not due to indigence if the failure to pay the fine resulted from a willful refusal to pay the fine or a failure to make sufficient good faith efforts to pay it. The Government bears the burden, by a preponderance of the evidence, of showing that payment of the fine is delinquent. The accused bears the burden, by a preponderance of the evidence, of showing that any delinquency resulted from indigence.

9.9.5.6. The accused may testify and present witnesses and documentary evidence. Strict evidentiary rules do not apply and hearsay statements are admissible. The hearing officer determines the facts from the best evidence available. Rulings on evidentiary and procedural matters are final. Witness testimony may be presented through sworn or unsworn statements, affidavits, depositions, prior testimony, stipulations of expected testimony, or telephone conference. The accused may not compel the production of a witness at Government expense unless the request is made to the hearing officer, in writing, in advance of the hearing and the hearing officer determines:

9.9.5.6.1. The physical presence of the witness is critical to a fair determination of a material issue in dispute;

9.9.5.6.2. The witness is available to testify; and

9.9.5.6.3. There is no substitute for the live testimony of the prospective witness (e.g. written statements, affidavits, stipulations, or telephone conference).

9.9.5.7. The accused has a right to confront and cross-examine those witnesses testifying at the hearing.

9.9.5.8. The accused may be represented at the hearing by a civilian attorney or civilian representative of the accused's choice at no cost to the Government. The accused is also entitled to representation by either by a certified ADC or military counsel of the accused's selection, if reasonably available (see paragraph **5.3.**). The accused is not entitled to representation by more than one military counsel.

9.9.5.9. A court reporter reports the hearing and prepares a summarized record of the proceeding. The record includes a summary of the evidence presented and any objections or requests considered by the hearing officer. The hearing officer submits a written report, including a statement of the evidence relied upon to support the findings. If the hearing officer chooses to make the findings and statement of evidence on the record, record them verbatim. The hearing officer forwards the record and report to the convening authority.

**9.9.5.10. Convening Authority's Action.** The convening authority takes final action on the hearing officer's findings and determinations. The convening authority may adopt, modify or reject the hearing officer's findings and determinations. If the hearing officer's findings and determinations are not adopted, the convening authority must specify the evidence relied upon and the reasons for the decision.

9.9.5.11. If the convening authority determines payment of the fine is delinquent and the failure to pay is not due to indigence, the convening authority may order the sentence of confinement executed. If the convening authority determines the accused is unable to pay a delinquent fine as a result of indigence, the convening authority decides whether to impose confinement or other alternative punishment as a substitute for the adjudged fine. The convening authority may impose confinement or other alternative punishment only if the convening authority does as follows:

9.9.5.11.1. Determines the accused had the opportunity to acquire the funds, but did not make sufficient bona fide efforts to do so;

9.9.5.11.2. Considers alternative measures for confinement; and

9.9.5.11.3. Determines that those measures are inadequate to meet the Government's penal interests in punishment and deterrence. Alternative punishment may not be more severe than the contingent terms of the fine enforcement provision.

9.9.5.12. Where an alternative form of punishment is deemed appropriate, publish a supplemental court-martial order remitting the fine, and imposing and executing the alternative sentence. Where an alternative form of punishment is not deemed appropriate, publish a supplemental court-martial order remitting the fine and ordering the contingent confinement executed.

**9.10. Application of Article 58(a), UCMJ.** Approval of a court-martial sentence which includes the elements set forth in Article 58(a), subsections (a)(1),(2) and (3), will reduce an enlisted member of the Air Force in grade only if the approved sentence also includes an approved reduction and, in that case, the member will be reduced only to the grade provided for in the approved reduction. If the supervisory authority or The Judge Advocate General acts to eliminate the reduction from the sentence or to lessen the degree of reduction, such action will correspondingly eliminate or lessen the degree of the reduction under Article 58(a).

Except as provided above, the grade of enlisted members who have been convicted by courts-martial will be as provided by the sentence of the court-martial and by applicable regulations.

The term "supervisory authority" means the officer exercising GCMCA in SPCMs requiring a second action.

**9.11. Disqualification of Convening Authority.**

**9.11.1. Action by a Commander Other Than the Original Convening Authority.** If the SPCMCA is unable to take action in a case, forward the case to the GCMCA. If the GCMCA is unable to take action, the MAJCOM commander designates a convening authority to do so. (see also **4.7.2.**).

9.11.2. The ROT allied papers must include an explanation why a different SJA reviewed the case and a different convening authority took action on the case.

9.11.3. Transfer of responsibility for recommendation and action does not transfer authority to order or rescind deferments of sentence under Article 57(d). That authority remains with the convening authority granting the deferment or, if the accused is no longer under that command, then with the GCMCA for the command to which the accused is currently assigned.

**9.12. Required and Voluntary Excess Leave.**

9.12.1. An accused awaiting appellate review of an unsuspended punitive separation, who either had no confinement adjudged or already completed the period of confinement, may be involuntarily placed on excess leave (See Article 76a, UCMJ). Members of the AFRES or ANG may be removed from active duty status rather than being placed in excess leave and recalled as necessary to complete appellate review.

9.12.2. Members with an adjudged sentence that includes a punitive discharge may volunteer to be placed on excess leave pending the convening authority's action. If the convening authority approves the punitive separation, terminate the member's voluntary excess leave status. Return the member to duty or place the member on involuntary excess leave.

9.12.3. When an approved sentence includes unsuspended confinement, the confinement must be served, remitted, or deferred before placing a member on either voluntary or involuntary excess leave.

9.12.4. A member with accrued leave when required to take excess leave may elect to either receive pay and allowances during the period of accrued leave and then continue on unpaid excess leave or receive payment for the accrued leave as of the day excess leave begins, and serve the entire period on unpaid excess leave.

9.12.5. If the member's sentence to a punitive separation is set aside or disapproved upon appellate review, the member is entitled to pay and allowances for the period of required excess leave, unless a rehearing or new trial is ordered and a punitive separation results from the rehearing. Reduce the amount of pay and allowances by the amount of income, unemployment compensation, and public assistance benefits received by the member from any government agency during the period of excess leave.

9.12.6. Involuntary excess leave may be ordered to begin any time following approval of the sentence which includes a punitive discharge by the convening authority and may either continue until the date the sentence is ordered executed or terminate at any earlier date.

**9.12.7. Procedures for Placing a Member on Excess Leave.** When the convening authority orders a member to take excess leave, the convening authority sends the member a letter (**Figure 9.3.**), through command channels, directing the excess leave and informing the member of entitlements, status, and responsibilities while on excess leave. If the convening authority directed the excess leave in the action (see paragraph **9.3.2.1.**), the SJA for the convening authority may sign and send the letter to the member. The SJA for the convening authority directing excess leave ensures a signed copy of this letter, with the member's receipt and any subsequent address changes, is sent to the servicing Military Personnel Flight (MPF). In cases of a member being returned from overseas, send a copy of the letter to the SJAs of the SPCMCA and GCMCA of the CONUS gaining unit.

9.12.7.1. When a convening authority directs excess leave for a member serving in an overseas area, the convening authority reassigns the member to the base nearest the member's home of record. The convening authority may not order the reassignment until after approving the sentence.

9.12.7.2. AFIs 36-3003, *Leave and Administrative Absence Policy* , 36-2110, and 31-205 apply. Action to place the member on voluntary or involuntary excess leave must comply with these instructions.

**9.13. Suspension of Sentences and Proceedings to Vacate a Suspended Sentence (RCM 1108; RCM 1109).** In a case where the convening authority suspends all or part of the execution of a sentence, include a copy of the terms of suspension and the member's receipt in each copy of the ROT with the suspension action. If a suspended sentence is later vacated, document the vacation hearing on a DD Form 455, **Report of Proceedings to Vacate Suspension of a General Court-Martial Sentence Including a Bad-Conduct Discharge Under Article 72, UCMJ, and R.C.M. 1109.** If the member waives the vacation hearing, use of the DD Form 455 is not required. Send the completed DD Form 455 or the member's waiver to AFLSA/JAJM for review and filing with the original ROT. Distribute court-martial orders announcing the vacation of a suspended sentence as required in **Chapter 10**. Use special orders to announce SCM sentence vacations.

**9.14. Notification and Distribution of Documents to Confinement Facilities.**

9.14.1. After action by the original convening authority, 11 WG/CC, exercises GCMCA over inmates transferred to Level II Regional Corrections Facilities (RCFs) and long-term corrections facilities, both as defined in AFI 31-205 (generally, those with over 90 days remaining to minimum release date at time of transfer to such facilities), the Federal Bureau of Prisons, and over those Air Force members and former members paroled or placed on excess leave from such facilities.

9.14.2. When an inmate (with or without a punitive separation) is transferred into the Air Force Corrections System, send the following to AFSPA/SPC and the corrections officer of the facility housing the offender:

9.14.2.1. Four copies of the court-martial order to AFSPA/SPC and two copies of the court-martial order to the corrections officer of the facility housing the offender;

9.14.2.2. Two copies of any victim requests to be notified of changes in the inmate's status and clemency hearings;

9.14.2.3. One copy of the post-trial recommendation when required;

9.14.2.4. One copy of the ROT, to the corrections officer only, if the approved confinement is 1 year or more; and

9.14.2.5. Four copies of the AF Form 1359 and the convening authority's action, if at the time of transfer the court-martial order has not been published.

**Figure 9.1. Submission of Matters by the Accused.**

Subject: Submission of Matters to the Convening Authority

1. Since you have been convicted and sentenced by court-martial, you have the right to submit matters for consideration by the convening authority of your court-martial before the convening authority takes action on your case. The matters you submit may include any matters which might affect the convening authority's decision to approve or disapprove any findings of guilty or any part of the sentence in your case. These matters may include:

a. Allegations of errors affecting the legality of the findings or sentence in your case.

b. Portions or summaries of your record of trial, or copies of evidence introduced at trial.

c. Matters in mitigation not available for consideration at your trial.

d. Clemency recommendations by any court member, the military judge, or any other person.

e. Any other matters you or your counsel believe the convening authority should be aware of before taking action in your case, whether or not available or introduced into evidence at your trial.

f. Your desires for entry into the Return to Duty Program to according to AFI 31-205.

2. You should consult your defense counsel to decide whether to submit such matters. The convening authority will consider all matters you submit before taking action in your case. Failure to submit matters within the time provided in paragraph 4 constitutes a waiver of your right to do so.

3. If you decide not to submit matters for the convening authority's consideration, you may waive, in writing, the right to submit such matters. Such a waiver may expedite the post-trial processing and review of your case, if that is what you desire. You should consult your defense counsel before waiving your

rights to submit matters. Once you make such a written waiver, it may not be withdrawn or revoked. Indicate any waiver of your rights to submit matters on the indorsement to this letter.

4. (GCM or SPCM) You have 10 days from the latter of the date you receive a copy of the authenticated record of trial or, if applicable, the date both you and your defense counsel receive a copy of the recommendation of the staff judge advocate, to submit matters for convening authority consideration. If you are unable to submit your matters within this period, you may, for good reason, apply to the convening authority, through the convening authority's staff judge advocate for an extension of the period.

(SCM) You have 7 days from the date your sentence was announced to submit your matters for the convening authority's consideration. Your matters must be submitted by _(date)_. If you are unable to submit your matters within this period, you may, for good cause, apply to the convening authority, through the convening authority's staff judge advocate, for an extension of the period.

(Signature)

Name and Rank

(Trial Counsel, Assistant Trial Counsel, or Staff Judge Advocate)

1st Ind

Receipt acknowledged at _(time)_ on _(date)_

(Signature)

Name and Rank of Accused

OR

1st Ind

1. Receipt acknowledged at _(time)_ on _(date)_

2. I consulted my counsel concerning my rights to submit matters for the convening authority's consideration before the convening authority takes action on my case. After considering the advice of my counsel, I decided to waive my right to submit such matters. I will not submit any matters for the convening authority's consideration.

(Signature)

Name and Rank of Accused

**Figure 9.2. Sample Notification of Adjudged Sentence or Convening Authority Action.**

UNCLASSIFIED

01 02 DTG MO YR PP RR UUUU

FROM: CONVENING AUTHORITY'S ORGANIZATION, BASE, STATE//JA//

TO: HQ AFPC RANDOLPH AFB TX//DPPPWM//

GAINING BASE OF ASSIGNMENT//AFO// (if required)

INFO: (GCM/SPCM)//JA//

HQ AFSPA KIRTLAND AFB NM//SPCI//

DFAS-DENVER CENTER DENVER CO//FJPC//

ZEN: MEMBER'S FINANCE OFFICE, BASE, STATE//FMFPM//

UNCLAS

SUBJ: (ADJUDGED SENTENCE) or (CONVENING AUTHORITY ACTION) - US V. (NAME OF ACCUSED)

1. REQUEST YOU UPDATE PERSONNEL AND PAY DATA AS THE RESULT OF SENTENCE OF:

A. (GRADE)

B. (FULL NAME)

C. (SSN)

D. (UNIT)

2. ON [DATE OF SENTENCE) (ACTION)], THE FOLLOWING SENTENCE WAS (ADJUDGED) (APPROVED):

A. DISCHARGE: (DISMISSAL)(DD)(BCD)(N/A)

B. CONFINEMENT: _____ (YEARS)(MONTHS)(N/A)

C. FORFEITURE: (TOTAL)($__ PAY PER MONTH FOR (MONTHS)(N/A)

D. FINE: ($ __)(N/A)

E. REDUCTION TO: (RANK)(GRADE)(N/A)

F. DATE ADJUDGED:

*Use the following paragraph with the 14 day message:*

[3. (ADJUDGED FORFEITURES) (REDUCTION IN GRADE) (AUTOMATIC FORFEITURES OF (2/3) (TOTAL) PAY AND ALLOWANCES) (TOOK EFFECT) (WILL TAKE EFFECT) ON (date) (WERE DEFERRED UNTIL ACTION)] or, [AUTOMATIC FORFEITURES IN THE AMOUNT OF (2/3)

(TOTAL) ($_____/MONTH) PAY AND ALLOWANCES WERE WAIVED FROM (date) UNTIL (date).]

*Use the following paragraphs with the message after action is taken:*

[3. ENTIRE SENTENCE WAS ORDERED EXECUTED (EXCEPT DISCHARGE/DISMISSAL)(EXCEPT DISCHARGE AND THE FOLLOWING PORTIONS, WHICH WERE SUSPENDED: ____)(EXCEPT __). AUTOMATIC FORFEITURES OF (2/3) (TOTAL) ($_____/MONTH) PAY AND ALLOWANCES TOOK EFFECT ON (date) (WERE DEFERRED) (WERE WAIVED (FROM (date) UNTIL (date).]

[4. ACTION WILL BE PROMULGATED BY (SPCMO)(GCMO) NO. __, HQ (CONVENING AUTHORITY), DATED __.]

**Figure 9.3. Notification and Acknowledgment of Required Excess Leave.**

MEMORANDUM FOR (Rank, Name, SSN, Unit of Accused)

FROM:

SUBJECT: Required Excess Leave

1. On (date of sentence), you were sentenced by (general/special) court-martial. Your sentence, as approved by the court-martial convening authority, included (list all elements of accused's sentence). You are hereby required, under Article 76a, Uniform Code of Military Justice (UCMJ), to take leave pending completion of appellate review of your conviction by court-martial. The effective date of your leave will be determined administratively and entered in the first indorsement below. Sign the second indorsement to acknowledge receipt and understanding of this letter.

2. If you have ordinary leave accrued, you may elect to:

a. Receive pay and allowances during the period of accrued leave and then continue on unpaid required leave; or

b. Receive payment for the accrued leave, as of the day before the required leave begins, and serve the entire period of required leave on unpaid excess leave.

3. If you have no accrued leave, the entire period of required leave will be unpaid excess leave.

4. While on required leave, you remain a member of the United States Air Force, on active duty, and subject to the UCMJ, to lawful orders and regulations, and to recall from required leave as provided in paragraph 5. You and your family members are entitled to medical care, use of military exchange facilities and commissaries, and other military welfare benefits. Since these entitlements may be curtailed or terminated for cause, you and your family members must maintain proper conduct while using them and follow all applicable rules. In order for you to make use of these benefits, you and your family members will be issued appropriate identification cards of limited duration.

[For members assigned to overseas locations, add: "You will be reassigned to an Air Force unit near your home of record."]

5. It is important that you provide a correct leave address and report any changes in that address. Failure to do this may result in loss of valuable opportunities to recoup pay and allowances to which you may be entitled if your sentence is disapproved or set aside, and it could prevent you from receiving important instructions about the appellate review of your case. Further, you are subject to recall from required leave. Failure to return promptly to your unit, if so directed by order delivered to you in person or mailed to you at your leave address, could result in your being placed in absent without leave or desertion status.

6. You will be informed of any significant action or decisions with regard to the appellate review of your conviction. This information and instructions will be sent to you at your leave address. If you have any questions concerning your status or your court-martial, contact the Appellate Defense Division, AFLSA/JAJA, 112 Luke Avenue, Room 343, Bolling AFB, DC 20332-8000 (Phone: (202) 767-1562 or toll free 1-800-414-8847). You also may contact your defense counsel, or any defense counsel or staff judge advocate at any Air Force base.

Signature of court-martial convening
authority or SJA if excess leave is
directed in the convening authority's
action

[To be accomplished by unit to which accused will be assigned while on excess leave. The convening authority's letter, should be sent to this unit's commander with instructions for addition of this indorsement, service on the accused and completion of the second indorsement.]

(Date)

1st Ind (Excess Leave Commander)

TO: (Rank, Name, SSN, Unit of Accused)

1. During the period of your excess leave, you will be assigned to _(Unit Designation)_. You are required to provide a current leave address and to promptly report any change in that address by first class mail. You must make arrangements for receiving all mail which is addressed to the address you provide. Send any change of address to: (Insert full address of SJA office to receive changes.)

2. (Insert name and designation of briefer with date of briefing) briefed you regarding your status, obligations, and entitlements while on required leave and on the appeal of your case, and (he or she) permitted you to ask any questions you had in this regard.

3. According to the order of the court-martial convening authority, your required leave begins on date.

Signature of unit commander,

or representative, and Title.

2nd Indorsement, (Name and Rank of Accused)

(Date)

TO: (Unit)

I received a copy of the convening authority's letter placing me on excess leave. I have been briefed as noted in paragraph 2 of my current commander's indorsement. I understand that I must provide information as to any change of address without delay and am responsible for receiving mail addressed to me at the address last provided by me. My initial leave address, for use until I provide a change as required by paragraph 1 of the letter, is as follows: (accused inserts leave address) (phone number is optional). I also understand that my appellate defense counsel also requests that I provide a long term alternative address and phone number of a relative or other person to contact if I cannot be reached at the above address. That address is __(if accused gives one). Finally, I understand it is critical that I keep my appellate defense counsel informed of my current address.

Signature

Name and Rank of Accused

cc: AFLSA/JAJM

AFLSA/JAJA

**Figure 9.4. Staff Judge Advocate's Recommendation.**

SAMPLE STAFF JUDGE ADVOCATE'S RECOMMENDATION

MEMORANDUM FOR: 17 AF/CC (convening authority)

FROM: 17 AF/JA

Unit 4065, Box 10

APO AE 09136-5000

SUBJECT: Staff Judge Advocate's Recommendation - US v. (name and rank of accused)

1. On (date of referral), you referred the case of (name and rank of accused), (unit of assignment), (base), to trial by (general) (special) court-martial. On (date of trial), court convened. Attached is the AF Form 1359, Report of Result of Trial, which summarizes the charges and specifications, pleas, findings, and sentence. Also attached is a personal data sheet on the accused for your consideration prior to taking action on the sentence. Pursuant to RCM 1106, I make the following recommendations.

2. The primary evidence against the accused consisted of (a stipulation of fact), (a confession), (testimony by the victim), ( ). There is no corrective action required in regard to the findings of guilty. I am satisfied that the evidence upon which the conviction is based is legally sufficient.

3. The character of the accused's service prior to charges was (outstanding), (satisfactory), (marginal), (unsatisfactory), ( ). [Include any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence under RCM 1106(d)(3)(B)]

4. [Note: If the defense raised legal errors in matters submitted under RCM 1105, address them pursuant to RCM 1106(d)(4).]

5. The accused was sentenced to ( ). The maximum imposable sentence for the offense(s) for which the accused was convicted is ( ). [In accordance with the pretrial agreement, I recommend you approve only so much of the sentence as calls for ( ).]

6. I have considered all matters in the record of trial, including all matters presented in the presentencing portion of the trial. The sentence adjudged (is) (is not) appropriate for the offense(s) for which the accused was convicted. [If the sentence is not appropriate explain why it is not appropriate.] (I recommend you approve the sentence as adjudged.) [In accordance with the pretrial agreement, I recommend you only approve so much of the sentence as calls for ( ).]

(name and rank of attorney preparing the recommendation)

Assistant Staff Judge Advocate

I have reviewed the record of trial and the foregoing recommendation and concur.

(name and rank of staff judge advocate)

Staff Judge Advocate

Attachments:

1. AF Form 1359

2. Personal Data Sheet

# CHAPTER 10

# COURT-MARTIAL ORDERS AND INMATE TRAVEL

## *Section 10A—- Court-Martial Orders*

### 10.1. Issuance, Form and Distribution.

**10.1.1. General.** Prepare, issue and distribute orders promulgating the result of trial and action by the convening or higher authorities as indicated in MCM, RCM 1114, Appendix 17 and the figures in this chapter. See AFMAN 51-203, Records of Trial, for SCM. AFLSA/JAJM issues final court-martial orders executing sentences in cases acted on by TJAG, and AFLSA/JAJR issues final court-martial orders in cases acted on by SAF.

**10.1.2. Authority to Publish Orders.** This instruction is the sole authority for the publication of court-martial orders (CMO). Court-martial orders are published by the appropriate convening authority only, or AFLSA/JAJM may direct publication. In the event a convening authority's command is deactivated, responsibility for publication of orders reverts to:

10.1.2.1. The next higher level of command, if a GCMCA;

10.1.2.2. A redesignated unit when the original order was published under its old designation; or,

10.1.2.3. A unit assuming the records, personnel, functions, etc., of an inactivated or transferred unit that published the order.

**10.1.3. Date of Orders.** Date the CMO with the same date as the action. Date an order the same date it is published when promulgating an acquittal, a court-martial terminated before findings, a court-martial resulting in a finding of not guilty only by reason of lack of mental responsibility on all charges and specifications, or when action on the findings or sentence is taken after the initial action of the convening authority. The order states the date the sentence was adjudged, the date the acquittal was announced or the date proceedings were otherwise terminated. The convening authority issues the order promulgating the result of trial and the convening authority's initial action. Promulgate any action taken on a case after the initial action in supplementary orders. The subsequent action and the supplementary order may be the same document as long as the appropriate convening authority personally signs the supplementary order. See RCM 1114(b)(2).

**10.1.4. Orders Promulgation.** Promulgate orders as follows:

10.1.4.1. Number consecutively, starting with number one for each fiscal year;

10.1.4.2. Above the heading of the first order of a fiscal year, state, "GCMO (SPCMO) _____(date), was the last GCMO (SPCMO) of this headquarters published in _____. (There were no GCMOs (SPCMOs) published in _____ )." See **Figure 10.1.**

10.1.4.3. Continue CMOs of commands redesignated during a fiscal year in the same series of numbers. Cite the authority for the redesignation above the heading of the first page in the first order published after redesignation. Example: "SO G-005, HQ AFSPC, 14 May 1996, redesignates this unit from lst Space Wing."

**10.1.5. Separate Orders.** Use a separate order to announce the results of SPCMs or GCMs for each accused tried.

**10.1.6. Corrected Copies.**

10.1.6.1. Do not amend CMOs. Issue a corrected copy to correct errors in the heading and close, the body of the order, the announcement of the proceedings or the action taken, and errors in typing or printing that make the order ambiguous. To correct a CMO, include the deleted matter with a line through it and leave it legible. If the correction is an addition, underscore the added matters. If the correction is a substitution, include both the deleted and the added matter, with the former lined out and the latter underscored. See **Figure 10.4.** Preface the heading of the order as follows:

CORRECTED COPY - DESTROY ALL OTHERS

In the event additional corrections are required, the heading must reflect that the order is the second, third, etc., corrected copy. For example:

THIRD CORRECTED COPY - DESTROY ALL OTHERS

10.1.6.2. Do not issue a corrected copy in any case in which an action by a convening authority or reviewing authority withdraws an action and substitutes a new one. Prepare a new CMO rescinding the initial order. See **Figure 10.8.**

**10.1.7. Authentication.** The SJA or a designated representative signs CMOs with the authority line "FOR THE COMMANDER" or "FOR THE COMMANDER-IN-CHIEF," as appropriate. Do not designate a representative below the grade of master sergeant. Paralegals in the grades of master sergeant, senior master sergeant, and chief master sergeant include their appropriate duty titles in the signature block. These rules also apply to special orders signed in the Office of The Judge Advocate General.

10.1.8. Use the following format, and examples in the figures:

10.1.8.1. Head-to-foot on letter size paper;

**10.1.8.2. Margins.** Leave a two inch margin at the top and bottom, and a one inch margin on each side of all pages. Number the second and succeeding pages one-half inch from the bottom of the page at the left margin. On the first page of an order, include the order number one-half inch from the bottom of the page at the left margin;

**10.1.8.3. Abbreviations.** Abbreviations from a standard dictionary or authorized nicknames may be used if they make the order clearer;

**10.1.8.4. Grade, Name.** Always type the grade and name in capital letters. The first time a name is used, state the grade or title, first name, middle initial, last name (or last name, first name, middle initial). If the name is used again, use only the grade or title and last name.

**10.1.8.5. Heading, Body.** Include "DEPARTMENT OF THE AIR FORCE," the complete unit designation, the name of the MAJCOM abbreviated in parentheses, the mailing address, and the order number and date in the heading. DO NOT number paragraphs in the body. Indent and use subparagraphs with headings for SENTENCE and ACTION.

**10.1.8.6. Close.** In the close, use different elements depending on who authenticates. For Department of the Air Force, use BY ORDER OF THE SECRETARY OF THE AIR FORCE. For

the Air Force Academy, use FOR THE SUPERINTENDENT. For Air Force components of unified commands, use FOR THE COMMANDER IN CHIEF. For all other units, use FOR THE COMMANDER.

**10.1.9. Distribution and Number of Copies.** Distribute (two spaces below the authentication signature element at the left margin) orders in the number of copies and to the organizations shown below:

10.1.9.1. Orders announcing acquittal of all charges and specifications; orders promulgating the results of a court-martial terminated before findings; and orders disapproving the findings of guilty and sentence in the action of the convening authority or reviewing authority under Article 64, UCMJ.

**10.1.9.1. (AMC)** Also send a copy to HQ AMC/JAJ, 102 E. Martin St., Rm N-119, Scott AFB IL 62225-5012.

| | |
|---|---|
| - Accused (if action executes reduction in grade, use reduced grade)..... | 1 |
| - President, military judge, trial counsel, and defense counsel, (identify position in parentheses by using the standard abbreviations)..... | 1 |
| - Commander of the headquarters which issued the order..... | 1 |
| - Unit to which accused is assigned..... | 1 |
| - Commander of each intermediate headquarters..... | 1 |
| - Commander and correctional officer of installation where accused is in confinement..... | 1 |
| - AFLSA/JAJM, 112 Luke Avenue, Room 343 Bolling AFB DC 20332-8000..... | 4 **(NOTE: Include these 4 copies in the original ROT. Also, include one copy in each copy of the ROT. Do not forward additional separate copies.)** |

- GCM convening authority..... 1

- HQ AFPC/DPSRI1
550 C Street West Ste 21
Randolph AFB, TX 78150-4723..... 1
Do note include AFPC/DPSRI1 on distribution of court-martial orders announcing results of acquittal.

- Servicing MPF that maintains the
field record group of the accused..... 4

- Installation SJA..... 1

- Local investigating agency (AFOSI or SP) (to comply with DI-BRS requirement)..... 1

- Additional record and file copies, as specified by the SJA for the authority issuing the order.

10.1.9.2. Orders announcing results of trial not included in **10.1.9.1.**, and all supplementary orders:

**10.1.9.2. (AMC)** Also send a copy to HQ AMC/JAJ, 102 E. Martin St., Rm N-119, Scott AFB IL 62225-5012.

- Accused (if action executes reduction
in grade, use reduced grade)..... 1

- President, military judge, trial
counsel, and defense counsel
(identify position in parentheses by
using the standard abbreviations)..... 1

- Commander of the headquarters
which issued the order..... 1

- Unit to which accused is assigned..... 1

- Commander of each intermediate
headquarters..... 1

- Commander and correctional officer

of installation where accused is in confinement..... 2

- AFO maintaining individual's military
pay record (distribute with AF Form 1373)..... 2

- Servicing MPF that maintains the
field record group of the accused..... 4

- Installation SJA..... 1

- GCM convening authority..... 1

- SJA to the GCM convening authority..... 1

- AFLSA/JAJM, 112 Luke Avenue, Room 343
Bolling AFB DC 20332-8000..... 10 **(NOTE: Include these 10 copies in the original ROT. Also, include one copy in each copy of the ROT. Do not forward additional separate copies.)**

- HQ AFPC/DPSRI1
550 C Street West Ste 21
Randolph AFB, TX 78150-4723..... 1

DFAS-DE/FYAB, 6760 East Irvington Place,
Denver CO 80279-7000..... 1

DFAS-DE/FJPC, 6760 East Irvington Place,
Denver CO 80279-5000..... 1

- Air Force Security Clearance Office,
497 IG/INSA, 229 Brookley Avenue, Room 200
Bolling AFB, DC 20332-7040..... 1

- When a facility within the Air Force
Corrections System is designated for
the purpose of either confinement or
rehabilitation, send to HQ AFSFC/SFC

1720 Patrick Street
Lackland AFB TX 78236-5226..... 4

- 11 WG/JAJR, 20 MacDill Blvd, Room 207
Bolling AFB, DC 20332-5100..... 1

For general officer accused, send to
HQ USAF/DPG, 1040 Air Force Pentagon,
Washington, D.C. 20330-1040..... 1

- For all officer accused, one each:
HQ USAFA/DFL, 2354 Fairchild Dr Suite 6J10, USAF Academy, CO 80840-6248;
Professor of Law, US Military Academy, Bldg 606, Thayer Road, West Point, NY, 10996-1794;
Head, Leadership & Law Dept., U.S. Naval Academy, 112 Cooper Road, Annapolis, MD 21402-5022;
OTS/EDP, Attn: Curriculum Manager, 50 Chennault Circle, Bldg 1412 Maxwell AFB, AL 36112-6417
and
AFPC/DPPSRO, 550 C Street West Suite 4
Randolph AFB TX 78150-5108

- ARPC/DPADS, Denver, CO 80280 (if accused is serving on active duty in enlisted status and also holds appointment as Air Force Reserve commissioned or warrant officer)..... 1

- HQ AFMOA/SGOC, 110 Luke Avenue, Room 400, Bolling AFB, DC 20332-7050 (when officer accused assigned to any hospital squadron)..... 1

- The accused's MAJCOM DP (officer cases only)

- Local investigating agency (AFOSI or SP)..... 1
( to comply with DIBRS requirement)

- Additional record and file copies as required by the

SJA to the authority issuing the order.

**10.1.10. Retention and Disposition of Record Copies.** SJAs are responsible for retaining record copies of their headquarters' CMOs and retiring the record sets in annual blocks in accordance with AFMAN 37-139 (formerly AFR 4-20, Vol II), **Records Disposition--Standards**.

**10.1.11. Disposition of Stamped Orders.** When orders are examined and noted as legally sufficient under Article 64(a), UCMJ, permanently place the original in the ROT. Make distribution IAWparagraphs **11.4.** and **10.1.9.**

**10.2. Matters Unfit for Publication and Classified Matters.**

10.2.1. Remove the following information from court-martial orders:

10.2.1.1. Names of children, and replace them with initials in all court-martial orders;

10.2.1.2. Names of sex offense victims (see **10.2.2.**);

10.2.1.3. Obscene matter; and

10.2.1.4. Classified information (see **10.2.4.**).

10.2.2. Delete obscene language and the names of adult victims of sex offenses from CMOs, except those to be forwarded with the record to AFLSA/JAJM, AFPC/DPSRI1, the authorities of the command where the accused is held in custody or to which transferred, and the commander of the place where the accused is confined. Include ten copies of the expurgated orders in the original ROT of trial when forwarding it for appellate review (in addition to ten copies of the unexpurgated orders). Use initials in place of the deleted names. Use asterisks in place of deleted obscene language.

10.2.3. Both the unexpurgated and the expurgated orders are the same order, and both carry the full distribution list. To avoid confusion between the recipients, mark the addressees who are to receive the unexpurgated copies with asterisks and add, below the distribution list, "*Recipients of unexpurgated CMO."

10.2.4. When an order contains classified information, only the order provided to the command where the accused is held in custody or assigned and the copies of the order accompanying the copies of the ROT forwarded to AFLSA/JAJM include the classified information. Substitute asterisks for the classified information.

**10.3. Orders in Trials Terminated Without Findings.** In GCMs or SPCMs terminated without findings:

**10.3.1. Before Arraignment.** Issue no CMO in trials terminated without findings before arraignment.

**10.3.2. After Arraignment.** Issue a CMO generally following MCM Appendix 17a in trials terminated without findings after arraignment. Include summaries of specifications on which arraigned, and if terminated after entry of pleas, the pleas. Include an explanation of the circumstances of the termination, the date of termination, and the authentication. The date of the order is the date of publication. See MCM, Appendix 17a, generally, for language used in explaining the termination. Suitable entries are:

Mistrial declared (on motion of defense) (on motion of prosecution) (without motion by either side) (before/after) receipt of pleas and (before/after) receipt of evidence on the merits (on grounds that _____).

(Military Judge) (Convening Authority) ordered dismissal of all charges and specifications (on motion of defense) (on motion of prosecution) (without motion of either side) (before/after) receipt of pleas and (before/after) receipt of evidence on the merits (on grounds that _____).

***NOTE:*** If different grounds apply to different specifications, make suitable alterations to apply the applicable grounds to each one or each group. More than one statement may be necessary.

**10.4. Initial Orders.**

**10.4.1. Preparing Orders.** Prepare initial CMOs when:

10.4.1.1. All charges and specifications are dismissed or withdrawn after arraignment. No order is necessary if all charges and specifications are dismissed or withdrawn before arraignment.

10.4.1.2. The accused is found not guilty of all charges and specifications.

10.4.1.3. The convening authority takes action on a case where the court returned any finding of guilty and a sentence.

**10.4.2. Issuing Authority.** SPCMCAs issue initial orders promulgating SPCM results of trial and initial action. GCMCAs issue initial orders promulgating the results of trial and initial action in GCMs and SPCMs they convened. See RCM 1114(b).

**10.4.3. Form and Content.** Prepare initial orders in the form reflected in **Figure 10.1.** through **Figure 10.5.**, consistent with MCM, Appendix 17. The order may be summarized using the format provided in MCM, Appendix 17. RCM 1114(c) prescribes the required content of initial orders.

**10.4.4. Additional Guidance on Contents.**

**10.4.4.1. Amending Specification.** RCM 1114(c) requires the promulgating order to contain at least a summary of the charges and specifications on which the accused was arraigned. Indicate an amendment made to the charge(s) or specification(s) after arraignment in parentheses after the affected portion of the specification. See **Figure 10.1.** and **Figure 10.2.**

**10.4.4.2. Plea or Finding of Guilty to a Lesser Included Offense (LIO).** Include excepted or substituted words in context in the summary of the charges and specifications. When an accused pleads guilty to an LIO, summarize the plea in the initial order. The order should accurately reflect the essentials of the plea. See **Figure 10.2.**

**10.4.4.3. Change of Plea.** Where the ROT reflects an accused changed a plea during trial, show this in the initial order at the place provided for pleas. See **Figure 10.3.**

**10.4.4.4. Renumbering of Charges.** Use care in proofing ROTs involving charges and specifications withdrawn, dismissed, or severed, resulting in renumbering of remaining charges and specifications. **Figure 10.4.** and the following examples reflect charges, specifications, pleas, and findings in such cases:

CHARGE: Article 121. Plea: G. Finding: G.

Specification 1. Summary of specification (withdrawn after arraignment)

Specification 2. (redesignated as Specification): Summary of specification. Plea: G. Finding: G.

CHARGE I. Article 121. Plea: G. (withdrawn after arraignment).

Specification. Summary of specification. Plea: G. (withdrawn after arraignment).

CHARGE II (renumbered CHARGE I): Article 121. Plea: G. Finding: G.

Specification 1. Summary of specification (dismissed after arraignment).

Specification 2. (redesignated as Specification #). Summary of specification Plea: G. Finding: G.

CHARGE III (renumbered CHARGE II): Article 134. Plea: G. Finding: G.

Specification: Summary of specification. Plea: G. Finding: G.

Since the CMO must conform to the ROT, these examples apply only when the ROT reflects the correct numbering at trial. Charges and specifications withdrawn before arraignment do not appear in the CMO if the other charges were correctly renumbered.

**10.4.4.5. Rehearing or New Trial.** Indicate in an initial CMO whether a case is a rehearing or new trial as shown in **Figure 10.5.** See also MCM, Appendix 17a.

**10.5. Final Supplementary Orders.** Supplementary CMOs issued after the completion of appellate review must reflect all modifications of the findings and sentence. Final supplementary CMOs in cases involving rehearings must reflect only modifications of the findings and sentence occurring after publication of the rehearing promulgating order.

**10.6. Form and Contents of Supplementary Orders.**

**10.6.1. General.** Promulgate any action taken on a case subsequent to the initial action in supplementary orders. The following are examples of such actions:

10.6.1.1. Reviewing authority action under Article 64, UCMJ;

10.6.1.2. When directed by AFLSA/JAJ or JAJM upon completion of appellate review;

10.6.1.3. When appellate review provides for a rehearing but the rehearing is not held and the charges either are dismissed, or the convening authority approves a sentence of no punishment. It includes cases where the accused is administratively separated;

10.6.1.4. When SAF or TJAG takes action under Article 74, UCMJ;

10.6.1.5. When the convening authority or reviewing authority corrects an action (when authorized); and

10.6.1.6. When the convening authority or reviewing authority remits, suspends, commutes, or defers a sentence, or vacates a suspended sentence subsequent to the initial order.

**10.6.2. Contents.** Supplementary orders cite the initial CMO and any later CMOs modifying the findings, sentence, or action. Supplementary orders also include the final, supplementary, or modifying action. See MCM, Appendix 17b. All supplementary CMOs list the ACM or ACMS number assigned to the case. For example: "In the general court-martial case of AIRMAN FIRST CLASS MCCLAIN S. COLLINS, FR 456-33-7893 . . . The sentence was adjudged on 14 April 1981. (ACM 22222)" Include the date the sentence was adjudged in all supplementary orders.

**10.6.3. Suspension of Discharge or Dismissal in the Initial Order:**

10.6.3.1. When the convening authority suspends the execution of a punitive discharge or a dismissal in the initial action and a supplementary order is necessary before the accused's release from confinement, the order reflects the previous suspension. For example, insert a phrase such as, "suspended until the accused's release from confinement with provision for automatic remission thereafter" or "suspended until (date), with provision for automatic remission thereafter" after the word "discharge" in line two of the first form of MCM, Appendix 17b, or a similar location in other forms used to publish a discharge.

10.6.3.2. In addition, insert the phrase "but the execution of the [(dismissal)][(dishonorable) (bad conduct) discharge] is suspended as provided above" following the words, "will be executed," in such forms unless action is included to suspend further or remit the dismissal or the punitive discharge.

**10.6.4. Deferred Confinement, Forfeitures or Reduction in Grade.** See paragraph **9.8.4.**

**10.6.5. Supplementary Orders When the Accused May Be Adjudged Two Punitive Discharges.**

An accused court-martialed for later-discovered offenses cannot be discharged twice from the same enlistment. If, before execution of a punitive discharge from a previous court-martial, a second court-martial adjudges, or may adjudge, a second punitive discharge, execute the sentence from the first court-martial, except the discharge. If the accused receives a dishonorable discharge in the second court-martial, after receiving a bad conduct discharge in the first court-martial, execute the dishonorable discharge after final appellate review. If the second punitive discharge is not more severe than the first (dishonorable vs. bad conduct), do not normally delay execution of the first punitive discharge (after notice of final appellate review) to wait for appellate review of the second court-martial.

10.6.5.1. If the accused is discharged using the second punitive discharge, a supplementary order for the first court-martial must address the original discharge. The following is an example for the order:

The provisions of Article 71(c) have been complied with, but the bad conduct discharge will not be executed because the accused was previously discharged from the United States Air Force with a dishonorable discharge pursuant to ____(cite the CMO from second case here) _____.

10.6.5.2. If the convening authority executed the discharge from the first court-martial, tailor the language in **10.6.5.1.** for the second CMO.

10.6.6. Rehearings on Sentence and Dismissal of Charges after Rehearing Ordered:

10.6.6.1. Supplementary Order Providing for Rehearing on Sentence Only:

In the (general) (special) court-martial case of ___(name of the accused)_____, the findings of guilty have been affirmed, but the sentence as promulgated in (General) (Special) Court-Martial Order No. _____, (Headquarters _____) or,(this headquarters), dated _____ was set aside. A rehearing on the sentence only is ordered before another court-martial to be hereafter designated. The sentence was adjudged on __(date)_____. (ACM # _____).

**10.6.6.2. Supplementary Order Providing for a Sentence of "No Punishment" When the Convening Authority Found a Rehearing on Sentence to be Impractical:** In the (general) (special) court-martial case of _____, the findings of guilty having been affirmed, but the sentence as promulgated in (General)(Special) Court-Martial Order No. _____, (Headquarters, _____) or, (this headquarters), dated _____, was set aside on (date) _____. A rehearing on the sentence was found to be impractical. A sentence providing for "no punishment" is approved. All rights, privileges, and property of which the accused was deprived due to the sentence that was set aside will be restored. That sentence was adjudged _____( date) _____ . (ACM(S) #_____ ).

**10.6.6.3. Supplementary Order Dismissing Charges Before a Rehearing When the Convening Authority Found a Rehearing to be Impractical:** In the (general) (special) court-martial case of _____ , the findings of guilty and sentence as promulgated in (General) (Special) Court-Martial Order No._____, (Headquarters,_____), or (this headquarters), dated_____, were set aside on _____ (date). A rehearing was found to be impractical. Pursuant to the authority of RCM 1107(e), the charges are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and the sentence so set aside will be restored. That sentence was adjudged on _____ (date). (ACM(S) # _____).

**10.6.6.4. Supplementary Order Dismissing Charges Prior to a Rehearing When the Convening Authority Decides to Accept an Accused's Administrative Discharge in Lieu of Rehearing.** If the convening authority elects to accept an accused's request to be administratively separated rather than order a rehearing, the following is an example of the supplementary order:

In the (general) (special) court-martial case of_____, the findings of guilty and sentence as promulgated in (General) (Special) Court-Martial Order No._____, (Headquarters, _____), or(this headquarters), dated _____, were set aside on_____ (date). That sentence was adjudged on _____ (date). A rehearing was found to be impractical. Pursuant to the authority of RCM 1107(e), the charges are dismissed effective upon the accused's discharge pursuant to AFI 36-3209. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and the sentence so set aside will be restored. (ACM(S) # ____).

(**Note.** This language eliminates the AFI 36-3209, **Separation Procedures for Air Force Reserve Members,** requirement for preferral of court-martial charges as a prerequisite for separation under AFI 36-3209, and the need to publish a CMO dismissing the charges).

**10.6.7. Convening Authority Modifications, Suspensions, and Remissions.**

10.6.7.1. When a convening authority corrects an action, or remits, modifies, or suspends all or a portion of the sentence initially approved, after publication of the initial CMO but before publication of a supplementary order affirming actions taken in the review or appellate process, the following is an example of the supplementary CMO:

"In the general court-martial case of _____, that portion of the sentence promulgated in General Court-Martial Order No. ____, (Headquarters _____) (this headquarters), dated _____, providing for (bad conduct discharge) (confinement) (forfeitures) (subsequent to _____) is (remitted) (suspended until _____, with provision for automatic remission thereafter). The sentence was adjudged on _____. (ACM(S) #_____).

10.6.7.2. When the GCMCA remits or suspends execution of part of a sentence when publishing the supplementary CMO, the following is an example of the order:

In the general court-martial case of _____, the sentence to _____, as promulgated in General Court-Martial Order No. _____, (Headquarters _____ ) (this headquarters) dated _____ has been finally affirmed. Article 71(c), UCMJ, having been complied with, the sentence will be executed, but the [(bad conduct discharge) (confinement) (and) (forfeitures) remaining subsequent to [(this date)] (is) (are) (will be) [(remitted) (suspended until _____ at which time, unless the suspension is sooner vacated, the (bad conduct discharge) (confinement) (forfeitures) will be remitted without further action)]. (The_____ is designated as the place of confinement.) The sentence was adjudged on _____. (ACM(S) # _____).

10.6.7.3. When the GCMCA vacates a portion of a previously suspended sentence, the following is an example of the supplementary court-martial promulgating order:

In the (general) (special) court-martial case of (rank, name), United States Air Force, (unit), the sentence _____, as promulgated in (General) (Special) Court-Martial Order No._____, (Headquarters) (this headquarters) dated _____has been finally affirmed. In the action of that order, the sentence to (bad conduct discharge) (confinement) (and) (forfeitures) was approved, but the execution of that portion of the sentence to (bad conduct discharge) (confinement) (and) (forfeitures) was suspended until_____with provisions for automatic remission thereafter. So much of the order published in (General) (Special) Court-Martial Order No.___, (Headquarters) (this headquarters)(MAJCOM), dated_____, suspending the execution of the sentence to (bad conduct discharge) (confinement) (and) (forfeitures) was vacated pursuant to Article 72, UCMJ, in (General) (Special) Court-Martial Order No. _____, of the (Headquarters), dated _____. Article 71(c), UCMJ, having been complied with, the sentence to (bad conduct discharge)(confinement) (and) (forfeitures) will be executed, (but the (bad conduct discharge) (confinement) (and)(forfeitures) (is)(are) remitted as provided above.) The sentence was adjudged on_____. (ACM(S)#_____)

**10.6.8. SAF Actions on Sentence.**

**10.6.8.1. Remission.** When SAF remits a portion of the sentence (for example, in an action by the Air Force Board for Correction of Military Records), the following is an example of the supplementary court-martial promulgating order:

In the (general) (special) court-martial case of _____, the sentence to_____, as promulgated in (General) (Special) Court-Martial Order No._____, Headquarters _____ ) (this headquarters) dated_____, has been finally affirmed. So much of the confinement as is in excess of _____ was remitted by order of the Secretary of the Air Force, dated _____ . Article 71(c), UCMJ, having been complied with, the discharge will be executed. The sentence was adjudged on_____. (ACM(S)#_____).

**10.6.8.2. Suspension of Discharge.** When SAF suspends execution of a punitive discharge, the following is an example of the supplementary court-martial promulgating order:

In the (general) (special) court-martial case of _____, the sentence to (dishonorable discharge) (bad conduct discharge) as promulgated in (General) (Special) Court-Martial Order No.___, (Headquarters) (this headquarters), dated_____, has been finally

affirmed. Article 71(c), UCMJ, having been complied with, the (dishonorable discharge) (bad conduct discharge) will be executed, but pursuant to an order of the Secretary of the Air Force, dated_____, the execution of the (dishonorable discharge) (bad conduct discharge) is suspended until_____, at which time, unless the suspension is sooner vacated, the (dishonorable discharge) (bad conduct discharge) will be remitted without further action. The sentence was adjudged on _____. (ACM(S)#_____).

**10.6.8.3. Substitution.** When SAF substitutes an administrative discharge for a punitive discharge, or approves an application for retirement in lieu of a punitive discharge, the following is an example of a supplementary court-martial promulgating order (BCD used only as an example):

In the (general) (special) court-martial case of _____, the sentence to bad conduct discharge as promulgated in (General) (Special) Court-Martial Order No.___ (Headquarters_____) (this headquarters), dated_____, has been finally affirmed. [(By action dated_____) pursuant to Article 74(b), UCMJ, the Secretary of the Air Force substituted a(n) (under other than honorable conditions) (general) discharge for the bad conduct discharge adjudged and finally affirmed) or (Pursuant to an order of the Secretary of the Air Force, dated_____, the accused will be permitted to retire in lieu of the execution of the bad conduct discharge.). That portion of the sentence providing for a bad conduct discharge is remitted, effective _____ (immediately)]. Article 71(c), UCMJ, having been complied with, the sentence, as thus modified, will be executed. The sentence was adjudged on _____. (ACM(S)#_____).

**10.6.9. TJAG Action Under Article 74(a), UCMJ.** When TJAG takes action on a sentence under Article 74(a), UCMJ, during appellate review, promulgate the action in a supplementary CMO. The following is an example of a supplementary court-martial promulgating order:

. . . has been affirmed. Pursuant to Article 74(a), UCMJ, as implemented by AFI 51-201, The Judge Advocate General, United States Air Force, suspended that portion of the sentence to (sentence) until (date), at which time, unless the suspension is sooner vacated, the suspended portion of the sentence shall be remitted without further action. Article 71(c), UCMJ, having been complied with, the sentence will be executed, but (suspended element of the sentence) is suspended as provided above. The sentence was adjudged on _____.(ACM(S)#_____).

**10.6.10. Orders Promulgating A Court's Affirmance of Lesser Included Offense (LIO).** Use the forms in MCM, Appendix 17b, to reflect appellate action on a case. When the court modifies the approved findings by finding an accused guilty of an LIO, and partially sets aside a prior order executing a sentence, the following is an example of a supplementary court-martial promulgating order implementing the court's decision:

In the (general) (special) court-martial case of (rank, name, and service number of accused), United States Air Force, (unit), the proceedings of which were promulgated in (General) (Special) Court-Martial Order No.___, (Headquarters_____) (this headquarters), dated _____, upon appellate review, the (Air Force Court of Criminal Appeals) (U.S. Court of Appeals for the Armed Forces) affirmed so much of the finding of guilty of Specification (number, if any), of (the) Charge (number, if any) as finds the accused guilty of (attempted possession of cocaine, in violation of Article 80, UCMJ) (voluntary manslaughter, in violation of Article 119, UCMJ), and only so much of the sentence as provides for _____ . The findings of guilty and the sentence, as modified, have been finally affirmed. Article 71(c), UCMJ, having been complied with, the sentence

as modified will be executed. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and that portion of the sentence so set aside will be restored. That sentence was adjudged on_____. (ACM(S)#_____).

**10.6.11. Death of Accused.** If the accused dies before completion of appellate review, the following is an example of a supplementary court-martial promulgating order:

In the (general) (special) court-martial case of (rank, name, and service number of accused), United States Air Force, (unit), the proceedings of which were promulgated in General Court-Martial Order No._____, (Headquarters_____) (this headquarters), dated _____, the accused having died before completion of appellate review, the proceedings are abated. All rights, privileges, and property of which the accused may have been deprived by virtue of the findings of guilty and the sentence will be restored. The sentence was adjudged on _____. (ACM(S)#_____).

**10.6.12. Order Setting Aside Findings and Sentence after Article 64, UCMJ, Review, Under RCM 1112(f).** Use the following instead of the last sample provided in MCM, Appendix 17b, in a supplementary court-martial promulgating order dismissing charges:

Pursuant to the authority of RCM 1112(f), the findings of guilty and the sentence in the (general) (special) court-martial case of_____, as promulgated in (General) (Special) Court-Martial Order No. _____, (Headquarters) (this headquarters), dated _____, are set aside and the charges are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and the sentence so set aside will be restored. That sentence was adjudged on _____. (ACM(S)#_____).

**10.7. Modification or Suspension of Sentence after Execution.** Use the form in MCM, Appendix 17c, to modify the sentence after the sentence is executed. See **Figure 10.6.**

**10.8. Order Vacating Suspension.** To provide necessary data to confinement officers for computation of time to be served in confinement, include the following additional information in court-martial orders promulgating the vacation of a suspension:

10.8.1. If a convening authority or reviewing authority suspends confinement, and the suspension is later vacated, the vacation order includes the date the sentence was adjudged, the period of any deferment and any modification of it, and the information in MCM, Appendix 17d. See also **Figure 10.5.**

10.8.2. If a separate order later suspends any portion of a sentence to confinement, and the suspension is vacated, in addition to the information contained in MCM, Appendix 17d, include the period of any deferment and any modification thereof, the date the sentence was adjudged, and identifying data of any orders affecting the sentence to confinement in the order vacating the suspension.

**10.9. Vacation of Suspension and Execution of Punitive Discharge When Accused is Absent Without Authority.** If an accused, whose sentence includes a suspended punitive discharge, is absent without authority before completion of the prescribed probationary period, the following procedures apply:

10.9.1. The suspension may be vacated according to Article 72, UCMJ, and RCM 1109(d). If the probationer, by continued absence without authority, does not attend the hearing required by RCM 1109(d), the hearing may be conducted in the probationer's absence. In such cases, appoint an ADC to represent the probationer.

10.9.2. The suspension may be vacated either before or after the probationer's return. Unauthorized absence tolls the suspension period, regardless of a specified date on which the period would expire.

10.9.3. Before vacating the suspension of an absent probationer, determine whether the convening authority intends to court-martial the probationer for unauthorized absence or other offenses. If the probationer may be tried, do not execute the discharge so jurisdiction over the probationer continues. If the decision is made not to prefer additional charges, the GCMCA may execute the punitive discharge in absentia, if the probationer is assigned in the CONUS. If the accused is assigned overseas, the discharge may not be executed without the approval of HQ AFPC/DPPR (for both officer and enlisted).

**10.10. Issuance of Final Court-Martial Order in International Hold Situations.** Special consideration applies to issuing final CMOs when the accused is overseas and being retained in a foreign country because of pending foreign criminal proceedings. This includes any order ordering the sentence executed, an initial order where Article 71, UCMJ, does not require further review before it may be ordered executed, or a supplemental order after completion of appellate action when the latter is required.

10.10.1. As a general rule, issue the order. Then, if the order directs the execution of a discharge, the discharge is not actually executed until appropriate under all of the circumstances. This is usually dictated by the accused's request for discharge, but each case must be determined on its own facts. If the accused is in foreign confinement, the discharge is not issued without compliance with AFI 51-706, **Status of Forces Policies, Procedures, and Information.** See also AFI 51-703, **Foreign Criminal Jurisdiction: Policies and Procedures.**

10.10.2. In rare cases, policy or international relations dictate against the issuance of the CMO itself. If so, advise AFLSA/JAJM by a separate letter or FAX as soon as possible, and again after trial.

***Section 10B—Inmate Travel***

**10.11. Travel and Change in Designated Place of Confinement of Inmates.** Since the "Air Force Corrections System" is the designated place of confinement, HQ AFSFC/SFC handles changes in places of confinement. "A" series orders are not required to transfer a prisoner, except when transferring a prisoner before the court-martial order is promulgated. In this case, cite the AF Form 1359 as authority for the transfer.

10.11.1. Publish a special order in "A" series, if a place of confinement is already specified in a court-martial order and a permanent change of station is not required.

**10.12. Travel of Personnel Awaiting Completion of Appellate Review (Excess) Leave.** A member placed on excess leave involuntarily while awaiting completion of appellate review of a court-martial sentence to a punitive discharge or dismissal from the service may be provided travel or transportation in kind, according to JFTR, Volume I, to the member's home of record or place from which ordered to active duty. Ensure a special order is published in "A" series if the court-martial convening authority directs involuntary appellate (excess) leave according to AFI 36-3003 and this instruction. If the member's court-martial sentence is disapproved or set aside, and the member is restored to duty, the member is authorized travel or transportation in kind, according to the JFTR Volume I, from the leave address to the permanent duty station. In such cases, publish an "A" Series order.

**Figure 10.1. Court-Martial Orders - Heading - First Order of the Fiscal Year.**

GCMO No. 3, 13 September 1995, was the last GCMO of this headquarters published in FY95.

**DEPARTMENT OF THE AIR FORCE**
**HEADQUARTERS NINTH AIR FORCE PROVISIONAL (ACC)**
**SHAW AIR FORCE BASE, SOUTH CAROLINA 29152-5002**

General Court-Martial Order 18 October 1995
No. 1

AIRMAN FIRST CLASS WILLIAM L. STEWART, 111-22-3333, United States Air Force, 19th Fighter Squadron, was arraigned at Shaw Air Force Base, South Carolina, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 85. Plea: NG. Finding: NG, but G of a violation of Article 86.

Specification: Did, on or about 24 June 1995, absent himself from his unit, 19th Fighter Squadron, located at Shaw Air Force Base, South Carolina, with the intent to remain away therefrom permanently, and did remain so absent in desertion until he was apprehended on or about 25 July 1995. Plea: NG, but G of absence from his unit, in violation of Article 86. Finding: G of absence without authority from his unit, alleged from 24 June 1995 to 25 July 1995, in violation of Article 86.

CHARGE II: Article 121. Plea: NG. Finding: G.

Specification 1. Did, at Shaw Air Force Base, on or about 30 August 1995, steal a camera of a value of about $95.00, the property of Airman Joe Smith. Plea: NG (but guilty of the LIO of wrongful appropriation), excepting the word "steal" and substituting therefor the words "wrongfully appropriate." Finding: G (of the charged offense of larceny).

Specification 2. Did, at Shaw Air Force Base, on or about 30 August 1995, steal a camera lens of a value of about $124.00, the property of Colonel Tom Jones. Plea: NG (but guilty of the LIO of wrongful appropriation), excepting the word "steal" and substituting therefor the words "wrongfully appropriate." Finding: G, except the word "steal," substituting therefor the words "wrongfully appropriate."

SENTENCE

Sentence adjudged on 10 September 1995: Bad conduct discharge, confinement for 15 months, and reduction to airman basic.

ACTION

In the case of AIRMAN FIRST CLASS WILLIAM L. STEWART, 111-22-3333, United States Air Force, 19th Fighter Squadron, only so much of the sentence as provides for a bad conduct discharge, confinement for 12 months, and reduction to airman basic is approved and, except for the bad conduct discharge, will be executed, but the execution of that portion of the sentence to bad conduct discharge is suspended until 30 June 1996, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as the Chief, Corrections Division may direct.

/s/ Robert Myers

ROBERT MYERS, Major General, USAF

Commander

FOR THE COMMANDER

BART L. SIMPSON, Colonel, USAF
Staff Judge Advocate

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**Figure 10.2. Court-Martial Orders and Action--Summarized Guilty Plea to Lesser Included Offense.**

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS TWELFTH AIR FORCE (ACC)
DAVIS MONTHAN AIR FORCE BASE, ARIZONA 85707-4100

General Court-Martial Order 13 February 1995
No. 10

SERGEANT GREGORY BURTON, 111-22-3333, United States Air Force, 12th Communication Systems Squadron was arraigned at Davis-Monthan Air Force Base, Arizona, on the following offense at a court-martial convened by this headquarters.

CHARGE: Article 118. Plea: G. Finding: G.

Specification: Did, at Davis-Monthan Air Force Base, Arizona, on or about 4 August 1994, with premeditation (amended after arraignment to delete the words, "with premeditation") murder Sergeant F. Thur Time by means of stabbing him with a knife. Plea: G. Finding: G.

SENTENCE

Sentence adjudged on 6 September 1994: Dishonorable discharge, confinement for 25 years, forfeiture of all pay and allowances, and reduction to airman basic.

ACTION

In the case of SERGEANT GREGORY BURTON, 111-22-3333, United States Air Force, 12th Communication System Squadron, only so much of the sentence as provides for a dishonorable discharge, confinement for 12 years, forfeiture of all pay and allowances, and reduction to airman basic is approved and, except for the dishonorable discharge, will be executed. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as the Chief, Corrections Division may direct. Unless competent authority otherwise directs, upon completion of the sentence to confinement, (name of accused) will be required under Article 76a, UCMJ, to take leave pending completion of appellate review of the conviction.

/s/ J. A. Marlow

J. A. MARLOW

Major General, USAF

Commander

FOR THE COMMANDER

ANN D. STOCKS, SMSgt, USAF
Paralegal Manager

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**Figure 10.3. Court-Martial Orders - Change of Pleas.**

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 35TH FIGHTER WING (PACAF)
APO AP 96319-5000

Special Court-Martial Order 29 December 1995
No. 5

SENIOR AIRMAN MARY J. LUNDY, 111-22-3333, United States Air Force, 35th Civil Engineer Squadron, was arraigned at Misawa Air Base, Japan, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 128. Plea: NG (G plea not accepted by military judge, plea of NG directed to be entered). Finding: G.

Specification: On or about 24 November 1995, at Misawa AB, did unlawfully strike with her fist and grab another. Plea: NG (G plea not accepted by the military judge, plea of NG directed to be entered). Finding: G.

CHARGE II: Article 134. Plea: NG (G plea not accepted by military judge, plea of NG directed to be entered). Finding: G.

Specification: On or about 24 November 1995, wrongfully communicated indecent language to a male at Misawa AB. Plea: NG (G plea not accepted by military judge, plea of NG directed to be entered). Finding: G.

CHARGE III: Article 108. Plea: NG (G plea not accepted by military judge, plea of NG directed to be entered). Finding: G.

Specification: On or about 24 November 1995, willfully destroyed the Misawa AB NCO Club front door, military property of a value in excess of $100.00. Plea: NG (G plea not accepted by the military judge, plea of NG directed to be entered). Finding: G.

SENTENCE

Sentenced adjudged on 12 December 1995: Hard labor without confinement for 30 days, restriction for 60 days, forfeiture of $100.00 per month for 6 months, and reduction to airman.

ACTION

In the case of Senior Airman Mary J. Lundy, 111-22-3333, 35th Civil Engineer Squadron, the sentence is approved and will be executed.

/s/Joseph T. Jones

JOSEPH T. JONES, Colonel, USAF
Commander

FOR THE COMMANDER

JOHN J. SMITH, Lt Col, USAF
Staff Judge Advocate

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**Figure 10.4. Court-Martial Orders - Corrected Copy.**

CORRECTED COPY - DESTROY ALL OTHERS

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS EIGHTH AIR FORCE (ACC)
BARKSDALE AIR FORCE BASE, LOUISIANA 71110-5002

General Court-Martial Order 10 October 1995
No. 3

TECHNICAL STAFF SERGEANT EDWARD MATTHEWS CROWLEY, 111-22-3333, United States Air Force, 380th Munitions Maintenance Squadron, was arraigned at Plattsburgh Air Force Base, New York, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 134 (withdrawn after arraignment).

Specification: Did, between on or about 15 June 1992 and 15 July 1993, commit an indecent act upon the body of a female under 16 years of age (withdrawn after arraignment).

CHARGE II: (renumbered as CHARGE) Article 120. Plea: NG. Finding: G.

Specification: Did, on divers occasions from on or about 17 December 1992 to on or about 10 June 1993, commit the offense of carnal knowledge. Plea: NG, Finding: G.

ADDITIONAL CHARGE: Article 112a. Plea: NG (withdrawn after defense motion to suppress evidence).

Specification: Did, at or near Plattsburgh Air Force Base, New York, on or about 16 December 1992, wrongfully use marijuana. Plea: NG (withdrawn after defense motion to suppress evidence).

SENTENCE

Sentence adjudged on 31 August 1995: Dishonorable discharge, confinement for 5 years, and reduction to airman basic.

ACTION

In the case of STAFF SERGEANT EDWARD CROWLEY, 111-22-3333, 380th Munitions Maintenance Squadron, the sentence is approved, and except for the dishonorable discharge, will be executed. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as the Chief, Corrections Division may direct. Unless competent authority otherwise directs, upon completion of the sentence to confinement, (name of accused) will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review of the action.

/s/ Mac S. Smith

MAC S. SMITH
Lieutenant General, USAF
Commander

FOR THE COMMANDER

DAVID A . DRAKE, SMSgt, USAF
Paralegal Superintendent

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**Figure 10.5. Court-Martial Orders--Rehearing or New Trial.**

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS FIFTEENTH AIR FORCE (AMC)
TRAVIS AIR FORCE BASE, CALIFORNIA 94535-5002

General Court-Martial Order 3 June 1995
No. 23

SENIOR AIRMAN NINA JANE, 111-22-3333, United States Air Force, David Grant USAF Medical Center, formerly assigned to 237th Equipment Maintenance Squadron, Scott Air Force Base, Illinois, was arraigned before a general court-martial convened by this headquarters, a rehearing on the sentence having been ordered in General Court-Martial Order No. 7, Headquarters Fifteenth Air Force (AMC), dated 8 July 1993. The findings of guilty of the former proceedings were affirmed, but the sentence was set

aside and a rehearing on the sentence authorized by the Air Force Court of Criminal Appeals, which decision was made final by the United States Court of Appeals for the Armed Forces by order dated 11 February 1995 (ACM 030097). The affirmed findings of the former proceedings are as follows:

CHARGE I: Article 80. Plea: G. Finding: G.

Specification 1: Attempt to wrongfully distribute lysergic acid diethylamide at Bellevue, Illinois, on or about 25 February 1993. Plea: G. Finding: G.

Specification 2: Attempt to wrongfully possess a substance she intended and believed to be lysergic acid diethylamide at Bellevue, Illinois, on or about 25 February 1993. Plea: G. Finding: G.

CHARGE II: Article 112a. Plea: G. Finding: G.

Specification: Wrongful distribution of 50 grams, more or less, of cocaine at Bellevue, Illinois, on or about 14 January 1993. Plea: G. Finding: G.

SENTENCE

Sentence adjudged, upon a rehearing, on 1 April 1995: Bad conduct discharge, confinement for 3 years, forfeiture of all pay and allowances, and reduction to airman basic.

ACTION

In the case of SENIOR AIRMAN NINA JANE, 111-22-3333, David Grant USAF Medical Center, the sentence is approved and, except for the bad conduct discharge, will be executed. The accused will be credited with any portion of the punishment served from 25 April 1994 to 23 January 1995, under the sentence adjudged at the former trial in this case, and for 30 days for illegal pretrial confinement directed by the military judge. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as the Chief, Corrections Division may direct. Unless competent authority otherwise directs, upon completion of the sentence to confinement (name of accused) will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review of the conviction.

/s/James T. Doe

JAMES T. DOE, Major General, USAF
Commander

FOR THE COMMANDER

HOWARD SMITH, Colonel, USAF
Staff Judge Advocate

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**Figure 10.6. Court-Martial Orders--Final Supplementary Order.**

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS FIFTH AIR FORCE (PACAF)
APO AP 96328-5087

Special Court-Martial Order 2 December 1995
No. 7

In the special court-martial case of SENIOR AIRMAN WALDO F. DUN, 111-22-3333, United States Air Force, 603rd Consolidated Aircraft Maintenance Squadron, the sentence to bad conduct discharge, confinement for 3 months, forfeiture of $250.00 per month for 3 months, and reduction to airman basic, as promulgated in Special Court-Martial Order No. 10, Headquarters 18th Wing (PACAF), dated 23 March 1994, has been finally affirmed. Article 71(c) having been complied with, the bad conduct discharge will be executed. The unexecuted portion of the sentence to confinement was remitted by Special Court-Martial Order No. 13, Headquarters 18th Wing (PACAF), dated 2 November 1994. The sentence was adjudged on 12 September 1994 (ACMS 030049).

W.E. SMITH

Lieutenant General, USAF
Commander

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**Figure 10.7. Court-Martial Orders - Final Supplementary Order Waiver/Withdrawal of Appellate Review.**

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS TWELFTH AIR FORCE (ACC)
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA 85730-4250

(General)(Special) Court-Martial Order 12 January 1994
No. ____

In the (general)(special) court-martial case of AIRMAN FIRST CLASS WARREN M. WEST, 111-22-3333, United States Air Force, 351st Support Group, the accused, (having waived his rights to appellate review under Article 61) (having withdrawn his rights to appellate review under Article 61), and Article 71(c) having been complied with, the (bad conduct discharge) (dishonorable discharge) as promulgated in (General) (Special) Court-Martial Order No. ___. (Headquarters _____ ) (this headquarters), dated _____, will be executed. The sentence was adjudged on _____ (ACM(S) _____ ).

BRUCE M. STRONG
Lieutenant General, USAF
Commander

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**Figure 10.8. Court-Martial Orders - New Action.**

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS SEVENTEENTH AIR FORCE (USAFE)
APO AE 09136-6510

General Court-Martial Order 31 May 1995
No. 5

MASTER SERGEANT CURTIS MAYS, 111-22-3333, United States Air Force, 52nd Equipment Maintenance Squadron, was arraigned at Spangdahlem Air Base, Germany, on the following offense at a court-martial convened by this command.

CHARGE. Article 85. Plea: NG, but G of a violation of Article 86. Finding: NG, but G of a violation of Article 86.

Specification: Unauthorized absence from unit from 1 February 1993 to 29 September 1993 with intent to remain away therefrom permanently in desertion. Plea: G, except the words "and with intent to remain away therefrom permanently" and "in desertion." Finding: G, except the words "and with intent to remain away therefrom permanently" and "in desertion."

SENTENCE

Sentence adjudged on 4 November 1994: Bad conduct discharge, confinement for 5 months, forfeiture of $200.00 pay per month for 5 months, and reduction to airman basic.

ACTION

In the case of MASTER SERGEANT CURTIS MAYS, 111-22-3333, the record of trial having been returned by The Judge Advocate General with directions that a new action be accomplished, the action taken by me (my predecessor) on 9 March 1995 is withdrawn, and General Court-Martial Order Number 3, Headquarters Seventeenth Air Force (USAFE), dated 9 March 1995, is rescinded and the following is substituted for the original action: Only so much of the sentence as provides for a bad conduct discharge, confinement for 82 days, forfeiture of $200.00 pay per month for 5 months, and reduction to airman basic is approved, and, except for the part of the sentence extending to a bad conduct discharge, will be executed. The term of confinement having been served, no place of confinement is designated.

/s/ Thomas J. Jackson

THOMAS J. JACKSON
Major General, USAF Commander

FOR THE COMMANDER

SONIA LEE, Colonel, USAF
Staff Judge Advocate

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# CHAPTER 11

# APPEALS AND REVIEW, REHEARINGS, CLEMENCY

## *Section 11A—General Information*

**11.1. Requests and Withdrawal of Requests for Appellate Counsel:**

**11.1.1. Request for Appellate Defense Counsel.** Attach an AF Form 304, **Request for Appellate Defense Counsel**, signed by the accused to every ROT forwarded to TJAG for examination. Place it immediately under the cover sheet of each ROT. The accused's trial defense counsel prepares the form, obtains the accused's signature and submits it to the trial counsel or appropriate SJA as soon as practicable after sentence announcement.

**11.1.2. Accused's Address for Appellate Review Correspondence.** The AF Form 304, provides the accused's preferred mailing address (home of record address, etc.) for all appellate review correspondence when the accused is not confined in a confinement facility. Use the Jun 95 or later edition of the AF Form 304. All previous versions of the form are obsolete and should not be used.

**11.1.3. Withdrawal of Request.** Use the following format to withdraw a request for appellate defense counsel:

I consulted with my [military trial defense counsel] [civilian defense counsel], (insert counsel's name), and have been advised of the action taken by the court-martial convening authority in my case. I received a copy of my record of trial for review. I am aware of my right to representation by appellate counsel. I hereby withdraw the request for appellate counsel executed by me on (date).

**11.1.4. Habeas Corpus Petitions.** Military prisoners sentenced to death by a court-martial, who seek to file in Federal civilian court(s) post-conviction habeas corpus petition(s) respecting such court-martial following the approval of their court-martial sentence to death by the President pursuant to Article 71, UCMJ, shall, upon request of the prisoner to The Judge Advocate General, be detailed military counsel by The Judge Advocate General under Article 70(e), UCMJ, to represent them in such proceedings and any appeals therefrom.

**11.2. Briefs and Affidavits to Support Arguments of Error.** When an assignment of error is advanced covering matters outside the ROT or allied papers, affidavits or other documents may support the assigned error.

## *Section 11B—Article 64(a), UCMJ, Judge Advocate Reviews (RCM 1112)*

**11.3. When Article 64(a) Reviews Are Required.** An Article 64(a), UCMJ, review is required in all special or general courts-martial in which the accused withdrew or waived appellate review under RCM 1110, in any SPCM in which the approved sentence does not include a bad conduct discharge, and all SCMs. A judge advocate appointed by the SJA of the officer exercising GCMCA over the accused at the time of trial conducts the review. The Article 64(a) review conforms to the requirements of RCM 1112. Indicate compliance with Article 64(a) with a stamped or typed notation signed and dated by the reviewing officer on the cover of all copies of the record of trial and all copies of the court-martial order.

**11.4. Distribution of Article 64(a) Reviews.** After completing the Article 64(a) review and, when applicable, any action by the GCMCA under RCM 1112(f), forward the original copy of the ROT and four copies of the court-martial order and any supplementary orders to AFLSA/JAJM indicating compliance with Article 64(a) as stated in paragraph **11.3.** above. Provide one copy each of the annotated court-martial order indicating compliance with Article 64(a) to each addressee listed in paragraph **10.1.9.**

11.4.1. If the GCMCA orders a rehearing, forward the review, ROT, action, and court-martial order to the convening authority who convened the court-martial. That convening authority determines whether a rehearing is practicable.

***Section 11C—Article 69, UCMJ, Reviews by the Office of The Judge Advocate General.***

**11.5. Examinations under Article 69(a), UCMJ (RCM 1201(b)(1)).**

**11.5.1. Submission of Matters by the Accused.** The accused may submit matters for consideration by TJAG in examining the accused's ROT. Submissions must meet the requirements of paragraph **11.6.3.** The accused submits matters directly to AFLSA/JAJM. That office must receive the matters on or before the thirtieth day after the date the GCMCA approved the sentence, unless the accused establishes good cause for not filing matters within that time.

11.5.2. Notification of Examination Results. AFLSA/JAJ, or a delegee, notifies the convening authority's SJA of the examination results. If TJAG does not direct a review by the AFCCA, AFLSA/JAJ or a designee forwards three copies of the initial promulgating order reflecting the results of the examination. The SJA serves one copy of the order upon the accused, obtains a receipt for it, and returns the receipt to AFLSA/JAJM. Forward the second signed copy of the order to the custodian of the accused's field record group for filing. The GCMCA retains the third copy. If the defense counsel's name and address is included in matters submitted by the accused, AFLSA/JAJM also notifies counsel of the results.

11.5.3. Other Action by TJAG. If TJAG orders a rehearing or certifies a case for review by the AFCCA, the procedures in Section F apply.

**11.6. Applications under Article 69(b), UCMJ (RCM 1201(b)(3)).**

**11.6.1. Submission of Application:** The member forwards the application directly to AFLSA/JAJM, and it is considered as filed when received by that office.

11.6.1.1. If the application concerns a trial by SCM with action taken before 1 Jul 96, the GCMCA SJA (or AFLSA/JAJM in all other cases) obtains the ROT, and any other statements, documents, matters admitted, or, in the alternative, summaries of the substance of such evidence, from the SJA for the installation at which the trial was held.

**11.6.2. Prerequisite of Finality of Review.** No application is ripe for review under Article 69(b), UCMJ, unless the convening authority already took action, and a judge advocate completed the review and any other action required by Article 64, UCMJ.

**11.6.3. Contents of Application.** **Figure 11.1.** is a sample format for applications. In all cases, the application must be written and signed by the accused, or the applicant's legal representative, under oath or affirmation. Defense counsel does not receive a copy of TJAG's action, unless counsel's name is on the application. The application must also contain:

11.6.3.1. The accused's name, social security number, and present mailing address;

11.6.3.2. The date and place of trial and type of court-martial;

11.6.3.3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise;

11.6.3.4. A succinct statement of the specific relief requested and the specific grounds for the relief (a concise brief of the applicable law with appropriate citations is encouraged); and

11.6.3.5. Any documentary or other evidence pertinent to the facts asserted under the specific grounds alleged, including copies of the court-martial order, if available.

***Section 11D—Review by the Air Force Court of Criminal Appeals (AFCCA) (RCM 1203)***

**11.7. Forwarding Records.** Forward records for cases required to be referred to the AFCCA under RCM 1201(a) to AFLSA/JAJM in accordance with AFMAN 51-203, *Records of Trial.*

**11.8. Notification of Transfer or Excess Leave.** When an accused awaiting completion of appellate review is to be transferred or placed on excess leave, the accused's organization notifies AFLSA/JAJM by message. Send information copes of the message to the GCMCAs SJAs for both the losing and gaining commands. In the case of transfer, identify the new organization, date of departure, and expected date of arrival. In the case of excess leave, provide the leave address.

**11.9. Notification of the AFCCA's Decision.** AFLSA/JAJM normally sends AFCCA decisions to the accused. In appropriate cases, AFLSA/JAJM sends the decision through the accused's GCMCA SJA with instructions for additional action.

**11.10. Convening Authority Action After Service of AFCCA Decision.** AFLSA/JAJM notifies the accused's GCMCA SJA whether the accused petitioned the USCAAF for review and provides appropriate instructions. Do not promulgate a final supplementary court-martial order, or discharge the accused, prior to receipt of these instructions.

***Section 11E—Petitions for New Trial (RCM 1210).***

**11.11. Filing and Form of Petition.** The petition contains the matters required by RCM 1210(c), and must be in writing. When practicable, the petition will be typewritten, double spaced. The petition will be signed under oath or affirmation by the petitioner, a person possessing the power of attorney of the petitioner for that purpose, or a person with the authorization of an appropriate court of law to sign the petition as the petitioner's representative. The member forwards the petition and supporting documentation, if any, in triplicate, directly to AFLSA/JAJM. An accused may submit only one petition for new trial for the same reason within the two-year limitation period.

***Section 11F—Rehearings and Other Remedial Actions***

**11.12. Notification of the Accused.** When a post-trial review or action directs or authorizes further proceedings, such as a rehearing or new action by the convening authority, make reasonable efforts to locate the accused and provide the accused with a copy of the document requiring additional action.

**11.13. Rehearing Procedures.**

**11.13.1. Notification of Convening Authority.** AFLSA/JAJM, or the Article 64, UCMJ, reviewing officer, sends a letter of transmittal, and a copy of the pertinent decision, mandate, or order to the SJA of the GCMCA who exercised GCM authority over the accused at the time of the trial (original GCMCA), regardless of the type of court-martial. If the accused is no longer within the command of the original GCMCA, include an information copy to the accused's current GCMCA. If the original GCMCA no longer exists, send all the above referenced documents to the accused's current GCMCA who assumes all the responsibilities of the original GCMCA.

**11.13.2. Action by the Original GCMCA Convening Authority.** The original GCMCA convening authority is responsible for ensuring action is taken consistent with the post-trial directions from the review or appellate authority. If the trial was a GCM, the original GCMCA takes appropriate action, including publishing a supplementary court-martial order reflecting post-trial action on the case. If the trial was a SPCM, the GCMCA will forward the case to the original SPCM convening authority for appropriate action, including publishing a supplementary court-martial order. If a rehearing is determined to be impractical, see paragraphs **10.6.6.2.** and **10.6.6.3.**

**11.13.3. Action When the Accused is No Longer Within the Original GCMCA's Command.** The original GCMCA may either act on the case or refer the matter to the member's current GCMCA for action with the concurrence of the current GCMCA. If the trial was a GCM, the GCMCA takes appropriate action, including publishing a supplementary court-martial order reflecting post-trial action on the case.

If the original trial was a SPCM, the GCMCA forwards the case to the original SPCM convening authority for appropriate action, including publishing a supplementary court-martial order. The convening authority may direct a rehearing at any location the convening authority determines to be appropriate. If the rehearing is held at a location requiring the accused to travel, the accused should be placed on TDY orders following the rules in **Table 6.1.**, rules 3 and 4. If a rehearing is determined to be impractical, see paragraphs **10.6.6.2.** and **10.6.6.3.**

**11.13.4. Referral.** Whether re-referring the matter to a rehearing in full or for a limited purpose, incorporate the appropriate instructions in the referral form on the Charge Sheet (see paragraph **4.9.**).

**11.14. DuBay Hearings.**

**11.14.1. Detail of a Military Judge.** A military judge is detailed to a rehearing or a *DuBay* hearing in the same manner as detailed to any court-martial.

**11.14.2. Procedure.** Conduct *DuBay* hearings in accordance with Article 39(a), UCMJ. Number items admitted as evidence at the hearing numerically, beginning with "Hearing Exhibit 1."

**11.14.3. Record.** Unless otherwise directed by the authority ordering the hearing, prepare a verbatim record of the hearing. Authenticate the transcript of the hearing in the form appropriate for ROTs. Return the original ROT and the original and two copies of the *DuBay* transcript to AFLSA/JAJM.

**11.15. Records of Trial on Rehearing.** The original and any copies of the record remanded for further proceedings by the US Supreme Court, USCAAF, or AFCCA must remain intact, except for documents needed for reintroduction in the further proceedings, such as the original charge sheet and exhibits to be readmitted into evidence.

**11.15.1. Withdrawal of Documents.** Replace documents and copies of documents withdrawn from the original ROT, if not used in the rehearing. If used, describe the documents, and substitute the description in the original and all copies of the ROT. Indicate the reasons for withdrawal and the new location of the documents. Do not withdraw the original copies of a decision of a court, action of a convening authority, post-trial review or recommendation, pretrial advice, and Article 32 report of investigation.

**11.15.2. Returning the Record.** Return the original ROT along with the original and two copies of the verbatim record of further proceedings to AFLSA/JAJM.

***Section 11G—Exercise of Clemency Under Article 74, UCMJ (RCM 1108)***

**11.16. General Information.** After the action is published or the accused receives notice of the action, SAF has authority to modify the unexecuted part of any court-martial sentence, except one approved by the President, unless SAF delegated such authority in this chapter.

**11.17. Authority of the Accused's Commander.** Except in cases listed in paragraph **11.19.**, an accused's commander with the authority to convene a court-martial of the type that adjudged the sentence may exercise SAF authority under Article 74(a), UCMJ, with the following limitations:

11.17.1. A commander exercising only SPCM convening authority may not remit a BCD, but may suspend a BCD only in the initial action; and

11.17.2. If the accused transferred to a Level II RCF or a long-term corrections facility, both as defined in AFI 31-205, or the Federal Bureau of Prisons, only the Commander, 11 WG, exercises this authority. See paragraph **9.3.4.**

**11.18. Authority of TJAG.** TJAG may exercise SAF authority under Article 74(a), UCMJ, with the exception of those cases specified in paragraph **11.19.**

**11.19. Authority Reserved to SAF.** Only SAF may remit or suspend, in whole or in part, the sentences listed below. (This limitation does not apply to the convening authority's powers under RCM 1107; Article 60, UCMJ):

11.19.1. Any sentence resulting from the President's commutation of a sentence of death to a lesser punishment;

11.19.2. Any sentence SAF approved and ordered into execution;

11.19.3. A dismissal, dishonorable discharge, or bad conduct discharge imposed in the following cases:

11.19.3.1. Those involving an approved finding of guilty for the offense of murder, rape, carnal knowledge, sodomy, arson, robbery, or burglary;

11.19.3.2. Those in which there is evidence in the ROT, or other substantiated report, of the accused's homosexuality, chronic alcoholism, severe psychoneurotic disorder, or distribution, introduction, possession, manufacture, importation, exportation, or habitual use of those substances specified in Article 112a, UCMJ, with the exception of marijuana, Phenobarbital, and schedule IV and V controlled substances; and,

11.19.4. Those referred to the SAF for action by commanders authorized to exercise Article 74, UCMJ, authority in **11.17.** Commanders are encouraged to forward to AFLSA/JAJR for SAF decision those cases involving issues most appropriate for resolution at the Air Force policy level.

**11.20. Publication of SAF Actions Under Article 74, UCMJ.** Promulgate actions taken by the SAF in cases specified in **11.19.** in appropriate GCM orders. RCM 1114(b). The Director, Air Force Personnel Council and TJAG are authorized to announce the action taken by SAF in all other cases.

***Section 11H—Waiver or Withdrawal of Appellate Rights***

**11.21. Waiver or Withdrawal of Appellate Rights.** Use either a DD Form 2330, **Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review**, or a DD Form 2331, **Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General**, when an accused waives or withdraws appellate rights.

**Figure 11.1. Sample Format for Defense Submission (Article 69, UCMJ).**

(SUMMARY) (SPECIAL) (GENERAL) COURT-MARTIAL

| | | | |
|---|---|---|---|
| UNITED STATES | [ | | [Application for Relief |
| | [ | | Under Article 69(b), UCMJ] |
| v. | [ | or | {Matters for Consideration |
| | [ | | on Examination Under |
| Technical Sergeant John Smith | [ | | Article 69(a), UCMJ] |

TO: The Judge Advocate General, United States Air Force

The following information is provided under paragraph **11.6.3.**, AFI 51-201.

1. The accused's name, service number and present mailing address. Technical Sergeant John Smith, (SSN), [present mailing address, base of assignment (if applicable)].

2. Date, place and type of court-martial. 1 March 1992, Bolling AFB, special court-martial.

3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise. Confinement for 5 months, forfeiture of $125.00 per month for 6 months, reduction to airman basic.

4. A succinct statement of the specific relief requested and the specific grounds for the relief. The accused requests vacation of the court's findings and sentence. The specific ground upon which the accused requests relief is as follows:

THE MILITARY JUDGE ERRED IN OVERRULING THE DEFENSE OBJECTION TO THE ADMISSION OF PROSECUTION EXHIBIT 2 INTO EVIDENCE AS THE PRODUCT OF AN ILLEGAL SEARCH AND SEIZURE.

The installation commander who authorized the search of the accused's room testified the AFOSI agent, who requested the search authority, informed him the AFOSI informant told the AFOSI he saw heroin in

the accused's room six months previously (R.22). The fact heroin might have been in the accused's room six months previously is not sufficient probable cause to search the accused's room six months later. First of all, possession of contraband at one location does not provide probable cause to search another location. *U.S. v. Moore*, 42 C.M.R. 188 (CMA 1970); *U.S. v. Elwood*, 41 C.M.R. 376 (CMA 1970); *U.S. v. Clifford*, 41 C.M.R. 391 (CMA 1970). Moreover, the passage of six months from the informant's alleged observation until the issuance of the commander's search authorization made the information too "stale" to be sufficient probable cause for a search *U.S. v. Britt*, 38 C.M.R. 415 (CMA 1968)).

_____

(Signature of Defense Counsel or Accused)

Subscribed and sworn to before me this 17th day of July, 1996.

Judge Advocate or Notary Public

# CHAPTER 12

# MISCELLANEOUS MILITARY JUSTICE MATTERS

## *Section 12A—Staff Judge Advocate*

**12.1. Staff Judge Advocate-Title.** Unless otherwise specified by TJAG, the senior officer of The Judge Advocate General's Department on a commander's staff is designated the "staff judge advocate" of that command. All other judge advocate officers assigned to a command are designated "assistant staff judge advocates." Use these titles for pretrial advice, post-trial recommendations and court-martial orders. The senior assistant staff judge advocate uses the title "acting staff judge advocate" when the staff judge advocate is absent or ineligible to act in a particular case. In all other matters, titles such as "deputy staff judge advocate," "chief, military justice division," and "executive officer," may be used.

12.1.1. Convening authorities may delegate military justice administrative duties to the SJA or any other attorney assigned to the servicing SJA's office. **Figure 12.1.** is a sample delegation letter. In addition to the duties listed in **Figure 12.1.**, convening authorities may delegate any other military justice administrative duties not expressly requiring convening authority action. When signing a military justice matter for the convening authority, use the signature element, "FOR THE COMMANDER."

## *Section 12B—Explanation of the UCMJ (Article 137)*

**12.2. Required Explanation of Specified UCMJ Articles.**

**12.2.1. In General.** Brief personnel on the UCMJ, as required by Article 137.

**12.2.2. SJA Responsibilities:**

12.2.2.1. A judge advocate, a Department of the Air Force civilian attorney, or a noncommissioned officer qualified and serving as a paralegal technician, superintendent, or manager, shall brief personnel on the requirements of Article 137, UCMJ. Instructional aids may be used, provided a qualified briefer is available to answer questions.

12.2.2.2. (37 TRW SJA only) Ensure trainees receive the required briefing from regular instructors at the Air Force Military Training Center within 14 days of entry on active duty.

12.2.2.3. Record attendance at such training, including number of people trained and time spent in training, so that unit training monitors can provide this information to MAJCOM and Air Staff Ancillary Training Program OPRs for biennial review (see AFI 36-2202, *Developing Military Training Programs*).

**12.2.3. Unit Responsibilities.** Upon receipt of the monthly list of personnel required to receive training, the unit commander or designated representative contacts the SJA's office to schedule personnel for the briefing and ensures each person scheduled attends.

**12.2.4. Frequency, Content and Duration.** The SJA determines the frequency, content and duration of training sessions to meet the following requirements:

12.2.4.1. Complete the initial explanation within 14 calendar days of entry on active duty;

12.2.4.2. Complete the 6-month explanation within 30 calendar days of the last day of the month in which the individual completed 6 months of active duty; and

12.2.4.3. Complete the reenlistment explanation within 30 days of an individual's reenlistment.

12.2.4.4. Members of a reserve component (AFRES and ANG) receive the initial explanation within 14 days of initial entrance on a duty status with a reserve component, again after completing basic training, and at the time of reenlistment.

12.2.5. Explain the following topics:

12.2.5.1. Types of punitive and administrative discharges;

12.2.5.2. Basis for characterizing service;

12.2.5.3. Articles 2, 3, 7-15, 25, 27, 31, 38, 55, 77-134, and 137-139, UCMJ;

12.2.5.4. The benefits, disadvantages, and possible future effects of each type of service characterization (AFIs 36-8001, *Air Force Reserve Education and Training,* and 36-3209, *Separation Procedures for Air Force Reserve Members*);

12.2.5.5. The denial of certain benefits to most persons who fail to complete at least 2 years of an original enlistment (38 U.S.C. 5303A); and

12.2.5.6. A detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces.

***Section 12C—Direct Communications and Reports***

**12.3. AFLSA/JAJM Requests for Information.**

**12.3.1. In General.** AFLSA/JAJM routinely receives inquiries concerning military justice actions against Air Force members and relies heavily on information from bases to answer the inquiries. A complete, accurate and timely response to requests for information is critical. Do not construe requests as criticism of the handling of a case, nor view them as a mandate for particular action. AFLSA/JAJM may communicate directly with any organizational level. When providing information, send information copies of replies to AFLSA/JAJM to superior levels of command up to MAJCOM level to ensure they are informed of the requests and replies.

**12.3.1. (AMC)** Due to the time sensitivity of these responses, the suspense date to JAJM must be met. Ensure required replies are provided in a timely manner to AFLSA/JAJM, with copies concurrently provided to appropriate Numbered Air Force and HQ AMC legal offices to ensure simultaneous receipt. Where time permits, coordinate the response with the appropriate Numbered Air Force and HQ AMC legal offices before dispatching the response to JAJM.

**12.3.2. All Responses.** Respond to JAJM via JAGMAIL or data facsimile, DSN 754-8755, commercial (202) 404-8755 (confirm receipt, DSN 297-1539). Include the following information in all replies:

12.3.2.1. A detailed response to specific inquiries;

12.3.2.2. Narrative of the activity, including dates, resulting in the action in question; and,

12.3.2.3. Any other unique or significant aspects of the case.

12.3.3. Responses About Courts-Martial. In addition to the above, provide the following, as appropriate:

12.3.3.1. Dates and nature of pretrial restraint and associated proceedings;

12.3.3.2. Type of court-martial and summary of charges and specifications;

12.3.3.3. Date and source of preferral, referral and trial date;

12.3.3.4. Information about the Article 32 investigation, including by whom directed, identity of accused's counsel, a listing of Government witnesses, a brief synopsis of their testimony, and the investigating officer's recommendations;

12.3.3.5. Summary of the evidence, including whether the accused testified;

12.3.3.6. Pleas, findings, sentence, and court composition;

12.3.3.7. Prior disciplinary record considered;

12.3.3.8. Date and action of the convening authority;

12.3.3.9. Date and disposition of Article 64, UCMJ, review;

12.3.3.10. Date ROT is expected to be sent to AFLSA/JAJM;

12.3.3.11. Information concerning post-trial confinement; and

12.3.3.12. Information concerning member's excess leave.

12.3.4. Responses About Article 15 Actions. In addition to matters in **12.3.2.**, provide all pertinent names, dates, and individual elections throughout the Article 15 process from notification of intent to punish through appeal (essentially the information required on the AF Form 3070, **Record of Nonjudicial Punishment**); and discharge action contemplated, if any.

**12.3.5. Responses About Civilian Charges.** In addition to matters in **12.3.2.**, provide the following as appropriate:

12.3.5.1. Jurisdiction involved (if in a foreign jurisdiction, indicate whether a waiver of jurisdiction has been requested);

12.3.5.2. Charges;

12.3.5.3. Place and dates of pretrial confinement;

12.3.5.4. Name of individual's defense counsel, if any;

12.3.5.5. Summary of the evidence;

12.3.5.6. Maximum authorized punishment;

12.3.5.7. Pleas, findings, and sentence;

12.3.5.8. Appeals filed; and

12.3.5.9. Administrative or disciplinary action taken or contemplated by military authorities.

**12.4. Local Responses to High Level Inquiries.** When members of the Congress inquire directly to field commanders concerning disciplinary action against a member, retain a copy of the inquiry and reply in the office administrative file for the action. See AFI 90-401, paragraph **4.3.**, for additional guidance.

***Section 12D—Extrajudicial Statements to the Public Relating to Criminal Proceedings and Release of Court-Martial Records.***

**12.5. General.** The permissible release of information which does not have a substantial likelihood of prejudicing a criminal proceeding depends on the type of information to be released and its source, the type of proceeding, and the stage of the proceeding when the information is released.

12.5.1. Information relating to criminal proceedings that has a substantial likelihood of prejudicing a criminal proceeding may not be released.

12.5.2. The release of information relating to a criminal proceeding is subject to the Air Force Rules of Professional Conduct, the Air Force Standards for Criminal Justice, applicable laws, such as the Privacy Act, the Freedom of Information Act, the Victim-Witness Protection Act, implementing directives, security requirements, and judicial orders protecting information. Release of Privacy Act protected information to third parties is governed by the Freedom of Information Act.

12.5.3. Air Force representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody.

12.5.4. This section does not apply to release of information by military or civilian defense counsel. Defense counsel, both military and civilian, must, however, comply with the Air Force Rules of Professional Conduct and the Air Force Standards for Criminal Justice, portions of which address trial publicity by defense counsel. Military defense counsel must comply with the requirements and restrictions of the Freedom of Information Act and the Privacy Act with regard to trial publicity.

**12.6. Extrajudicial Statements.** This subsection applies to oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication.

12.6.1. There are valid reasons for making certain information available to the public in the form of extrajudicial statements. However, extrajudicial statements should not be used for the purpose of influencing the course of a criminal proceeding. Usually, extrajudicial statements should include only factual matters and should not offer subjective observations or opinions.

12.6.1.1. The release of extrajudicial statements is a command responsibility. The installation staff judge advocate (SJA) and the installation public affairs officer (PAO) must work closely together to provide informed advice to the commander. If the extrajudicial statement is based on information contained in agency records, the OPR for the record should also coordinate on the extrajudicial statement prior to release. The convening authority responsible for the criminal proceeding makes the ultimate decision about release of extrajudicial statements relating to that criminal proceeding. MAJCOM (or equivalent) commanders may withhold release authority from subordinate commanders. In high interest cases, the SJA and the PAO should consult with their MAJCOM representatives.

12.6.1.2. The SJA, trial counsel and defense counsel must ensure investigators, law enforcement personnel, employees and other persons assisting or associated with counsel do not make extrajudicial statements counsel are prohibited from making.

**12.6.2. Extrajudicial Statements Which Generally May Not Be Made.** Extrajudicial statements relating to the following matters ordinarily have a substantial likelihood of prejudicing a criminal proceeding and generally should not be made:

12.6.2.1. The existence or contents of any confession, admission or statement by the accused or the accused's refusal or failure to make a statement;

12.6.2.2. Observations about the accused's character and reputation;

12.6.2.3. Opinions regarding the accused's guilt or innocence;

12.6.2.4. Opinions regarding the merits of the case or the merits of the evidence;

12.6.2.5. References to the performance of any examinations, tests or investigative procedures (e.g., fingerprints, polygraph examinations and ballistics or laboratory tests) or the accused's failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

12.6.2.6. Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

12.6.2.7. The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

12.6.2.8. Before sentencing, facts regarding the accused's disciplinary or criminal record, including nonjudicial punishment, prior court-martial convictions, and other arrests, indictments, convictions, or charges. Do not release information about nonjudicial punishment or administrative actions even after sentencing unless admitted into evidence. (This rule does not prohibit, however, a statement that the accused has no prior criminal or disciplinary record.); and

12.6.2.9. Information trial counsel knows or has reason to know would be inadmissible as evidence in a trial.

**12.6.3. Extrajudicial Statements That May Be Made Under Some Circumstances Regardless of the Stage of the Proceedings.** Subject to the limitations in paragraphs **12.5.1.** (Information with a substantial likelihood of prejudicing a criminal proceeding) and **12.5.2.**, (Rules of Professional Conduct, Standards for Criminal Justice, FOIA, PA, and Victim-Witness Assistance), the following extrajudicial statements may be made when deemed necessary regardless of the stage of the proceeding:

12.6.3.1. General information to educate or inform the public concerning military law and the military justice system;

12.6.3.2. If the accused is a fugitive, information necessary to aid in apprehending the accused or to warn the public of possible dangers;

12.6.3.3. Requests for assistance in obtaining evidence and information necessary to obtaining evidence;

12.6.3.4. Facts and circumstances of an accused's apprehension, including the time and place of apprehension;

12.6.3.5. The identities of investigating and apprehending agencies and the length of the investigation, only if release this information will not impede an ongoing or future investigation and the release is coordinated with the affected agencies;

12.6.3.6. Information contained in a public record, without further comment; and

12.6.3.7. Information that protects the Air Force or the military justice system from the substantial, undue prejudicial effect of recent publicity initiated by some person or entity other than the Air Force. Information in the form of extrajudicial statements shall be limited to that which is necessary to correct misinformation or to mitigate substantial undue prejudicial information already available to the public. This can include, but is not limited to, information that would have

been available to a spectator at an open Article 32 investigation or an open session of a court-martial. Unless The Judge Advocate General (TJAG) has withheld the authority to coordinate on command release of this information for individual cases or types of cases, the MAJCOM SJAs (and equivalents) shall coordinate on release of this information by the appropriate command authority. If TJAG has withheld the authority to coordinate on release of extrajudicial statements, requests for TJAG coordination shall be forwarded through the MAJCOM SJA to AFLSA/JAJM by the most expeditious means appropriate for the sensitivity of the information.

**12.6.4. Extrajudicial Statements That Generally May Be Made Only After Preferral of Charges.** Subject to the limitations in paragraphs **12.5.1.** and **12.5.2.**, the following may be made after preferral of charges:

12.6.4.1. The accused's name, unit and assignment;

12.6.4.2. The substance or text of charges and specifications, provided there is included a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty. As necessary, redact all Victim and Witness Protection Act and Privacy Act protected data from the charges and specifications.

12.6.4.3. The scheduling or result of any stage in the judicial process;

12.6.4.4. Date and place of trial and other proceedings, or anticipated dates if known;

12.6.4.5. Identity and qualifications of appointed counsel;

12.6.4.6. Identities of convening and reviewing authorities;

12.6.4.7. A statement, without comment, that the accused has no prior criminal or disciplinary record or the accused denies the charges; and

12.6.4.8. The identity of the victim where the release of that information is not otherwise prohibited by law. (Generally, however, seek to avoid release of the name of victims of sex offenses, the names of children or the identity of any victim when release would be contrary to the desire of the victim or harmful to the victim).

12.6.4.9. The identities of court members and the military judge. Do not volunteer the identities of the court members or the military judge in material prepared for publication. This information may be released, if requested, after the court members or the military judge have been identified in the court-martial proceeding and the SJA to the convening authority determines release would not prejudice the accused's rights or violate the members' or the military judge's privacy interests.

**12.7. Documentation Pertaining to Criminal Proceedings.** This subsection applies to those documents and agency records created during the course of the military justice process and any document or record incorporated into a military justice document or record. Unless AFLSA/JAJM or higher authority withholds authority, the disclosure authority is the SJA for the convening authority responsible for the criminal proceeding. AFLSA/JAJM is the disclosure authority for all documents and records received at AFLSA/JAJM. File a copy of letters releasing documents or records with the allied papers and immediately notify AFLSA/JAJM of any release. This subsection does not apply to documents or records that originate outside the military justice system of records. The disclosure authority for those documents and records is the OPR for those records under the provisions of the Air Force Privacy Act Program, AFI 37-132, and/or the Air Force Freedom of Information Act Program, AFI 37-131.

**12.7.1. Release of Court-Martial Record of Trial.** A court-martial "record of trial" is defined by RCM 1103(b)(2). The court-martial record of trial is subject to release determination under the Privacy Act and Freedom of Information Act. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. A "transcript of oral proceedings" is not a record until authentication. When releasing records of trial under this paragraph, redact all Victim-Witness Protection Act and Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity.

**12.7.2. Release of Other Military Justice Documents or Records.** All other documents or records, including documents which will, but have not yet become part of a "record of trial," and including those which are attached to the court-martial record of trial but not made a part of the record of trial under the provisions of RCM 1103 (for example, an Article 32 report and its attachments) are also subject to release determination under the Privacy and Freedom of Information Acts. However, due regard will be given to the potentially heightened privacy interests of all accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Victim-Witness Protection Act and Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity.

**12.7.3. Cases Disposed of by Acquittal or Action Other Than Court-Martial** . When the charges against an accused were disposed of by an action other than court-martial, or when a court-martial results in an acquittal, due consideration must be given to the likelihood that the accused may have increased privacy interests in the protection of information contained in military justice documents or records. That is, less serious misconduct, which is handled administratively rather than judicially generally is not considered of sufficient public interest to outweigh the privacy interest of the individual.

***Section 12E—Reporting Officer and Special Interest Cases***

**12.8. Reporting Officer and Special Interest Cases to HQ USAF.** Certain offenses committed by Air Force members generate requests for information within HQ USAF, regardless of the member's rank. Similarly, an accused's rank itself may generate requests for information, or make HQ USAF knowledge of an offense necessary. Staff judge advocates must be sensitive to reporting requirements in this chapter, and make complete and timely reports. Reports should be prepared and forwarded by the base legal office prosecuting the case or, if the case is in a civilian court, the base legal office servicing the unit where the accused is assigned. None of the reporting requirements are intended to preclude a commander's complete evaluation of a case before deciding what action, if any, to take.

**12.8.1. Officer Courts** . Report all officer courts whether military, civilian or in a foreign court. In officer or special interest cases other than those in paragraph **12.8.2.**, submit initial reports when charges are preferred, within three days of the individual being placed in pretrial confinement (including civilian confinement), or when an officer tenders a resignation for the good of the service, whichever is earliest. SJAs are reminded to report preferral of court-martial charges against colonel selects and above to SAF/IGS (for general officers) or SAF/IGQ (for colonels and colonel selects) IAW AFI 90-130.

**12.8.2. All Ranks.** Report incidents or investigations involving the following offenses (including attempts, conspiracies, and solicitations) as soon as possible after learning of the offenses and without compromising ongoing investigations, regardless of the individual's rank:

12.8.2.1. Homicide, including civilian prosecution;

12.8.2.2. Espionage, subversion, aiding the enemy, sabotage, spying, or violations of punitive regulations or statutes regarding the handling of classified information or the foreign relations of the United States. (Coordinate with the responsible AFOSI Detachment before sending reports on these offenses.)

12.8.2.3. Environmental crimes, including civilian felony prosecution;

12.8.2.4. Sexual harassment, regardless of the charged offenses, including civilian felony prosecution (see also AFI 36-2702);

12.8.2.5. Fraternization (officers only); and

12.8.2.6. Any case the SJA determines reporting is appropriate. For example, a case with potential community reaction or press coverage.

**12.8.3. Report Format.** It is important the initial report include a detailed summary of the case. Include, as a minimum, a thorough description of offenses, including dates, UCMJ articles allegedly violated, the number of specifications under each offense, and sufficient detail to provide clear understanding of the facts and circumstances involved, and any other unusual or significant features of the case.

**12.8.4. Frequency of Updates.** As a minimum, submit monthly updates by the last duty day of each month. In addition to monthly updates, submit updates whenever a significant change occurs, such as release from pretrial confinement, completion of Article 32 investigation, tender of resignation request, referral or dismissal of charges, setting of trial date, changes in Article 32 or trial date, and results of trial. Continue the updates until a case concludes or AFLSA/JAJM notifies they are no longer necessary.

**12.8.5. Method of Reporting.** Submit all reports to AFLSA/JAJM. Facsimile transmission is the preferred method of reporting cases (DSN 754-8755 or commercial (202) 404-8755 - confirm receipt DSN 297-1539). Use JAGMAIL if FAX capability is unavailable. Use a message if other methods are unavailable. If a message is used and the case involves sensitive material, submit the report in two messages. In the first, include information about the case, other than the accused's name or other identifying data. Send the second message the following day, reference the first message, and include information omitted from the first message.

**12.8.5. (AMC)** AMJAMS will be the primary method for creating and updating officer/special interest reports. However, if the AMJAMS cannot be updated in a timely manner or if a matter warrants special immediate notice to JAJM or if information is forwarded to CCZ, the officer/special interest report should be sent electronically to JAJM via e-mail to **mailto:jajm.sir@pentagon.af.mil**, with information copies simultaneously sent to the appropriate Numbered Air Force and HQ AMC/JAJ.

**12.8.6. Reporting Referral of Additional Charges in Cases Pending Review.** If a case is pending review under Articles 66, 67 or 69, UCMJ, the headquarters referring new charges notifies AFLSA/JAJM of the facts relating to the new charges.

*Section 12F—Time Management Of Case Processing*

**12.9. Time For Processing Cases.**

**12.9.1. In General.** SJAs must give managerial attention to all time standards prescribed by the MCM, statutes, case law and regulations.

**12.9.2. Coordination with AFOSI.** SJAs should develop local procedures with their servicing AFOSI detachment commander to coordinate with agents as early as possible in the investigative stages of a case to ensure limited investigative resources are focused on gathering relevant evidence in a timely manner.

**12.9.3. Time Management.** To minimize disruptions in the Air Force mission, the lives of victims, witnesses, and the accused, and to minimize Air Force costs, expeditious processing of courts-martial is essential. The impartial and timely administration of military justice helps sustain good order and discipline. SJAs and chiefs of military justice should regularly analyze available AMJAMS data relating to each segment of court processing over which they have significant control to determine specific areas for improvement and implement appropriate management measures to maximize effectiveness and efficiency. The following Air Force court-martial metrics have been established to assist in expediting the administration of justice.

12.9.3.1. Prefer 80% of all courts-martial within 30 days of the Case-Ready Date (Earliest date commander has the information necessary to prefer charges).

12.9.3.2. Convene 80% of all courts-martial (arraignment) on a Negotiated Trial Date within 45 days after the accused is served (RCM 602).

12.9.3.3. Complete 80% of all general courts-martial (Preferral Date - CA Action Date) within 160 days.

12.9.3.4. Complete 80% of all BCD special courts-martial (Preferral Date - CA Action Date) within 75 days.

12.9.3.5. Complete 80% of all Non-BCD special courts-martial (Preferral Date - CA Action Date) within 55 days.

12.9.3.6. Forward all court-martial ROTs to AFLSA/JAJM within 14 days of CA Action.

12.9.3.7. Complete 80% of all Article 66, UCMJ, appellate reviews within 270 days (Date AFLSA/JAJM receives the ROT - Air Force Court of Criminal Appeals Decision Date).

*Section 12G—Specific Search, Seizure, and Apprehension Matters*

**12.10. Authorization to Administer Oaths for Search, Seizure, and Apprehension.** Air Force commanders and military magistrates are authorized to administer oaths or affirmations for purposes of authorizing searches, seizures, and apprehensions based upon probable cause. Use the AF Form 3226, **Authority to Apprehend in Private Dwelling**, to document authorization to apprehend someone from a private dwelling. When required by the circumstances of a particular case, oral authorization may be given.

**12.11. US Mail.** Refer to DoD Manual 4525-6, volume II, *DoD Postal Manual*, Chapter 8, for procedures for the inspection, search, and seizure of mail in the custody of the military postal service. The US

Postal Service operates post offices on CONUS installations and opening of mail is allowed only pursuant to a valid search warrant executed by a Federal magistrate or judge.

***Section 12H—Appointment of Judges to the Air Force Court of Criminal Appeals***

**12.12. Appointing Judges to AFCCA.** Pursuant to Article 66, UCMJ, TJAG appoints judge advocates to the Air Force Court of Criminal Appeals. The appointment may be documented using an AF Form 516, **Certificate for Appointment of Appellate Judge.**

**Figure 12.1. Delegation of Military Justice Administrative Duties.**

(date)

MEMORANDUM FOR JA

FROM: (Commander's address)

SUBJECT: Delegation of Military Justice Administrative Duties

The Staff Judge Advocate, Deputy Staff Judge Advocate, Acting Staff Judge Advocate and all Assistant Staff Judge Advocates assigned to the Office of the Staff Judge Advocate, (Unit), are hereby delegated the authority to receipt for court-martial charges, authenticate the referral of court-martial charges, authenticate court-martial convening orders and promulgating orders for this (special)(general)court-martial jurisdiction and perform all other military justice administrative duties not requiring my personal attention. [In addition paralegals in the grade of master sergeant and above assigned to the Office of the Staff Judge Advocate, (Unit), are hereby delegated the authority to authenticate court-martial promulgating orders.] The Staff Judge Advocate or Acting Staff Judge Advocate is delegated the authority to detail personnel to take depositions under Article 49, Uniform Code of Military Justice (UCMJ), and to detail counsel to represent the United States at investigations convened under Article 32, UCMJ.

Signature Element

Court-Martial Convening Authority

**12.13. Forms Prescribed.** AF Form 138, Post-Trial Clemency Evaluation

AF Form 304, Request for Appellate Defense Counsel

AF Form 516, Certificate For Appointment of Appellate Judge

AF Form 835, Sentence Worksheet (General Court-Martial)

AF Form 1092, Court-Martial Findings Worksheet

AF Form 1093, Sentence Worksheet (Special Court-Martial)

AF Form 1359, Report of Results of Trial

AF Form 3226, Authority to Apprehend in Private Dwelling

DD Form 453, Subpoena for Court-Martial Witness

DD Form 453-1, Travel Order

DD Form 454, Warrant of Attachment

DD Form 455, Report of Proceedings to Vacate Suspensions at General Court-Martial

DD Form 456, Interrogatories and Depositions

DD Form 458, Charge Sheet

DD Form 490, Record of Trial

DD Form 493, Extract of Military Records of Previous Convictions

DD Form 1722, Request for Trial Before Military Judge Alone

DD Form 2330, Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review

DD Form 2331, Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General

***Section 12I—Compliance with Sex Offender Registration under Federal Law.***

**12.14. General Provision.** If the member has been convicted of a sexually violent offense or certain offenses against a minor, the member is subject to sex offender registration under Federal law. See 42 U.S.C. §14071. The Security Forces (SF) corrections officer at the facility in which the prisoner is detained ensures compliance when the member is released from confinement. This includes the corrections officer notifying appropriate state and local law enforcement officials and state sex offender registration officials using the DD Form 2791**, Notice of Release of Military Offender Convicted of Sex Offense**. It also includes the corrections officer notifying the member about his or her registration responsibilities and obtaining the member's acknowledgment of these responsibilities.

**12.15. Base-level SJA Responsibilities.** If a member is convicted of an offense that triggers the sex offender registration requirements but confinement is not part of the adjudged punishment (or sufficient pretrial or illegal pretrial confinement credit offsets the term of confinement imposed at trial), the SJA, when action is taken on the case, notifies the appropriate corrections officer, or the SF commander if there is no corrections officer. The corrections officer or the SF commander will then ensure that the notifications required in paragraph **12.14.** are made.

BRYAN G. HAWLEY, Major General, USAF
The Judge Advocate General

## ATTACHMENT 1

## GLOSSARY OF ABBREVIATIONS AND ACRONYMS

***Abbreviations and Acronyms***

**ACM—**AFLSA/JAJM General Court-Martial Reference Number

**ACMS—**AFLSA/JAJM Special Court-Martial Reference Number

**ADC—**Area Defense Counsel

**AFCCA—**Air Force Court of Criminal Appeals

**AFI—**Air Force Instruction

**AFOSI—**Air Force Office of Special Investigations

**AFRES—**Air Force Reserve

**ANG—**Air National Guard

**ASD—**Assistant Secretary of Defense

**AWOL—**Absent Without Leave

**BCD—**Bad Conduct Discharge

**CCDC—**Chief Circuit Defense Counsel

**CCTC—**Chief Circuit Trial Counsel

**CDC—**Circuit Defense Counsel

**CFR—**Code of Federal Regulations

**CHAMPUS—**Civilian Health and Medical Program of the Uniformed Services

**CMO—**Court-Martial Order

**CONUS—**Continental United States

**CTC—**Circuit Trial Counsel

**DAF—**Department of the Air Force

**DoD—**Department of Defense

**DOJ—**Department of Justice

**FAX—**Data Facsimile

**FBI—**Federal Bureau of Investigation

**FOIA—**Freedom of Information Act

**FSC—**Family Support Center

**GCM—**General Court-Martial

**GCMCA—**General Court-Martial Convening Authority

**HQ AFSPA/SPC—**Air Security Police Agency, Corrections Directorate

**IMDC—**Individual Military Defense Counsel

**IO—**Investigating Officer

**ITO—**Invitational Travel Order

**JAGMAIL—**Judge Advocate General Department's Electronic Mail

**LIO—**Lesser Included Offense

**LRO—**Local Responsible Official

**MAJCOM—**Major Command

**MCM—**Manual for Courts-Martial

**MRE—**Military Rule of Evidence

**PA—**Privacy Act

**PAO—**Public Affairs Officer

**PCRO—**Pretrial Confinement Reviewing Officer

**PIF—**Personnel Information File

**PTA—**Pretrial Agreement

**RCF—**Regional Confinement Facility

**RO—**Responsible Official

**RTDP—**Return to Duty Program

**RCM—**Rules for Courts-Martial

**ROT—**Record of Trial

**SAF—**Secretary of the Air Force

**SCM—**Summary Court-Martial

**SCMCA—**Summary Court-Martial Convening Authority

**SJA—**Staff Judge Advocate

**SJAR—**Staff Judge Advocate's Recommendation

**SPCM—**Special Court-Martial

**SPCMCA—**Special Court-Martial Convening Authority

**TDY—**Temporary Duty

**TJAG—**The Judge Advocate General

**TR—**Transportation Request

**UCMJ—**Uniform Code of Military Justice

**U.S.C.—**United States Code

**USCAAF—**United States Court of Appeals for the Armed Forces

**VWAP—**Victim Witness Assistance Program

## ATTACHMENT 2

## SUBJECT INDEX

-A-

Action of Convening Authority, **9.8.**

Reflecting Deferment or Waiver in, **9.8.4.**

Reporting of, **9.7.**

RILO pending, **9.8.5.**

Addendum

To SJA's Recommendation, **9.6.3.**

Air Force Court of Criminal Appeals

Appointment of Judges, **12.12.**

Air Force Reserves, **2.8.1.**, **2.8.5.6.**

Air National Guard, **2.8.1.**

Appeals

by US, **8.7.**

Appellate Counsel

Request, **8.9.2.**

Withdrawal, **11.1.3.**

Appellate Rights

Waiver or Withdrawal, **11.21.**

Article 32, (RCM 405) **4.1.**

Investigating Officer, **4.1.1.**

Report of Investigation, **4.1.4.**

Tape Recording, **4.1.3.**

Transcripts, **4.1.3.**

Article 64 Reviews, **11.3.**

Article 69 Reviews, **11.5. 11.6.**

Attorneys

Standards of Conduct, **1.3.**

-C-

Charge Sheet

Preparation, **3.4.**

Charges

Forwarding, **3.5.**

Modification, Withdrawal, or Dismissal, **8.1.**

Preferral, (see Preferral)

Re-referring, **4.9.**

Receipt, **3.6.**

Referral, **4.7.**

Convening Orders, **5.8.1.**

Withdrawing, **4.8.**

Classified Information Disclosure, **8.10.**

Clemency Matters, **9.5.**

Combat Service, **4.6.**

Command Influence, (RCM 104) **1.2.**

Confinement

Air Force Reserves, **2.8.5.**

Contingent, **9.9.**

Post-Trial, **9.3.1.**

Return to Duty Program, **9.4.**

Confinement Reviewing Officer, **3.2.2.**

Congressional/High Level Inquiries, **12.3.**, **12.4.**

Court Reporters, **5.5.**

Enlisted, **5.7.**

Convening Authority, **4.7.**

Court-Marital

Action by Convening Authority, **9.7.**

Court-Martial

Convening Orders, **5.8.**

Court-Martial

Orders, **10.1.**

Authentication, **10.1.7.**

Confinement Deferred, **9.8.4.**

Corrected Copies, **10.1.6.**

Modification or Suspension After Execution, **10.7.**

SAF Actions, **10.6.8.**

Supplementary Orders, **10.6.**

Change in Place of Confinement, **10.11.**

Final Order, **10.5.**

International Hold, **10.10.**

Vacating Suspension, **10.8.**

Courts of Inquiry, **4.2.**

-D-

Deferment,

of Forfeitures or Reduction in Grade, **9.7.3.**

Reflecting in Action, **9.8.4.**

Defense Counsel

Detail of, **5.2.**

Disqualification, **5.2.3.1.**

Individual Military Defense Counsel (IMDC) Requests, **5.3.** et.seq.

Delegations, **12.1.1.**

Dependent Travel, **10.12.**

Depositions, (RCM 702), **4.3.**

Drug and Alcohol Rehabilitation Records, **8.3.**

-E-

Enlisted court reporters, **5.7.**

Ethics, **1.3.**

Excess Leave, **9.12.**

Convening Authority's Action, **9.3.2.1.**

Travel, **10.12.**

Extraordinary Writs

by US, **8.7.**

-F-

For Official Use Only Information
Disclosure, **8.10.**
Forfeitures,
Automatic, **9.7.**, **Figure 9.2.**
Limitations on Total Forfeitures, **9.8.1.**
Freedom of Information Act
Records of Trial, **12.6.**

-G-

General Officers, Trial of, **2.10.**

-H-

High Level Inquiries, **12.3.**., **12.4.**

-I-

IMDC Requests, **5.3.**
Immunity
Grant, (RCM 704), **6.6.**
Department. of Justice, **6.6.2.**
National Security Case, **6.6.4.**
Request for Authorization, **6.6.5.**
Witness not Subject to UCMJ, **6.6.2.**
Witness Subject to UCMJ, **6.6.1.**
Information about Criminal Proceedings
Release, **12.5.**
Investigations

Article 32, (see Article 32)

-J-

Jurisdiction

After Foreign Trial, **2.5.1.**.-**2.5.3.**

After State Trial, **2.5.1.** .-**2.5.3.**

Air Force Reserve

Proof at Trial, **8.4.**

Air Force Reserves, **2.8.1.**-**2.8.5.6.**

Confinement, **2.8.5.**

Non-judicial Punishment, **2.8.3.**

Recall to Active Duty, **2.8.4.**, **2.8.5.**

Air National Guard,**2.8.1.**

Proof at Trial, **8.4.**

Completion Term of Service, **2.7.**

Concurrent Jurisdiction

Department of Justice, **2.6.1.**

Convening Authority

Disqualification,**4.7.2.**

General Courts-Martial,General Courts-Martial, **2.1.**

Special Courts-Martial, **2.2.**

Summary Courts-Martial, **2.3.**

General Officers, **2.10.**

Joint Commands,**2.4.**

Retired Personnel, **2.9.**

Threats against President, **2.6.2.**

-L-

Leave, Excess, **9.12.**, **9.3.2.1.**

-M-

Metrics, **12.9.3.**

Military Judges

Chief Trial Judge, **5.1.1.**, **5.1.2.2.**

Detailing to Court-Martial, **5.1.2.**

Military Magistrate

Alternate, **3.1.5.**

Appointment, **3.1.1.**

Authority, **3.1.4.**

Duty Briefing, **3.1.2.**

Qualifications, **3.1.3.**

-N-

New Trial

Petition, **11.11.**

-O-

Oaths

One Time, **5.4.**

Search Authorizations, **12.10.**

Officer Courts

Reporting, **12.8.1.**

Officer Resignations (RILOs),

Action while pending, **9.8.5.**

Generally, **8.9.**

Requests to Proceed to Trial, **8.9.1.**

Orders, **10.1.**

OSI, Coordination with, **12.9.2.**

-P-

Personal Data Sheet, **Figure 3.4.**

Post Trial

Clemency, **11.18.**

Review

Article 64a, **11.3.**

Article 69, **11.5.**, **11.6.**

Court of Criminal Appeals, **11.7.**

Post Trial

Convening Authority

Action, **9.7.**

Post Trial Submissions

Clemency Matters, **9.6.3.**

Notice of Right, **9.5.1.**

SJA Recommendation, **9.6.**

Addendum, **9.6.3.**

Preferral

Accused

Access to Sensitive Information, **3.3.2.**

Prior Case pending Review, **4.10.**

with Adjudged Punitive Discharge, **3.3.4.**

Accuser Senior to Convening Authority, **3.3.1.**

Additional Charges, **3.4.7.2.**

Lengthy Absence Cases, **3.3.3.**

Presentencing

Personal Data, **8.5.**, **Figure 3.4.**

Previous Convictions, **8.5.**

Pretrial Advice, **4.2.5.**

Capital Cases, **2.3.1.**

Pretrial Agreements, **6.7.1.**

Authorization Required, National Security Cases, **6.12.1.**

Department. of Justice, Consultations with, **6.7.2.**

Notice to Judge, **6.10.1.**

Pretrial Restraint

After Release from Confinement, **3.2.8.**

Confinement,

Commanders Memorandum, **3.2.3.**, **3.2.4.**

Review, **3.2.5.** - **3.2.7.**

Reviewing Officer

Appointment, **3.2.2.**

Staff Judge Advocate

Duties, **3.2.1.**

Post trial Credit, **9.2.2.**

Privacy

Rights of Accused, (see Victim and Witness Assistance)

Promulgating Orders, **10.1.1.**

-R-

Records of Trial

Preparing, **8.13.**

Forwarding, **8.14.**

Referral of Charges, (see Charges)

Rehearings, **11.13.**

DuBay, **11.14.**

Records of, **11.15.**

Reporting, (see Officer & Special Interest Reports, **12.8.**)

Adjudged Sentences, **9.7.**

Retired Personnel, **2.9.**

Return to Duty Program, **9.4.**

RILOs (see Officer Resignations)

-S-

Search Authorization, (see Military Magistrate)

Search Authorizations

US Mail, **12.11.**

Sensitive Information Access

Preferral, (see Preferral)

Sentence, Reporting of, **9.7.**

Special Interest Cases, Reporting

Officer, **12.8.1.**

All Ranks, **12.8.2.**

Staff Judge Advocate

SJA's Recommendation **9.6.2.**, **Figure 9.4.**

Duties

Central Witness Funding Reporting, **6.2.4.**

Excusing Court Members, 5.7.4.1.

Military Magistrate Briefing, **3.1.2.**
Pretrial Confinement,**3.2.1.**
Officer & Special Interest Cases, **12.8.**
UCMJ Briefings, **12.2.2.**
Victim and Witness Assistance
Services to Victims **7.10.**
Services to Witnesses **7.11.**
Self Inspection, **7.17.**
Titles, **12.1.**
Staff Summary Sheets
Use with SJAR discouraged, **9.6.4.**
Standards of Conduct, **1.3.**
Suspended Sentences, **9.13.**
-T-
Time Standards, **12.9.**
Transfer of Prisoners, **9.14.**
Travel Funding, **Table 6.1.**
Trial
Officer Resignation Pending, **8.9.**
Military Judge Alone, **8.15.**
Trial Counsel
Detailing to Court-Martial, **5.2.**
Disqualification, **5.2.3.**
Qualifications, **5.2.2.**
Reservist, **5.2.2.3.**
-U-
UCMJ
Briefings, **12.2.1.**
Unlawful Command Influence, **1.2.**
-V-
Vacation of Suspended Sentence, **9.13.**
Victim and Witness Assistance

Definitions, **7.3.**

General, **7.1.**

Local Responsible Official, **7.7.**

Notifications, **7.12.**

Objectives, **7.2.**

Post Trial Information, **7.13.**

Privacy

Rights of Accused, **7.15.**

Reporting Requirements **7.18.**

Responsibilities, **Figure 7.1.**

Responsible Official, **7.6.**

Self Inspections, **7.17.**

Training, **7.16.**

Victim

Rights, **7.9.**

Services Provided, **7.10.**

Witnesses

Services Provided, **7.11.**

-W-

Waiver of Automatic Forfeitures, **9.7.3.**

Reflecting in Action, **9.8.4.**

Witness

Central Funding

Fund Citations, **6.2.3.**

Funded travel, **6.2.1.**

Requesting funds, **6.2.2.**

SJA Responsibility, **6.2.4.**

Civilian

Expert, **6.5.1.**

Consultants, **6.5.3.**

Inconvenience Fee, **6.5.2.2.**

Urinalysis, **6.5.2.1.**

Failure to Appear, **4.7.2.**

Government Employees, **6.4.4.**

FBI, **6.4.5.**

Invitational Travel Order, **6.4.1.**

Payments, **6.4.2.**

Subpoenas, **6.4.1.**

Expert, **6.5.**

Funding authorities, **Table 6.1.**

Immunity, **6.6.**

Military

AFOSI Agents, **6.3.2.1.**

Confidential Sources, **6.3.2.2.**

Foreign Area Clearance, **6.3.1.**

Threatened Airman, **6.3.2.2.**

## ATTACHMENT 3

## IC 97-1 TO AFI 51-201, ADMINISTRATION OF MILITARY JUSTICE, 1 SEP 96

SUMMARY OF REVISIONS

This interim change (IC) 97-1 provides guidance for travel funding for certain court-martial participants. These changes will apply to hearings and courts-martial held on or after 1 October 1997. This delay in effective date is so that any necessary budget adjustments can be made.

**Table 6.1.**, Rule 8, Column D: USAF Judiciary funds judiciary members; convening authority funds all others.

**Table 6.1.**, Rule 10, Column D: Convening authority.

**Table 6.1.**, Rule 29, Column D: USAF Judiciary funds judiciary members; convening authority funds all others.

## ATTACHMENT 4

## INTERIM CHANGE (IC) 97-2, DATED 3 OCT 97 TO AFI 51-201, ADMINISTRATION OF MILITARY JUSTICE, 25 APR 97

SUMMARY OF REVISIONS

This interim change (IC) 97-2 clarifies the existing language in AFI 51-201, paragraph **1.3.**, concerning the applicability of the Air Force ethical rules and standards. It adds a new paragraph **4.1.2.** to provide guidance on open Article 32 investigations. Paragraphs **4.1.2.**, **4.1.3.**, and **4.1.4.** under the 25 Apr 97 edition of AFI 51-201 are renumbered as paragraphs **4.1.3.**, **4.1.4.**, and **4.1.5.** The interim change rewrites, in its entirety, **Chapter 12**, Section D, which is now titled as Extrajudicial Statements to the Public Relating to Criminal Proceedings and Release of Court-Martial Records. Paragraph **12.7.** through **12.12.** in the 25 Apr 97 edition of AFI 51-201 are renumbered as paragraphs **12.8.** through **12.13.** A | indicates changes from previous edition.

1.3. Ethics and Standards of Conduct. The Air Force Rules of Professional Conduct and Air Force Standards for Criminal Justice apply to all military and civilian lawyers, paralegals and nonlawyer assistants in The Judge Advocate General's Department, USAF. This includes foreign national lawyers employed overseas by the Department of the Air Force, to the extent those rules ar e not inconsistent with their domestic law and professional standards. They also apply to all lawyers, paralegals and nonlawyer assistants who practice in Air Force courts or other proceedings under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM), or assist others practicing in such proceedings, including, but not limited to, civilian defense counsel (and their assistants) who have no other connection to the USAF. Trial counsel shall provide copies of the Air Force Rules of Professional Conduct and the Air Force Standards for Criminal Justice to civilian defense counsel of record.

4.1.2. Open Article 32 Investigations. Article 32 investigations should ordinarily be open to the public. Because the public has an interest in attending Article 32 investigations, all efforts to keep the investigation open to the public should be explored before closing the investigation. Access by spectators to all or part of the proceeding may be restricted or foreclosed in the discretion of the commander who directed the investigation or the investigating officer (IO) when the interests of justice outweigh the public's interest in access. See R.C.M. 405(h)(3). For example, it may be necessary to close an investigation to encourage complete testimony of a timid or embarrassed witness, to protect the privacy of an individual or to ensure an accused's due process rights are protected. Make every effort to close only those portions of the investigation that are clearly justified and keep the remaining portions of the investigation open. If the hearing is closed, the commander or IO ordering it closed should provide specific, articulable reasons, in writing, for closure. These reasons should be attached to the IO's report of investigation. The commander directing the investigation may maintain sole authority over a decision to open or close an Article 32 investigation by giving the investigating officer procedural instructions at the time of appointment or at any time thereafter. See R.C.M. 405(c). Prior to issuing procedural instructions to open an Article 32 investigation that has been closed, the commander must consider the investigating officer's written specific, articulable reasons for closing the investigation.

Section D - Extrajudicial Statements to the Public Relating to Criminal Proceedings and Release of Court-Martial Records.

**12.5. General.** The permissible release of information which does not have a substantial likelihood of prejudicing a criminal proceeding depends on the type of information to be released and its source, the type of proceeding, and the stage of the proceeding when the information is released.

12.5.1. Information relating to criminal proceedings that has a substantial likelihood of prejudicing a criminal proceeding may not be released.

12.5.2 The release of information relating to a criminal proceeding is subject to the Air Force Rules of Professional Conduct, the Air Force Standards for Criminal Justice, applicable laws, such as the Privacy Act, the Freedom of Information Act, the Victim-Witness Protection Act, implementing directives, security requirements, and judicial orders protecting information. Release of Privacy Act protected information to third parties is governed by the Freedom of Information Act.

12.5.3. Air Force representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody.

12.5.4. This section does not apply to release of information by military or civilian defense counsel. Defense counsel, both military and civilian, must, however, comply with the Air Force Rules of Professional Conduct and the Air Force Standards for Criminal Justice, portions of which address trial publicity by defense counsel. Military defense counsel must comply with the requirements and restrictions of the Freedom of Information Act and the Privacy Act with regard to trial publicity.

**12.6. Extrajudicial Statements.** This subsection applies to oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication.

12.6.1. There are valid reasons for making certain information available to the public in the form of extrajudicial statements. However, extrajudicial statements should not be used for the purpose of influencing the course of a criminal proceeding. Usually, extrajudicial statements should include only factual matters and should not offer subjective observations or opinions.

12.6.1.1. The release of extrajudicial statements is a command responsibility. The installation staff judge advocate (SJA) and the installation public affairs officer (PAO) must work closely together to provide informed advice to the commander. If the extrajudicial statement is based on information contained in agency records, the OPR for the record should also coordinate on the extrajudicial statement prior to release. The convening authority responsible for the criminal proceeding makes the ultimate decision about release of extrajudicial statements relating to that criminal proceeding. MAJCOM (or equivalent) commanders may withhold release authority from subordinate commanders. In high interest cases, the SJA and the PAO should consult with their MAJCOM representatives.

12.6.1.2. The SJA, trial counsel and defense counsel must ensure investigators, law enforcement personnel, employees and other persons assisting or associated with counsel do not make extrajudicial statements counsel are prohibited from making.

**12.6.2. Extrajudicial Statements Which Generally May Not Be Made.**

Extrajudicial statements relating to the following matters ordinarily have a substantial likelihood of prejudicing a criminal proceeding and generally should not be made:

12.6.2.1. The existence or contents of any confession, admission or statement by the accused or the accused's refusal or failure to make a statement;

12.6.2.2. Observations about the accused's character and reputation;

12.6.2.3. Opinions regarding the accused's guilt or innocence;

12.6.2.4. Opinions regarding the merits of the case or the merits of the evidence;

12.6.2.5. References to the performance of any examinations, tests or investigative procedures (e.g., fingerprints, polygraph examinations and ballistics or laboratory tests) or the accused's failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

12.6.2.6. Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

12.6.2.7. The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

12.6.2.8. Before sentencing, facts regarding the accused's disciplinary or criminal record, including nonjudicial punishment, prior court-martial convictions, and other arrests, indictments, convictions, or charges. Do not release information about nonjudicial punishment or administrative actions even after sentencing unless admitted into evidence. (This rule does not prohibit, however, a statement that the accused has no prior criminal or disciplinary record.); and

12.6.2.9. Information trial counsel knows or has reason to know would be inadmissible as evidence in a trial.

**12.6.3. Extrajudicial Statements That May Be Made Under Some Circumstances Regardless of the Stage of the Proceedings.** Subject to the limitations in paragraphs **12.5.1.** (Information with a substantial likelihood of prejudicing a criminal proceeding) and **12.5.2.**, (Rules of Professional Conduct, Standards for Criminal Justice, FOIA, PA, and Victim-Witness Assistance), the following extrajudicial statements may be made when deemed necessary regardless of the stage of the proceeding:

12.6.3.1. General information to educate or inform the public concerning military law and the military justice system;

12.6.3.2. If the accused is a fugitive, information necessary to aid in apprehending the accused or to warn the public of possible dangers;

12.6.3.3. Requests for assistance in obtaining evidence and information necessary to obtaining evidence;

12.6.3.4. Facts and circumstances of an accused's apprehension, including the time and place of apprehension;

12.6.3.5. The identities of investigating and apprehending agencies and the length of the investigation, only if release this information will not impede an ongoing or future investigation and the release is coordinated with the affected agencies;

12.6.3.6. Information contained in a public record, without further comment; and

12.6.3.7. Information that protects the Air Force or the military justice system from the substantial, undue prejudicial effect of recent publicity initiated by some person or entity other than the Air Force. Information in the form of extrajudicial statements shall be limited to that which is necessary to correct misinformation or to mitigate substantial undue prejudicial information already available to the public. This can include, but is not limited to, information that would have been available to a spectator at an open Article 32 investigation or an open session of a court-martial. Unless The Judge Advocate General (TJAG) has withheld the authority to coordinate on command release of this information for individual cases or types of cases, the MAJCOM SJAs (and equivalents) shall coordinate on release of this information by the

appropriate command authority. If TJAG has withheld the authority to coordinate on release of extrajudicial statements, requests for TJAG coordination shall be forwarded through the MAJCOM SJA to AFLSA/JAJM by the most expeditious means appropriate for the sensitivity of the information.

**12.6.4. Extrajudicial Statements That Generally May Be Made Only After Preferral of Charges.** Subject to the limitations in paragraphs **12.5.1.** and **12.5.2.**, the following may be made after preferral of charges:

12.6.4.1. The accused's name, unit and assignment;

12.6.4.2. The substance or text of charges and specifications, provided there is included a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty. As necessary, redact all Victim and Witness Protection Act and Privacy Act protected data from the charges and specifications.

12.6.4.3. The scheduling or result of any stage in the judicial process;

12.6.4.4. Date and place of trial and other proceedings, or anticipated dates if known;

12.6.4.5. Identity and qualifications of appointed counsel;

12.6.4.6. Identities of convening and reviewing authorities;

12.6.4.7. A statement, without comment, that the accused has no prior criminal or disciplinary record or the accused denies the charges; and

12.6.4.8. The identity of the victim where the release of that information is not otherwise prohibited by law. (Generally, however, seek to avoid release of the name of victims of sex offenses, the names of children or the identity of any victim when release would be contrary to the desire of the victim or harmful to the victim).

12.6.4.9. The identities of court members and the military judge. Do not volunteer the identities of the court members or the military judge in material prepared for publication. This information may be released, if requested, after the court members or the military judge have been identified in the court-martial proceeding and the SJA to the convening authority determines release would not prejudice the accused's rights or violate the members' or the military judge's privacy interests.

**12.7. Documentation Pertaining to Criminal Proceedings.** This subsection applies to those documents and agency records created during the course of the military justice process and any document or record incorporated into a military justice document or record. Unless AFLSA/JAJM or higher authority withholds authority, the disclosure authority is the SJA for the convening authority responsible for the criminal proceeding. AFLSA/JAJM is the disclosure authority for all documents and records received at AFLSA/JAJM. File a copy of letters releasing documents or records with the allied papers and immediately notify AFLSA/JAJM of any release. This subsection does not apply to documents or records that originate outside the military justice system of records. The disclosure authority for those documents and records is the OPR for those records under the provisions of the Air Force Privacy Act Program, AFI 37-132, and/or the Air Force Freedom of Information Act Program, AFI 37-131.

**12.7.1. Release of Court-Martial Record of Trial.** A court-martial "record of trial" is defined by RCM 1103(b)(2). The court-martial record of trial is subject to release determination under the Privacy Act and Freedom of Information Act. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. A "transcript of oral proceedings" is not a record until authentication. When releasing records of trial under this paragraph, redact

all Victim-Witness Protection Act and Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity.

**12.7.2. Release of Other Military Justice Documents or Records.** All other documents or records, including documents which will, but have not yet become part of a "record of trial," and including those which are attached to the court-martial record of trial but not made a part of the record of trial under the provisions of RCM 1103 (for example, an Article 32 report and its attachments) are also subject to release determination under the Privacy and Freedom of Information Acts. However, due regard will be given to the potentially heightened privacy interests of all accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Victim-Witness Protection Act and Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity.

**12.7.3. Cases Disposed of by Acquittal or Action Other Than Court-Martial**. When the charges against an accused were disposed of by an action other than court-martial, or when a court-martial results in an acquittal, due consideration must be given to the likelihood that the accused may have increased privacy interests in the protection of information contained in military justice documents or records. That is, less serious misconduct, which is handled administratively rather than judicially generally is not considered of sufficient public interest to outweigh the privacy interest of the individual.

## ATTACHMENT 5

## IC 99-1 TO AFI 51-201, ADMINISTRATION OF MILITARY JUSTICE

**2 NOVEMBER 1999**

### SUMMARY OF REVISIONS

This change clarifies the procedures for a commander's decision and memorandum under RCM 305(h)(2) in pretrial confinement cases (paragraphs **3.2.3.**, **3.2.3.1.**, and **3.2.3.2.**); clarifies when a review by the pretrial confinement review officer under RCM 305(i)(2) may be conducted (paragraph **3.2.5.**); provides new guidance authorizing the detailing of military defense counsel to represent an accused in habeas corpus petitions in Federal court where the accused is sentenced to death by a court-martial (paragraph **11.1.4.**); and provides new guidance to ensure compliance with the sex offender registration requirements under Federal law (paragraphs **12.14.** and **12.15.**). A bar (|) indicates revision from the previous addition.

**3.2.3. Commander's Decision and Memorandum.** Within the 72-hour standard set forth in RCM 305(h)(2)(A), the confinee's commander shall decide whether pretrial confinement will continue. The commander must address the requirements for confinement in RCM 305(h)(2)(B) and should consider the factors in the discussion to that section. If pretrial confinement is continued, the commander must prepare a written memorandum documenting that decision in accordance with RCM 305(h)(2)(C). The memorandum is sent through the SJA to the SPCMCA. **Figure 3.1.** is a sample memorandum, which must be included in the ROT.

3.2.3.1. While the confinee's commander has 72 hours to make a decision under RCM 305(h)(2)(A), an earlier probable cause determination is required by RCM 305(i)(1). It provides that within 48 hours of imposition of confinement under military control, a neutral and detached officer must make a probable cause determination to decide whether pretrial confinement should be continued. See also *U.S. v. Rexroat*, 38 M.J. 292 (CMA 1993). If the confinee's commander is neutral and detached and acts within 48 hours of imposition of confinement, the commander's decision under RCM 305(h)(2) will satisfy the 48-hour probable cause determination under RCM 305(i)(1).

3.2.3.2. If the confinee's commander is not neutral or detached, another neutral and detached officer must make the 48-hour probable cause determination under RCM 305(i)(1). This 48-hour probable cause determination does not eliminate the requirement that the confinee's commander make a decision on continued pretrial confinement within 72 hours as provided in RCM 305(h)(2), unless the neutral and detached officer finds no probable cause to continue pretrial confinement and directs release.

**3.2.5. PCRO's Review of Pretrial Confinement.** The PCRO's review under RCM 305(i) must be conducted within 7 days of the imposition of confinement. This review can be conducted earlier, and, if conducted within 48 hours of imposition of pretrial confinement, it will satisfy the 48-hour probable cause determination required under RCM 305(i)(1). However, the PCRO, before conducting the RCM 305(ii)(2) review, must first receive the RCM 305(h)(2)(C) memorandum of the confinee's commander

since this is an item that must be considered by the PCRO when conducting the review. The pretrial confinement review is not an adversarial proceeding. The confinee and defense counsel have no right to cross-examine witnesses. The PCRO may approve continued confinement or order immediate release.

**11.1.4. Habeas Corpus Petitions.** Military prisoners sentenced to death by a court-martial, who seek to file in Federal civilian court(s) post-conviction habeas corpus petition(s) respecting such court-martial following the approval of their court-martial sentence to death by the President pursuant to Article 71, UCMJ, shall, upon request of the prisoner to The Judge Advocate General, be detailed military counsel by The Judge Advocate General under Article 70(e), UCMJ, to represent them in such proceedings and any appeals therefrom.

**Section 12I - Compliance with Sex Offender Registration under Federal Law.**

**12.14. General Provision.** If the member has been convicted of a sexually violent offense or certain offenses against a minor, the member is subject to sex offender registration under Federal law. See 42 U.S.C. §14071. The Security Forces (SF) corrections officer at the facility in which the prisoner is detained ensures compliance when the member is released from confinement. This includes the corrections officer notifying appropriate state and local law enforcement officials and state sex offender registration officials using the DD Form 2791**, Notice of Release of Military Offender Convicted of Sex Offense**. It also includes the corrections officer notifying the member about his or her registration responsibilities and obtaining the member's acknowledgment of these responsibilities.

**12.15. Base-level SJA Responsibilities.** If a member is convicted of an offense that triggers the sex offender registration requirements but confinement is not part of the adjudged punishment (or sufficient pretrial or illegal pretrial confinement credit offsets the term of confinement imposed at trial), the SJA, when action is taken on the case, notifies the appropriate corrections officer, or the SF commander if there is no corrections officer. The corrections officer or the SF commander will then ensure that the notifications required in paragraph **12.14.** are made.