



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON DC

AFI51-201\_AFGM3  
25 October 2012

MEMORANDUM FOR DISTRIBUTION C  
MAJCOMs/FOAs/DRUs

FROM: HQ USAF/JA  
1420 Air Force Pentagon  
Washington, DC 20330-1420

SUBJECT: Air Force Guidance Memorandum to AFI 51-201, *Administration of Military Justice*

By Order of the Secretary of the Air Force, this AF Guidance Memorandum immediately changes AFI 51-201, *Administration of Military Justice*. Compliance with this Memorandum is mandatory. To the extent its directions are inconsistent with other Air Force publications, the information herein prevails, in accordance with AFI 33-360, *Publications and Forms Management*.

In advance of a rewrite of AFI 51-201, *Administration of Military Justice*, the Attachment to this Memorandum provides guidance changes that are effective immediately. Current provisions in 51-201 unaffected by this guidance memorandum remain in effect.

The guidance in this Memorandum becomes void after 180 days have elapsed from the date of this Memorandum, or upon incorporation by interim change to, or a rewrite of AFI 51-201, whichever is earlier.

RICHARD C. HARDING  
Lieutenant General, USAF  
The Judge Advocate General

Attachment:  
Guidance Changes

**ATTACHMENT**  
*Guidance Changes*

**The below changes to AFI 51-201, *Administration of Military Justice*, dated 21 December 2007, through Interim Change 1, dated 3 February 2010, are effective immediately.**

**Change to para 8.17.** Officer Resignations for the Good of the Service (RILOs). Officers may submit a RILO with the understanding that SAF may direct a discharge under other than honorable conditions (UOTHC) when their conduct makes them subject to trial by court-martial. (See Figure 8.2) Commanders should not recommend that SECAF accept a RILO for expediency when the member's conduct would be more appropriately addressed at trial. Before making any recommendations, commanders at all levels must consider the best interests of the Air Force and the effect a resignation accepted by SecAF will have on good order and discipline. The expense of a court-martial should rarely be the deciding factor in making a recommendation on a tendered resignation under this paragraph. To permit the full development of the facts of the case and appropriate consideration of dispositions other than trial, officers are encouraged not to tender a resignation for the good of the service before charges are referred to trial by court-martial. SPCMCA, GCMCA and MAJCOM commanders are authorized to deny RILOs submitted prior to the referral of charges. If denied, the officer may again submit a RILO after referral of charges. Once referral of charges occurs, RILOs may only be acted upon at the Secretarial level. A RILO may not be submitted post-arraignment.

**Change to para 8.17.1.** Procedure. Forward all pre-referral RILOs, in which approval is recommended, and all post-referral RILOs expeditiously to AFLOA/JAJM through command channels. *NOTE:* Legal offices at each level of command shall use the Comprehensive RILO Checklist located on the AFLOA/JAJM website.

**Change to para 8.17.1.1.4.** Recommendations on disposition of the RILO from each commander required to review the RILO;

**Addition of para 8.17.1.1.4.1.** The wing commander or equivalent authority indorses the resignation to the GCMCA (or to the SPCMCA if the wing commander or equivalent authority does not exercise special court-martial convening authority). (See Figure 8.3)

**Addition of para 8.17.1.1.4.2.** The GCMCA indorses the resignation to the officer's MAJCOM of assignment.

**Addition of para 8.17.1.1.4.3.** The MAJCOM/CC (or MAJCOM/CV if delegated) of assignment indorses the resignation and forwards it to AFLOA/JAJM, with an information copy of the officer's RILO submission to HQ APFC/DPSOS.

**Addition of para 8.17.1.1.4.4.** The wing commander or any superior commander may return to an officer a resignation that is conditioned on the character of discharge SECAF may direct or that is conditioned on a specific date of separation.

**Addition of para 8.17.1.1.4.5.** Documents submitted by the defense after the original submission of the resignation package will be considered at the discretion of the recommendation and decision authorities.

**Change to para 8.17.1.2.** Counsel. Before officers resign for the good of the service, they are given an opportunity to meet with counsel or they are provided with military counsel unless they expressly decline one.

**Addition of para 8.17.1.2.1.** If officers refuse counseling by military counsel, they state this in their resignation memorandums.

**Addition of para 8.17.1.2.2.** The Air Force will not reimburse officers for civilian counsel.

**Addition of para 8.17.1.2.3.** Military counsel or MPS/FSS commanders advise officers that if SECAF accepts their resignation they may be required to reimburse a portion of advanced education assistance, special pay, or bonuses received if they leave active duty before completing the period of active duty they agreed to serve. See AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, for complete recoupment guidance.

**Addition of para 8.17.1.2.3.1.** Officers who are subject to recoupment of education assistance, special pay, or bonuses must sign a Recoupment Statement and attach it to their resignation memorandum. (See Figure 8.4).

**Addition of para 8.17.1.5.** AFLOA/JAJM forwards the resignation to SecAF.

**Addition of para 8.17.1.6.** HQ AFPC/DPSOS schedules the officer's date of separation as soon as possible upon receiving notification from AFLOA/JAJM that the RILO has been approved.

**Addition of para 8.17.4.** Subsequent Resignations. The wing commander or any superior commander may return to an officer a subsequent resignation that is based on the same grounds or supported by the same evidence as a previous resignation. **EXCEPTIONS:** First, an officer whose resignation has been declined prior to referral of charges, may resubmit that resignation after charges are referred to trial. Process a resubmitted resignation as expeditiously as possible to the level that denied the original resignation. Do not attach additional indorsements or recommendations unless required by changed circumstances. Continue processing an officer's resignation as prescribed in paragraph 8.17.1. Second, process other subsequent resignations if the Show Cause Authority (as defined in AFI 36-3206) determines that unusual circumstances warrant.

**Addition of para 8.17.5.** Withdrawing Resignations. Base legal offices forward relevant materials to the officer's MAJCOM of assignment through the GCMCA. Base legal offices also ask the command or headquarters to hold a pending resignation when the officer files a withdrawal request.

**Addition of para 8.17.5.1.** Base legal offices will include the following:

**Addition of para 8.17.5.1.1.** Request to withdraw resignation.

**Addition of para 8.17.5.1.2.** Wing commander's (or equivalent authority) indorsement.

**Addition of para 8.17.5.1.3.** Copy of resignation with indorsements and attachments.

**Addition of para 8.17.5.2.** The GCMCA indorses the withdrawal request and forwards it to the officer's MAJCOM of assignment.

**Addition of para 8.17.5.3.** The MAJCOM/CC (or MAJCOM/CV if delegated) indorses the withdrawal request and forwards it to AFLOA/JAJM for action with an information copy to HQ AFPC/DPSOS.

**Addition of para 8.17.6.** RILO Processing Time Management. Expeditious processing of RILOs is essential to preventing unnecessary trial delay, uncertain trial preparation, wasted resources, distraction to the mission, disrupted schedules of victims and witnesses, and prolonged uncertainty and anxiety for the accused. The following Air Force measures are established for RILO processing.

**Addition of para 8.17.6.1.** Process RILOs within 60 days on average from the date the accused first submits a RILO to the date the accused is notified of a final decision on the RILO. This timeline is further delineated as follows:

**Addition of para 8.17.6.1.1.** Base level (or equivalent) legal offices should process and forward the original RILO package (including documents required pursuant to paragraph 8.17.1.1) to JAJM, and electronically post such documentation for review by intermediate levels of command, no later than 10 days after the accused first submits the RILO;

**Addition of para 8.17.6.1.2.** NAF (or equivalent) legal offices should process and electronically post the GCMCA indorsement and any required legal review no later than 7 days after the base level legal office submits the RILO package;

**Addition of para 8.17.6.1.3.** MAJCOM legal offices should process and forward the MAJCOM indorsement and any required legal review to JAJM, and electronically post such documentation, no later than 7 days after the NAF legal office submits the GCMCA indorsement;

**Addition of para 8.17.6.1.4.** AFLOA/JAJM and AFLOA/JAJ should process and forward the original RILO package, along with all required documentation, to AF/JA no later than 7 days after receipt of the completed package with all required indorsements and legal reviews;

**Addition of para 8.17.6.1.5.** AF/JA should process and forward the original RILO package, along with all required documentation no later than 5 days after receipt of the package from AFLOA/JAJ;

**Addition of para 8.17.6.2.** Failure to meet this measure at any stage of RILO processing shall not confer any rights or benefits on the accused.

**Delete Section 12I, Time Management of Case Processing.**

**Change to Section 12J, Reports and Meetings.**

**Addition of para 12.18.** Status of Discipline Meetings. Status of Discipline (SOD) meetings, run by the wing commander or equivalent authority, shall be conducted on at least a quarterly basis.

**Addition of para 12.18.1.** The SJA will facilitate SOD meetings. SJAs shall ensure the following personnel are included at SOD meetings: group commanders, squadron commanders, and first sergeants. Other legal office staff will attend SOD meetings at the direction of the SJA.

**Addition of para 12.18.2.** On all closed cases, the following items must be discussed at SOD meetings:

**Addition of para 12.18.2.1.** Court-martial processing times from discovery of offense to Convening Authority action for all squadrons.

**Addition of para 12.18.2.2.** NJP processing times from discovery of offense to SJA legal review for all squadrons.

**Addition of para 12.18.2.3.** The average NJP processing time from discovery of offense to SJA legal review for each squadron (including tenant squadrons) for the current calendar year.

**Addition of para 12.18.3.** On all closed cases, the following items may be discussed at SOD meetings (this is not an exhaustive list):

**Addition of para 12.18.3.1.** Type of offense(s) and demographic data on individuals who were court-martialed. Do not disclose individuals' names.

**Addition of para 12.18.3.2.** Type of offense(s) and demographic data on individuals who received NJP. Do not disclose individuals' names.

**Addition of para 12.18.3.3.** Number of driving under the influence incidents and whether the incidents occurred on-base or off-base. Do not disclose individuals' names.

**Addition of para 12.18.3.4.** Special interest items as identified by the wing commander or equivalent authority or the SJA.

**Change to para 13.5. General.** Information may not be disseminated if it could reasonably be expected to interfere with law enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudication in a criminal proceeding. The determination of whether a release is permissible includes an assessment of the type and details of information to be released and its source, the type of proceeding, and the stage of the proceeding. 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, implementing directives,

security requirements, judicial orders protecting information, and applicable laws such as the Privacy Act, the Freedom of Information Act (FOIA), and the Victim and Witness Protection Act. See paragraph 13.6.1.1 with respect to the FOIA's balancing test concerning the privacy rights of an accused.

**Change to para 13.5.1.** Air Force representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody.

**Change to para 13.5.2.** This section does not apply to the release of information by military or civilian defense counsel. However, defense counsel, both military and civilian, must 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 also comply with the requirements and restrictions of the FOIA and the Privacy Act with respect to the release of Air Force records.

**Delete para 13.5.3.**

**Change to para 13.6. Extrajudicial Statements.** Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication. There are valid reasons for making certain information available to the public in the form of extrajudicial statements, when such release otherwise complies with applicable rules and regulations as described in paragraph 13.5. 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. The question of whether a statement is extrajudicial will depend upon the circumstances.

**Change to para 13.6.1.** Under the Privacy Act, information from a system of records, such as a court-martial file maintained in a JA office about an individual, may not be released to the public without the individual's consent unless release is required by the Freedom of Information Act (FOIA). FOIA requires release except when specified circumstances exist, one of which is when release would constitute an unwarranted invasion of an individual's personal privacy. (See 5 USC 552a(b) and 5 USC 552(b)(6) & 552(b)(7)(C)).

**Change to para 13.6.1.1.** An unwarranted invasion of personal privacy exists when an individual's privacy interests outweigh the public's interest in disclosure of the information. *See Chang v. Dep't of the Navy*, 314 F. Supp. 2d 35 (D.D.C. 2004); *Schmidt v. Dep't of the Air Force*, 2007 WL 2812148 (C.D. Ill 2007). The public's interest portion of the balancing test is defined as the degree to which disclosure sheds light on the performance of an agency's statutory function. *Dep't of Justice v. Reporters Comm.*, 489 U.S. 749, 773 (1989). This can include information about how the government holds its employees accountable. *See Schmidt* at 11.

**Change to para 13.6.1.2.** Whether disclosure of data regarding the accused and his alleged offenses constitutes an unwarranted invasion of privacy depends upon the assessment of whether the accused has a reasonable expectation of privacy as measured by various factors, including, but not limited to, the accused's rank, duties, alleged offense(s), existing publicity about the allegation(s), and stage of the proceedings. Considering the fact that anyone subject to the

UCMJ can act as an accuser under the UCMJ, the accused normally retains a reasonable expectation of privacy upon preferral of charges. When the convening authority directs the charges toward a public forum, such as an Article 32 hearing or referral to trial, the accused's reasonable expectation of privacy begins to decline.

**Change to para 13.6.2.** Extrajudicial Statements That Generally May Be Made After Disposition Decision by the Convening Authority (CA) Directing an Article 32 Investigation or Directing Referral. Following the FOIA balancing test above, the following information may normally be provided after a CA has disposed of preferred charges by directing an Article 32 investigation or has referred the charges to a court-martial (exceptional cases may warrant earlier release but only after applying a public interest balancing test; assessing the reasonable expectation of privacy factors; and exercising due caution):

**Change to para 13.6.2.1.** The accused's name, unit and assignment;

**Change to para 13.6.2.2.** The substance or text of charges and specifications, provided there is a statement included explaining that the charges are merely accusations 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 (such as the names of all victims, signature of the accuser, and SSN of the accused).

**Change to para 13.6.2.3.** The scheduling or result of any stage in the judicial process;

**Change to para 13.6.2.4.** Date and place of trial and other proceedings, or anticipated dates, if known;

**Change to para 13.6.2.5.** Identity and qualifications of appointed counsel;

**Change to para 13.6.2.6.** Identities of convening and reviewing authorities;

**Change to para 13.6.2.7.** A statement, without comment, that the accused has no prior criminal or disciplinary record or that the accused denies the charges; and

**Change to para 13.6.2.8.** The identity of the victim where the release of that information is not otherwise prohibited by law. Generally, however, do not release the names 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.

**Delete para 13.6.2.9.**

**Change to para 13.6.3.** Disclosing 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 normally 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 member's or the military judge's privacy interests.

**Delete para 13.6.3.1.**

**Delete para 13.6.3.2.**

**Delete para 13.6.3.3.**

**Delete para 13.6.3.4.**

**Delete para 13.6.3.5.**

**Delete para 13.6.3.6.**

**Delete para 13.6.3.7.**

**Change to para 13.6.4.** Requests for Information from Law Enforcement Agencies: Disclose data about the accused, the charges, and the evidence in accordance with Blanket Routine Uses and System of Records Notice (SORN) Routine Uses concerning military justice records. See <http://dpclo.defense.gov/privacy/SORNs/component/airforce/index.html>; F051 AFJA I, *Military Justice and Magistrate Court Records*.

**Delete para 13.6.4.1.**

**Delete para 13.6.4.2.**

**Delete para 13.6.4.3.**

**Delete para 13.6.4.4.**

**Delete para 13.6.4.5.**

**Delete para 13.6.4.6.**

**Delete para 13.6.4.7.**

**Delete para 13.6.4.8.**

**Delete para 13.6.4.9.**

**Addition of para 13.6.5.** A written or oral request for information from the media or public is not required prior to release, nor does a media request indicate that information is automatically releasable.

**Addition of para 13.6.6.** Extrajudicial Statements That May Be Made Under Some Circumstances Regardless of the Stage of the Proceedings. The following extrajudicial statements may be made when deemed necessary regardless of the stage of the proceeding:

**Addition of para 13.6.6.1.** General information to educate or inform the public concerning military law and the military justice system;

**Addition of para 13.6.6.2.** If the accused is a fugitive, information necessary to aid in apprehending the accused or to warn the public of possible dangers;

**Addition of para 13.6.6.3.** Requests for assistance in obtaining evidence and information necessary to obtain evidence;

**Addition of para 13.6.6.4.** When requested or otherwise in the best interest of the Air Force, after applying FOIA exemption principles, as appropriate: facts and circumstances of an accused's apprehension, including the time and place of apprehension;

**Addition of para 13.6.6.5.** The identities of investigating and apprehending agencies, and the length of the investigation, only if release of this information will not impede an ongoing or future investigation, and the release is coordinated with the affected agencies;

**Addition of para 13.6.6.6.** Information contained in a public record, without further comment; and

**Addition of para 13.6.6.7.** Information that protects the military justice system from matters that have a substantial likelihood of materially prejudicing the proceedings. Information in the form of extrajudicial statements shall be subject to paragraph 13.6.1 and limited to that which is necessary to correct misinformation or to mitigate the substantial undue prejudicial effect of information or publicity 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 SJA (or equivalent) 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 AFLOA/JAJM by the most expeditious means appropriate to the sensitivity of the information.

**Addition of para 13.6.7.** 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:

**Addition of para 13.6.7.1.** The existence or contents of any confession, admission or statement by the accused or the accused's refusal or failure to make a statement;

**Addition of para 13.6.7.2.** Observations about the accused's character and reputation;

**Addition of para 13.6.7.3.** Opinions regarding the accused's guilt or innocence;

**Addition of para 13.6.7.4.** Opinions regarding the merits of the case or the merits of the evidence;

**Addition of para 13.6.7.5.** References to the performance of any examinations, tests or investigative procedures (e.g., fingerprints, polygraph examinations, and ballistics or laboratory tests), the accused's failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

**Addition of para 13.6.7.6.** Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

**Addition of para 13.6.7.7.** The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

**Addition of para 13.6.7.8.** 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. Generally, 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

**Addition of para 13.6.7.9.** Information that trial counsel knows or has reason to know would be inadmissible as evidence in a trial.

**Addition of para 13.6.8.** Responsibility for Extrajudicial Statements. The release of extrajudicial statements is a command responsibility. 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.

**Addition of para 13.6.8.1.** The installation SJA and the installation public affairs officer (PAO) must work closely together to provide informed advice to the commander. SJAs should consult with their MAJCOM SJAs when there is a question about the nature of a statement proposed for release. 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. In high interest cases, the SJA and the PAO should consult with their MAJCOM representatives, and JAJM and JAA as necessary.

**Addition of para 13.6.8.2.** 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.

**Change to para 13.7.** Release of Information from Records of Trial or Related Records: Once a completed record is forwarded, AFLOA/JAJM is the disclosure authority for all records and associated documents. This subsection does not apply to documents or records that originate outside the military justice system of records (e.g., OSI reports). The disclosure authority for such documents and records is the OPR for those records under the provisions of AFI 33-332,

*Privacy Act Program, and/or DOD 5400.7-R\_AFMAN 33-302, Freedom of Information Act Program.*

**Change to para 13.8.3.** Cases with Command or Media Interest.

**Addition of para 13.8.3.1.** Report any case where the local chain-of-command for the accused or subject would likely provide information about the case to the NAF commander, MAJCOM commander and/or Headquarters Air Force (HAF). SJAs should also work with their respective command post to ensure they are made aware of criminal activity and other legal-related events and incidents reported to higher headquarters via OPREP 3 as provided for in AFI 10-206, *Operational Reporting*.

**Addition of para 13.8.3.2.** Report any other case with potential community reaction, or potential or actual media coverage.

**Change to para 13.11.3.1.** Prefer charges in 80% of all general and special courts-martial within 30 days of the date the AFOSI, SFOI, or CDI Report of Investigation is published. (*NOTE: Charges may always be preferred prior to the publication of the Report of Investigation*)

**Change to para 13.11.3.5.** Complete 80% of all summary courts-martial (Date of Discovery - CA Action Date) within 60 days.

**Change to para 13.11.3.8.** Staff Judge Advocates are expected to ensure expeditious processing of all cases by closely monitoring the investigative activities of all agencies from the date of discovery of the offense through preferral. In cases in which an ROI is published, the following measures have been established to assist in expediting the administration of justice. In general courts-martial, the ROI should be completed within 75 days of the date of discovery of the offense. In special courts-martial, the ROI should be completed within 30 days of the date of discovery of the offense.

**Addition of para 13.11.3.9.** The date of discovery of the offense is defined as the date when an investigative agency (e.g., OSI, SFOI, IG), legal office, commander, supervisor, or first sergeant becomes aware of an allegation and a subject has been identified, including when notification is made by civilian authorities. In a case involving a Commander Directed Investigation (CDI), the date of discovery of the offense is when a commander is notified of an allegation that an offense has been committed and a subject has been identified. If an allegation is investigated by CDI and is subsequently turned over to an investigative agency for further investigation, use the date the commander first became aware of the allegation and initiated the CDI. In all cases, where additional allegations against an identified subject are discovered, use the earliest date of discovery of all offenses.

## **Addition of Figure 8.2 Sample Memorandum, Resigning for the Good of the Service**

Use this memorandum for officers resigning instead of undergoing trial by court-martial or who are subject to trial by court-martial. Follow the instructions in parentheses ( ). Use material enclosed in brackets [ ] as appropriate.

(Date)

MEMORANDUM FOR (Functional address symbol of wing commander or equivalent authority)

FROM: (Officer's grade, full name, SSN)

SUBJECT: Resignation for the Good of the Service under AFI 51-201

I am resigning for the good of the service under AFI 51-201 effective as soon as possible.

I am resigning voluntarily for the good of the service because [my conduct renders me subject to trial by court-martial.] [I am serving under a suspended sentence to dismissal (if the sentence includes any other punishment, set out all of its elements).] I am resigning in my own best interest. Nobody threatened me, coerced me, or made promises to induce me to resign.

I understand that if the Secretary of the Air Force accepts my resignation, I will receive a discharge under other than honorable conditions unless the Secretary of the Air Force determines that I should receive a discharge under honorable conditions (general) or an honorable discharge. I understand I may lose all rights and benefits under laws administered by the Department of Veterans' Affairs, regardless of the character of discharge I receive. I understand that if I receive a discharge under other than honorable conditions, I will not receive settlement for accrued leave.

(Use if the officer resigns awaiting trial by court-martial:) [I understand that my case may go to trial while Secretarial action is pending and that I may not withdraw my resignation without approval of the Secretary of the Air Force or his or her designee.]

[I am not accountable or responsible for public property or funds.] [I am accountable or responsible for public property or funds. I have attached the required certificate of relief.] (**NOTE:** If accountable or responsible for public property or funds, attach a certificate indicating that they've been relieved from accountability or responsibility. Specify whether they've returned all issued government property to the proper agency.)

[I [have] [have not] consulted with counsel regarding this action.] [I decline counsel but (grade, full name, and full duty title of the Chief, Force Support Squadron) counseled me and I fully understand my rights and options regarding this action.] [I fully understand my rights and options regarding this action, as explained to me by (enter area defense counsel's grade and full name, if military, or full name and business address, if civilian, or both).]

(signature)  
(typed full name, grade, USAF)  
(organization)

[Attachments:]

[1. Certificate of Relief from Accountability or Responsibility]

[2. Recoupment Statement]

### **Addition of Figure 8.3 Sample Memorandum, Indorsing a Resignation for the Good of the Service**

Use this memorandum for wing commanders or equivalent authorities to indorse resignations for the good of the service. Follow the instructions in parentheses ( ). Use material enclosed in brackets [ ] as appropriate.

(Date)

MEMORANDUM FOR: (Functional address symbol of the GCMCA)  
(Functional address symbol of MAJCOM of assignment)  
AFLOA/JAJM  
IN TURN

FROM: (Commander's functional address symbol)

SUBJECT: Resignation for the Good of the Service under AFI 51-201 (Officer's grade, full name, and SSN)

I recommend that the Secretary of the Air Force [accept] [not accept] this resignation because (state reasons).

If the Secretary of the Air Force accepts the resignation, I recommend that the officer receive [an honorable discharge.] (or) [a discharge under honorable conditions (general).] (or) [a discharge under other than honorable conditions.]

(Enter officer's grade and last name) [is] [is not]:

- Under investigation.
- Under charges.
- Awaiting the result of a trial.
- Absent without leave.
- Absent in the hands of civil authorities.
- In default with respect to public property or funds. (If the officer is in default, explain the circumstances in full.)

(Enter officer's grade and last name) was given the opportunity to meet with counsel.  
The officer:

- Was counseled by\_\_\_\_\_ .]
- (-[Declined counsel.]

(For officers resigning while awaiting trial by court-martial, include one of these statements:)

[Court-martial charges have been brought against this officer. I have attached a complete summary of all the facts which are the basis for this resignation. (Include Article 32, Report of Investigation. When there is not an Article 32, include the charge sheet, pretrial advice, the convening authority's referral memorandum, and other investigative reports if available.)]

[Court-martial charges have not been brought against the officer. I have attached all information or evidence that shows that the officer is subject to trial by court-martial and which is the basis for this resignation. (Include, if available, Article 32, Report of Investigation, and any other investigative reports.)]

I certify that at the time of the misconduct, the officer wasn't suffering from a mental disease or defect. The officer presently understands the nature of the proceedings and can help in the defense.

Action under AFI 31-501 is [complete] [not required]. (See AFI 31-501 if the officer has or once had access to SCI, SIOP-ESI, or other special access programs.)

(signature)  
(typed name, grade, USAF)  
(title)

## **Addition of Figure 8.4 Recoupment Statement for Resignation for the Good of the Service**

I understand that if I am separated per my request before completing the period of active duty I agreed to serve, I may be subject to recoupment of a portion of education assistance, special pay, or bonus money received.

I understand the recoupment in all cases will be an amount that bears the same ratio to the total amount or cost provided to me as the unserved portion of active duty bears to the total period of active duty I agreed to serve.

I understand education assistance includes such programs as service academy, armed forces health profession scholarship program, Uniformed Services University of the Health Sciences, ROTC college scholarship program, tuition assistance, Air Force Institute of Technology, and minuteman education program.

I understand that if I dispute the indebtedness for educational assistance, the show cause authority will appoint an officer (or a civilian employee) to conduct an inquiry into the facts and hear evidence presented by me and other parties as appropriate, to determine the validity of the debt. The show cause authority will forward the report of inquiry, together with his/her recommendation concerning recoupment, with the case to the Secretary of the Air Force for decision.

(signed) (date)  
(typed name, grade, SSN)

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**

**AIR FORCE INSTRUCTION 51-201**

**21 DECEMBER 2007**

*Incorporating Change 1, 3 February 2010*

*Law*



**ADMINISTRATION OF MILITARY JUSTICE**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This instruction implements the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial (MCM), and Air Force Policy Directive (AFPD) 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 applies to individuals at all levels, including Air National Guard (ANG) members while in Federal service and Air Force Reserve Command (AFRC) members in Federal service. Commands may supplement this instruction only with the prior, written approval of Air Force Legal Operations Agency, Military Justice Division (AFLOA/JAJM), 112 Luke Avenue, Room 343, Bolling AFB DC 20032-8000; DSN voice 297-1539/fax 754-8755. 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 of Records Notice F051 AF JA I, Courts-Martial and Article 15 Records, applies. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF IMT 847, *Recommendation for Change of Publication*; route AF IMT 847s from the field through Major Command (MAJCOM) functional managers. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located at <https://www.my.af.mil/gcss-af61a/afirms/afirms/>.

**SUMMARY OF CHANGES**

This interim change clarifies jurisdictional, command coordination, and witness travel issues for reservists; adds language regarding comity when the Air Force receives clear intent that state or

foreign proceedings will not continue; implements DoD policy concerning UCMJ jurisdiction over persons serving with or accompanying the armed forces; updates the qualifications of Article 32 Investigating Officers; clarifies when reserve component judge advocates may be detailed as counsel; reinstates the installation VWAP council, clarifies the disclosure of administrative dispositions to victims and witnesses, and requires victim input to be included in discharge requests; updates court-martial order distribution matters; implements a 30-day processing goal for preferral of charges from the date the AFOSI report of investigation is published; clarifies government computer system monitoring standards; updates sex offender notification requirements; and adds JA-AFOSI collaborative investigation processes. A margin bar indicates newly revised material.

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## Chapter 1

### PURPOSE, COMMAND INFLUENCE, AND PROFESSIONAL CONDUCT

**1.1. Purpose.** This instruction sets forth requirements for the administration of military justice. The primary sources of rules and guidance on military justice are in the Uniform Code of Military Justice (UCMJ), 10 U.S.C. §801 et. seq., and the Manual for Courts-Martial (MCM).

**1.2. Unlawful Command Influence (Articles 37 and 98, UCMJ; Rules for Courts-Martial (RCM) 104).** The military justice system must operate free of unlawful command influence. Staff Judge Advocates (SJAs), their staffs, and all personnel involved in the military justice process must be sensitive to the existence, or appearance, of unlawful command influence. Likewise, they must be vigilant and vigorous in efforts to prevent it and to respond appropriately to its occurrence. SJAs should periodically discuss with commanders the importance of avoiding even the appearance of unlawful command influence, and act decisively when apprised of facts or circumstances which might give rise to it.

**1.3. Ethics and Standards of Conduct.** Legal ethics and expected standards of conduct in the Air Force are contained in the Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct, TJAG Policy Memorandum: TJS-2, and Air Force Standards for Criminal Justice, TJS-3.

1.3.1. General Application. These rules and standards apply to all military and civilian lawyers, paralegals and nonlawyer assistants in The Judge Advocate General's Corps, USAF.

1.3.2. Application to Foreign National Attorneys Overseas. These rules and standards apply to all foreign national lawyers employed overseas by the Department of the Air Force, to the extent these rules are consistent with applicable domestic law and professional standards.

1.3.3. Application to All Practitioners in Air Force Proceedings. The rules and standards also apply to all lawyers, paralegals and nonlawyer assistants who practice in Air Force courts or other proceedings, or assist others practicing in such proceedings. This includes, but is not limited to, civilian defense counsel (and their associates and non-lawyer assistants) who have no connection to the USAF other than as participants in such proceedings. Military defense counsel at trial, or appellate defense counsel on appeal, shall provide copies of TJS-2, the Rules, and TJS-3, the Standards, to civilian defense counsel of record. In any case in which military counsel is excused or not detailed, trial counsel shall ensure that civilian counsel has been provided the referenced rules and standards.

## Chapter 2

### COURT-MARTIAL CONVENING AUTHORITY AND JURISDICTION

#### *Section 2A—Court-Martial Convening Authority*

**2.1. General Court-Martial Convening Authority (RCM 504(b)(1)).** The following Air Force commanders may exercise general court-martial convening authority (GCMCA):

2.1.1. Commanders of organizations identified by Article 22(a)(7), UCMJ, who have been authorized to exercise GCMCA by the Secretary of the Air Force (SECAF) or the express authorization of TJAG to convene GCMs.

2.1.2. Commanders of organizations not identified by Article 22(a)(7), UCMJ, who are designated and authorized to convene GCMs by the SECAF under Article 22(a)(8), UCMJ, or empowered by the President under Article 22(a)(9), UCMJ.

2.1.3. Requests for authorization to exercise GCMCA are forwarded through command channels to AFLOA/JAJM.

**2.2. Special Court-Martial Convening Authority (RCM 504(b)(2)).** The following Air Force commanders may exercise special court-martial convening authority (SPCMCA):

2.2.1. Commanders authorized to convene GCMs under paragraph 2.1.

2.2.2. Commanders of organizations identified by Article 23(a), UCMJ, who have been authorized to exercise SPCMCA by SECAF. Submit requests for SECAF action under Article 23(a)(7) to AFLOA/JAJM.

2.2.3. Commanders of organizations identified by Article 23(a)(4), UCMJ, who are not authorized to exercise SPCMCA by SECAF, but are authorized by the appropriate MAJCOM commander to convene special courts-martial. MAJCOM SJAs send a copy of all such authorizations to AFLOA/JAJM.

2.2.4. Commanders who are not authorized to exercise SPCMCA by SECAF, but who are authorized by the commander of an Air Force component of a unified or specified combatant command. The commander of an Air Force component of a unified or specified combatant command may only authorize subordinate commanders to exercise SPCMCA if the subordinate commander commands an organization identified by 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 AFLOA/JAJM.

**2.3. Summary Court-Martial Convening Authority (RCM 504(b)(3), RCM 1302).** SPCMCA and GCMCA may convene summary courts-martial (SCM). The commanding officer of a detached squadron or other detachment of the Air Force may convene a SCM, as provided 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).

#### *Section 2B—Jurisdiction*

**2.4. Court-Martial Convening Authority Actions Involving Tenant Organizations.** All members of a tenant unit or Air Force Element (AFELM), whether designated as a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of general, special, and summary courts-martial convening authority.

2.4.1. All members of a stand-alone Air Reserve Station or Air Reserve Base are attached to the host command of the nearest active duty Air Force Installation and its appropriate subordinate and higher commands for the exercise of general, special, and summary courts-martial convening authority.

2.4.2. While attachment for court-martial convening authority purposes does not serve to divest any other commander from the exercise of such authority over a member of the tenant unit, AFELM, or members assigned or attached to a reserve station or base, the concurrent exercise of such authority by the host command is preferred to expeditiously resolve the matter, preserve resources, and retain command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the installation. Members of a tenant unit, AFELM, or members assigned or attached to a reserve station or base, include personnel on temporary duty with or otherwise attached to it.

2.4.2.1. When a support agreement differing from that above is necessary or desirable, it must be documented at the general court-martial convening authority level or higher.

2.4.2.2. All judge advocates assigned as senior trial counsel and senior defense counsel, area defense counsel, and defense paralegals are exclusively assigned to the Air Force Legal Operations Agency (AFLOA) for courts-martial jurisdiction. All personnel assigned to AFLOA are exclusively attached to the Air Force District of Washington for court-martial jurisdiction. Military judges are assigned to AFDW for courts-martial jurisdiction.

2.4.3. Sole Authority. This section is the sole authority for legal service support. No other order, writing or implementing agreement is required unless otherwise provided for herein.

**2.5. Court-Martial Jurisdiction in Joint Commands (RCM 201(e), Joint Publication O-2).** Air Force personnel supporting a contingency in a deployed area of operations (AOR) fall under the Air Force component commander's chain of command for Military Justice purposes. While a commander of a unified or specified combatant command may convene courts-martial over members of any of the armed forces, a joint force commander normally should allow court-martial jurisdiction over Air Force members to be exercised by the appropriate Air Force convening authority. Air Force convening authorities should exercise court-martial jurisdiction over members of other services only when warranted by RCM 201(e). AFI 38-101, Air Force Organization; AFI 51-202, Nonjudicial Punishment (Procedures for Multi-service Commanders).

**2.6. Jurisdiction Involving State or Foreign Prosecution Interest.**

2.6.1. In General. Where an act or omission is subject to trial by court-martial or nonjudicial punishment proceedings and to trial by state or foreign courts, the determination of which sovereign shall exercise jurisdiction should be made through consultation or prior agreement between appropriate Air Force and civilian authorities. RCM 201(d). If state or foreign prosecution jurisdiction will not meet/or has not met the ends of good order and discipline, it may be appropriate to seek permission from SECAF to exercise UCMJ authority. Convening authorities and staff judge advocates should foster relationships with local civilian authorities

with a view toward maximizing Air Force jurisdiction. Except as discussed in 2.6.3., a member who is either pending trial or has been tried by a state or foreign court, regardless of the outcome, should not ordinarily be tried by a court-martial or subjected to nonjudicial punishment proceedings for the same act or omission. This limitation does not apply to vacation proceedings held under RCM 1109 and Part V, paragraph 6a(4) of the MCM. A member may be considered to be pending trial when state or foreign authorities have expressed their intention to try the member, even if formal charges have not been brought, e.g., upon arrest of the member or a representation by civilian authorities that they intend to pursue the case.

**2.6.2. Procedure.** When a member is subject to both UCMJ and state or foreign jurisdiction for substantially the same act or omission, Air Force authorities must determine whether the exercise of jurisdiction is in the best interests of the Air Force. If the exercise of jurisdiction is sought, Air Force authorities (normally the SJA) shall contact appropriate civilian authorities and notify them of the Air Force desire for jurisdiction. Procedures for seeking jurisdiction in foreign locations are discussed in paragraph **2.6.2.1**. If civilian or foreign authorities decline or waive the right to exercise jurisdiction, the Air Force may proceed with military justice action, whether court-martial or nonjudicial punishment. If the civilian or foreign authorities are exercising or express their intention to exercise jurisdiction over the member, neither a court-martial nor nonjudicial punishment may proceed as a matter of comity until the state or foreign proceedings are completed. *Ponzi v. Fessenden*, 258 U.S. 254 (1922); *United States v. Panchisin*, 30 C.M.R. 921, 924-25 (A.F.B.R. 1961). If the state or foreign proceedings end without jeopardy attaching or if the Air Force receives clear intent that state or foreign proceedings will not continue pending UCMJ action, the principle of comity is satisfied and the Air Force may proceed with nonjudicial punishment or court-martial action. If jeopardy attached in the state or foreign proceedings, UCMJ action may not be taken unless approved by SECAF.

**2.6.2.1. Foreign Criminal Jurisdiction.** The procedures to determine whether U.S. authorities or host-nation authorities will have primary criminal jurisdiction over military members present in foreign countries will vary from nation to nation. The status of forces agreement, or similar agreement, should address procedures for dealing with concurrent jurisdiction offenses. AFI 51-703, *Foreign Criminal Jurisdiction*, will be followed in these cases.

**2.6.3. Secretarial Approval.** Only SECAF may approve initiation of court-martial or nonjudicial punishment action against a member previously tried by a state or foreign court for substantially the same act or omission, regardless of the outcome. These requests may only be submitted after the member has been tried in a state or foreign court. Submit requests, with full justification, through command channels to AFLOA/JAJM. SECAF approval will be granted in only the most unusual cases when the ends of justice and discipline can be satisfied in no other way. A member shall be deemed “tried” by a state or foreign court if:

**2.6.3.1.** Jeopardy has attached. Follow the state or foreign law to determine when this occurs. 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). State law may consider a member “tried” even if the court ultimately suspends judgment upon

discharge of the accused following probation, permits withdrawal of the guilty plea, or applies some form of alternative sentencing.

2.6.3.1.1. A member will not be deemed “tried” if the prosecution is deferred, held in abeyance, or otherwise diverted from normal channels pending completion of one or more conditions as an alternative to prosecution without an initial judicial determination of guilt. As a matter of Air Force policy, UCMJ action is impermissible without first seeking SECAF approval. If deferral, abeyance or diversion is conditional and the member remains subject to prosecution should he or she violates a condition, UCMJ action should not be taken until after the deferral, abeyance or diversion is completed.

## **2.7. Jurisdiction Involving Federal Agencies.**

2.7.1. Department of Justice (DOJ). The MCM, Appendix 3, (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 and DoDI 5525.07, Implementation of the MOU Between Department of Justice and Department of Defense Relating to the Investigation and Prosecution of Certain Crimes), sets forth DoD and DOJ responsibilities for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction.

2.7.2. U.S. Secret Service. The U.S. 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. § 3056. The Chief, AFLOA/JAJM, or a designee, will meet with representatives of DOJ and USSS to determine which department will exercise further jurisdiction in the case.

2.7.3. The Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. §§ 3261 et seq) (MEJA). Military members, as well as civilians accompanying the force, may be subject to United States civilian federal jurisdiction for offenses committed while overseas. Submit a report of any potential case involving MEJA, through command channels, to AFLOA/JAJM. See AFI 51-1001, Delivery of Personnel to United States Civilian Authorities for Trial, and AFD 51-10, Making Military Personnel, Employees, and Dependents Available to Civilian Authorities for substantive procedural guidance and procedures.

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

### **2.8. Completion of Military Service (RCM 202).**

2.8.1. Court-martial jurisdiction extends to those persons whose enlistments have expired, but are awaiting discharge. Article 2(a)(1) and Article 3(a), UCMJ. Action with a view to trial must be taken as soon as practicable to preserve jurisdiction. RCM 202(c).

2.8.2. Generally, jurisdiction to try a member of the military by court-martial ceases upon discharge or other separation. Jurisdiction over active duty military personnel normally continues until the member receives a valid discharge certificate, there is a final accounting of pay, and the member has completed administrative clearance processes required by his or her service Secretary. *United States v. King*, 27 M.J. 327, 329 (C.M.A. 1989). SJAs should recognize that exceptions to this general rule might apply including regaining military jurisdiction for members upon reentry into military service. See RCM 202(a), Discussion

(2)(B)(iii) and RCM 204(d). If the matter results in trial by court-martial, the record of trial (ROT) must include evidence that establishes jurisdiction over the accused.

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

### **2.9. Jurisdiction Over Air Force Reserve and Air National Guard Members (RCM 202).**

2.9.1. In General. Air National Guard Members while in Federal status and Air Reserve members including retired members are subject to UCMJ jurisdiction for offenses committed while on active duty or on inactive duty training status. Reserve members performing continuous duty in an inactive duty for training status overseas are subject to UCMJ jurisdiction from the commencement to the conclusion of such duty. Air National Guard (ANG) members are subject to UCMJ jurisdiction only when in Federal service. (Title 10).

2.9.2. **Courts-Martial.** Once jurisdiction attaches in accordance with RCM 202(c), a member of a reserve component may either be retained on active duty pending disposition of offenses, or be released to reserve status and recalled as necessary for pretrial investigation, court-martial, or both. Prior consultation with the member's reserve component chain of command through JA channels is required. If the member is no longer on active duty when the offense is discovered, the member may be involuntarily ordered to active duty for a pretrial investigation, trial by court-martial, or both. In any case in which the accused is a member of the Reserve or Air National Guard, trial counsel must introduce sufficient evidence to establish in-personam jurisdiction over the accused at the time of the offense.

2.9.3. Summary Courts-Martial and 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 an 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.

2.9.4. **Recall Authority.** Subject to the consultation requirement of paragraph 2.9.2, the following may order a Reserve or Air National Guard member to active duty:

2.9.4.1. A GCMCA for the regular component unit to which the member is attached for training purposes;

2.9.4.2. A GCMCA for the regular component unit in which the member performed duty when the offense(s) occurred;

2.9.4.3. A GCMCA of the regular component host unit, as designated in the applicable host-tenant support agreement if the member is assigned to a reserve component unit for training purposes, or was attached to such a unit when the offense(s) occurred; or

2.9.4.4. AFRC/CC, 4 AF/CC, 10 AF/CC, or 22 AF/CC for members assigned or attached to their respective commands.

2.9.5. Limitations on Punishment. A Reserve or Air National Guard member recalled to active duty for court-martial may not be sentenced to confinement, or be required to serve a punishment consisting of any restriction on liberty during the recall period of duty, without SECAF 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. Requests for SECAF approval to recall a reserve

member for court-martial to preserve the possibility that the sentence may include confinement are forwarded, via command channels, to AFLOA/JAJM. Generally, requests should be made prior to preferral of charges, but, in any case, must be approved prior to arraignment. The GCMCA must concur in the request and the request shall include as a minimum, the following information:

- 2.9.5.1. The preferred or anticipated charges and specifications. When charges have been preferred, attach a copy of the charge sheet and personal data sheet.
- 2.9.5.2. A summary of the evidence relating to each offense. Attach copies of any reports of investigation/inquiry or witness statements.
- 2.9.5.3. Prior convictions and nonjudicial punishments.
- 2.9.5.4. Whether the member refused an offer of nonjudicial punishment.
- 2.9.5.5. The member's background, including civilian employment, family circumstances, and character of military service.
- 2.9.5.6. Consultation 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*

**2.10. Jurisdiction Over Retired Air Force Personnel.** Retired regular Air Force personnel who are entitled to receive pay (Article 2(a)(4), UCMJ), retired members of a reserve component who are receiving hospitalization from an armed service (Article 2(a)(5), UCMJ), and retired members of a reserve component subject to lawful orders to return to duty (See *Morgan v. Mahoney*, 50 M.J. 633 (1999)), will not be tried by court-martial for acts/omissions while on active duty or inactive duty training, within the statute of limitations, unless their conduct clearly links them with the military or is adverse to a significant military interest of the United States. SECAF approval is required prior to preferral of charges unless there is an immediate statute of limitations problem. If the time prescribed by the statute of limitations is about to expire, prefer charges and request SECAF approval as soon as possible. Send requests for approval, with full justification, to AFLOA/JAJM.

### *Section 2F— General Officers*

**2.11. Jurisdiction Over General Officers.** Only commanders of Air Force MAJCOMs and superior convening authorities 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.

### *Section 2G—Other Persons*

**2.12. Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations (Article 2(a)(10), UCMJ).**

2.12.1. **Article 2(a)(10) Jurisdiction.** Only the Secretary of Defense (SECDEF) possesses the authority to exercise court-martial convening authority and impose nonjudicial punishment (NJP) over persons subject to Article 2(a)(10) with respect to: offenses committed within the "United States," meaning the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States; persons who were not at all times during the alleged misconduct located outside the "United States," as defined above; and persons who are, at the time court-martial charges are preferred or notice of NJP proceedings is given, located within the "United States," as defined above. *See* SECDEF Memorandum dated 10 March 2008, "*UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations.*"

2.12.1.1. Only SECDEF, geographic combatant commanders (CCDRs), and commanders assigned or attached to geographic combatant commands who also possess GCMCA may exercise court-martial convening authority and impose NJP over persons subject to Article 2(a)(10) with respect to offenses committed outside the "United States," as defined in paragraph 2.12.1. Geographic CCDRs may withhold this authority within their command.

2.12.1.2. Authority to prefer court-martial charges and offer NJP is withheld until the notification requirements outlined in paragraph 2.12.4 are accomplished. Law enforcement, criminal investigations, and other military justice procedures that precede the preferral of court-martial charges should continue, as applicable, during this notification process.

2.12.1.3. Authority to prefer court-martial charges and offer NJP is withheld whenever DOJ provides notice that it intends to pursue federal criminal prosecution for what is substantially the same offense or a related offense, and such withholding of authority shall remain in effect while DOJ is pursuing its federal prosecution of the case until such prosecution is completed or terminated prior to its completion.

2.12.2. **Command Law Enforcement Authority.** Commanders at all levels have the authority to investigate any crime allegedly committed by persons subject to the UCMJ, as well as persons subject to MEJA jurisdiction until such time as civilian law enforcement officials have assumed sole investigative responsibility. Such investigations shall be conducted in accordance with practices established with host nation authorities, applicable international law, and international agreements.

2.12.2.1. **Apprehension and Arrest.** Military law enforcement officers and military criminal investigators are authorized to apprehend persons subject to UCMJ jurisdiction, and arrest and temporarily detain persons subject to MEJA jurisdiction, when there is probable cause that an offense has been committed and that the person committed it, subject to the requirements of RCMs 304 and 305. Although all commissioned, warrant, petty, and noncommissioned officers on active duty may apprehend persons subject to UCMJ jurisdiction, absent exigent circumstances, the apprehension of civilians should be done by law enforcement personnel. The apprehension and arrest of civilians in a foreign nation is almost exclusively a host nation function. When the apprehension, arrest, or temporary detention of a civilian by U.S. authorities is appropriate, such action shall be

done in accordance with established procedures, applicable international law, and international agreements.

2.12.2.2. Pretrial Restraint and Confinement. Commanders may order the pretrial restraint or confinement of civilians subject to the limitations of RCM 304(b) and all applicable provisions of the MCM and this instruction. Absent exigent circumstances, Article 2(a)(10) personnel shall not be placed in pretrial restraint or confinement without first consulting with the SJA of the appropriate geographic CCDR.

2.12.3. **Command Discretion.** The unique nature of exercising UCMJ jurisdiction over civilians requires commanders to evaluate legal and policy considerations before initiating any punitive disciplinary action.

2.12.3.1. Legal Considerations. Article 2(a)(10) applies to individuals serving with or accompanying the Air Force, Army, Navy, Marines, or Coast Guard in the field during declared war or contingency operations. See 10 U.S.C. § 101(a)(13). This generally includes DoD civilian employees and contractors, as well as individuals who are dependent on or connected to the armed forces in some manner. See *United States v. Burney*, 21 C.M.R. 98 (C.M.A. 1956); *Perlstein v. United States et al.*, 151 F. 2d. 167 (3d Cir. 1945). It can also include both U.S. citizens and foreign nationals, but international agreements will likely impact punitive action against any foreign national. Before taking any steps to initiate UCMJ action, it is critical to establish that Article 2(a)(10) jurisdiction applies.

2.12.3.2. Policy Considerations. Even if an individual is legally subject to the UCMJ, as a matter of policy the exercise of jurisdiction under Article 2(a)(10) must also be based on military necessity to support an effective fighting force and be called for by circumstances that meet the interests of justice, such as when federal criminal jurisdiction otherwise does not apply or federal criminal prosecution is not pursued, or when the person's conduct is adverse to a significant military interest of the United States (e.g., alleged misconduct that may jeopardize good order and discipline or discredit the armed forces and thereby have a potential adverse effect on military operations).

2.12.4. **Notification Requirements and Procedures.** Before initiating any disciplinary action against any person under Article 2(a)(10), commanders, through their SJAs, shall comply with the notification procedures outlined below.

2.12.4.1. General Requirements. All levels of command must follow the notification requirements of DoD Instruction 5525.11, *Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members*, in all cases intended to be pursued under Article 2(a)(10), to include forwarding all reasonably available information regarding the investigation, the suspect's last known residence in the United States, and the reasoning in support of a UCMJ disposition. Potential Article 2(a)(10) cases also trigger special interest reporting requirements under paragraph 13.8 and must be immediately reported to AFLOA/JAJM.

2.12.4.2. Non-GCMCA Notification Requirements. Commanders who are not GCMCAs shall, before initiating any UCMJ disposition under RCMs 306-308 or 401-406, forward expeditiously all available information regarding the alleged misconduct that is

potentially subject to this jurisdiction to the first GCMCA in the chain of command that is attached or assigned to a geographic combatant command.

2.12.4.3. GCMCA Notification Requirements. GCMCAs assigned or attached to a geographic combatant command shall notify in writing (including by email or facsimile) their respective geographic CCDR of their intended disposition by court-martial or NJP over persons subject to Article 2(a)(10).

2.12.4.4. CCDR Notification Requirements. Before any commander prefers court-martial charges or before a commander authorized by paragraph 2.12.1.1 offers NJP based on Article 2(a)(10), and regardless of whether the suspected offense may also be an offense under federal criminal laws, the geographic CCDR commander shall first provide notice of the case in writing (including by email or facsimile) in accordance with the procedures established in DoD Instruction 5525.11 through DoD channels so that DOJ may be afforded the opportunity to pursue federal criminal prosecution.

2.12.4.5. DOJ-DoD Notification Requirements. After DoD's formal notification to DOJ, DOJ is to expeditiously (but in no case longer than 14 calendar days absent an extension) notify DoD whether it intends to exercise jurisdiction over the case. If DOJ elects to exercise jurisdiction over the case, authority to convene a court-martial or administer NJP is withheld. If DOJ does not exercise jurisdiction or terminates prosecution, or if permission to proceed is granted by SECDEF or his designee, UCMJ action may be initiated.

**2.12.5. Court-Martial Rights and Procedures.** The MCM ensures a fair trial and due process of law for all persons tried before a properly constituted court-martial. The following clarifications will assist all parties with interpreting the MCM and applicable regulations.

2.12.5.1. Military Defense Counsel. An accused under Article 2(a)(10) has the same rights to counsel as a military accused subject to the requirements prescribed in the Military Defense Counsel Charter, including the right to be represented by a detailed military defense counsel, the right to request an individual military defense counsel, and the right to be represented by a civilian defense counsel at no expense to the government.

2.12.5.2. Court Members. Only commissioned officers on active duty are eligible to serve on a court-martial for the trial of any accused under Article 2(a)(10). A convening authority may, but is not required to, consider rank equivalencies by comparing military and civilian pay tables when selecting officer members for an accused who holds a federal civilian position. An accused under Article 2(a)(10) does not have the right to request enlisted court members.

2.12.5.3. Punishments. Subject to the limitations of the MCM, a court-martial may adjudge only the following punishments for an accused under Article 2(a)(10): reprimand, fine, restriction to specified limits, confinement, and death.

## Chapter 3

### MILITARY MAGISTRATES, PRETRIAL RESTRAINT, AND PREFERRAL

#### *Section 3A—Military Magistrates*

##### **3.1. Military Magistrate Program.**

3.1.1. Appointment of Magistrate (MRE 315(d)(2)). The commander of the lowest organizational level having command over an Air Force installation, who is either an SPCMCA or GCMCA, or the installation commander at Air Force Reserve Command (AFRC) bases and stations, may appoint a maximum of two officers with judicial temperament to serve as military magistrates for that installation. If unique circumstances exist that warrant the appointment of more than two magistrates, permission to appoint additional magistrates must be obtained from the GCMCA and approved by AFLOA/JAJM. Appoint magistrates in writing by name, not position, and specify the installation over which the magistrates may exercise authority.

3.1.2. Qualifications. A military magistrate should be an officer serving in the grade 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 exercising jurisdiction over the installation. Chaplains, SJA office personnel, Air Force Office of Special Investigations (AFOSI) and Security Forces (SF) members, and court-martial convening authorities may not serve as military magistrates. Officers appointed at AFRC installations must be serving a period of inactive duty training or active duty to perform magistrate duties.

3.1.3. Authority. A military magistrate issues search and seizure, and apprehension authorizations based upon probable cause. If two magistrates are appointed for an installation, each exercises concurrent authority with the other and with the installation commander. The commander need not be unavailable for a magistrate to exercise this authority.

3.1.4. Non-Air Force Military Installations. The Air Force commander who is either an SPCMCA or GCMCA at a military installation where the installation commander is not an Air Force commander may appoint an officer with judicial temperament to serve as a military magistrate for matters involving Air Force personnel on the installation. A military magistrate appointed under this paragraph is authorized to issue search and seizure and apprehension authorizations, based on probable cause, involving Air Force personnel at non-Air Force military installations to the extent the commander appointing the military magistrate has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. MRE 315(d)(1). This military magistrate exercises concurrent authority with the commander who appointed him or her.

3.1.5. SJA Duties. The SJA for the commander appointing military magistrates should brief military magistrates on their duties at the time of their appointment and whenever necessary thereafter.

#### *Section 3B—Pretrial Confinement and Restraint*

**3.2. Pretrial Confinement (RCM 305).** An authorized person must determine if there is probable cause to order pretrial confinement. Once the member is placed in pretrial confinement, additional steps must occur to determine if it is appropriate to continue pretrial confinement – a 48-hour probable cause determination, a 72-hour commander’s decision and memorandum, and a pretrial confinement review (within 7 days). Normally, offenses to be disposed of by summary court-martial do not warrant pretrial confinement.

3.2.1. Probable Cause for Pretrial Confinement. No person may be ordered into pretrial confinement except for probable cause. Probable cause to order pretrial confinement exists when there is a reasonable belief that an offense triable by court-martial has been committed, the person confined committed it, and confinement is required by the circumstances. Additional matters to consider include the person’s background and character, the details of the offense, and the matters in the Discussion following RCM 305(h)(2)(B). The person who directs confinement need not conduct a detailed analysis of the circumstances before physically detaining the person if time does not permit. See RCM 305(d).

3.2.2. 48-Hour Probable Cause Determination. Within 48 hours of the imposition of confinement under military control, a neutral and detached officer must review the adequacy of probable cause to continue pretrial confinement. RCM 305(i)(1); *Gerstein v. Pugh*, 420 U.S. 103, 124-25 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). See format at Figure 3.1. If the determination is not made within 48 hours, the government may have to establish the existence of a bona fide emergency or other extraordinary circumstances. The determination should be in writing and included in the Record of Trial (ROT).

3.2.2.1. Include in the ROT any documentation regarding a determination of probable cause made by civilian authorities prior to transfer of the member to military authorities. When a military member is transferred from civilian confinement to military control, authorities must still conduct a 48-hour probable cause determination.

3.2.2.2. Factors to consider in determining whether an officer is neutral and detached include whether the officer is the formal accuser on the charge sheet, is the officer who ordered the accused into confinement, or is directly or particularly involved in the command’s law enforcement functions. *United States v. Rexroat*, 38 M.J. 292 (C.M.A. 1993); *United States v. Lynch*, 13 M.J. 394 (C.M.A. 1982).

3.2.2.3. The Pretrial Confinement Review in paragraph 3.2.4 will satisfy the 48-hour probable cause determination if the Pretrial Confinement Review memorandum is completed within 48 hours of the imposition of confinement.

3.2.3. 72-Hour Commander’s Decision and Memorandum. A commander shall decide whether to continue pretrial confinement not later than 72 hours after the commander orders a military member into pretrial confinement, or after receipt of a report that a member of the commander’s unit or organization has been confined. 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 the commander decides to continue pretrial confinement, he or she must prepare a written memorandum in accordance with RCM 305(h)(2)(C). The memorandum is then forwarded to the Pretrial Confinement Review Officer, through the SJA and SPCMCA. If court-martial results, the commander’s memorandum must be included in the ROT. Figure 3.3 provides a sample format.

3.2.3.1. The 72-hour commander's decision will satisfy the 48-hour probable cause determination only if the commander is neutral and detached and acts within 48 hours of the imposition of confinement. RCM 305(h)(2)(A). See Figure 3.3.

3.2.4. Pretrial Confinement Review (PCR), (RCM 305(i)(2)). Within 7 days of the imposition of pretrial confinement under military control, a Pretrial Confinement Review Officer (PCRO) must review the probable cause determination and make a decision about the necessity for continued pretrial confinement. *United States v. McCants*, 39 M.J. 91 (C.M.A. 1994).

3.2.4.1. Appointment of PCROs, (RCM 305(i)(2)). The SPCMCA appoints, by letter, a reasonable number of mature officers to serve as PCROs. Chaplains, SJA office personnel, AFOSI and SF members, and court-martial convening authorities may not serve as a PCRO. Military magistrates may also be appointed as PCROs. Except in unusual circumstances, a magistrate should not serve as the PCRO if he or she otherwise acted upon the same case in any capacity.

3.2.4.2. The PCRO must review the commander's decision to continue pretrial confinement satisfying the 72-hour requirement. The PCRO should consider any matters submitted by the pretrial confinee.

3.2.4.2.1. The PCR may satisfy the 48-hour probable cause determination requirement if the PCR decision is completed within 48 hours of the imposition of confinement. In such cases, the PCR memorandum must specifically state when the probable cause determination was made.

3.2.4.3. The PCRO conducts a hearing at which the pretrial confinee and defense counsel shall be allowed to appear and make a statement before the PCRO, if practicable. A government representative, usually a judge advocate, may also make a statement, if practicable. Although the PCR is not an adversarial proceeding, the PCRO may exercise his or her discretion by allowing the pretrial confinee, defense counsel or government representative to present evidence or cross-examine witnesses. The PCRO must complete a written summary of the testimony of any witnesses. The only rules of evidence that apply are MRE 302, MRE 305 and MRE 501 - 513 (Section V - Privileges).

3.2.4.4. Upon completion of the PCR, the PCRO shall approve continued confinement or order immediate release. To continue pretrial confinement, the PCRO must find the requirements of RCM 305(h)(2)(B) have been proven by a preponderance of the evidence to continue pretrial confinement. If the requirements of RCM 305(h)(2)(B) have not been proven, the PCRO must order immediate release of the pretrial confinee. The PCRO may not impose conditions on release, but may recommend the commander impose a less severe form of pretrial restraint. If the PCRO orders release, a commander may impose any alternative lesser form of pretrial restraint authorized by RCM 304(a)(1) through (3).

3.2.4.5. Within 24 hours of making the pretrial confinement decision, the PCRO must complete a memorandum of the PCRO's conclusions and the findings on which they are based. A copy of all documents and summaries of all oral statements considered by the PCRO must be attached to the memorandum. The memorandum with attachments shall be provided to the SPCMCA, the SPCMCA's SJA, the confinement officer, the pretrial

confinee and the pretrial confinee's defense counsel. Figure 3.4 provides a sample format for the PCRO's memorandum.

3.2.5. **Pretrial Restraint Upon Release From Confinement.** A commander may impose any alternative lesser form of pretrial restraint authorized by RCM 304(a)(1) through (3), if release is ordered by the PCRO. Re-confinement after release is limited to circumstances provided in RCM 305(l). *United States v. Mahoney*, 36 M.J. 679 (A.F.C.M.R. 1992). The requirements of this chapter apply to a member upon imposition of re-confinement.

3.2.6. **Pretrial Restraint as Suicide Prevention.** Preventing an accused from committing suicide is not valid as the sole basis for ordering the accused into or continuing pretrial confinement. A distinction shall be drawn between an accused that is a threat to him or herself and an accused that is either a threat to flee the jurisdiction to avoid prosecution or is a threat to commit a serious offense. The latter may be placed in pretrial confinement in accordance with RCM 305(h)(2)(B). The former should be referred to mental health practitioners for evaluation and treatment and, if necessary, involuntary commitment in a mental health facility. *United States v. Doane*, 54 M.J. 978, 982 (A.F. Ct. Crim. App. 2001).

3.2.7. **Pretrial Determination of Mental Competence.** A convening authority may determine the place and condition of pretrial detention, including confinement in a civilian facility, for the purpose of evaluating the competency of the accused, subject to review by a military judge for abuse of discretion. The conditions may not be more harsh than necessary to ensure the accused's presence at trial. The facility must be capable of rendering the necessary competency evaluations and providing necessary care and treatment of the accused. Article 13, UCMJ; RCM 706, 909; *Short v. Chambers*, 33 M.J. 49 (C.M.A. 1991); 18 U.S.C. § 4241.

3.2.8. **SJA Duties.** SJAs must ensure confinement personnel advise pretrial confinees in accordance with RCM 305(e). SJAs must ensure PCROs are briefed on their duties when appointed, and updated as appropriate thereafter. SJAs must notify alleged victims of a confinee's pretrial confinement and release from pretrial confinement. Consult AFI 51-703, Foreign Criminal Jurisdiction, if a member is confined at the request of foreign host nation authorities.

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

#### **3.3. Considerations Prior to Preferral of Charges.**

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

3.3.2. **Authority To Proceed in Cases Involving an Accused with Special Access.** Do not take action on personnel who hold or have held access to Single Integrated Operation Plan-Extremely Sensitive Information (SIOP-ESI), Sensitive Compartmented Information (SCI), research and development (R&D) special access program, AFOSI special access program, or other special access program information until the appropriate special access program office approves. Legal offices ensure compliance with AFI 31-501, Personnel Security Program Management. In accordance with AFI 31-501, paragraph 8.9, commanders must submit a written request to the appropriate special access program functional office for permission to proceed with further processing before initiating action against military members that could lead to a discharge. The legal office must also ensure a copy of the commander's written

request is sent to AFLOA/JAJM. Apply security classification according to message contents and send through classified channels as required. In accordance with AFI 31-501, paragraph 8.9.8, if a commander contemplates a general or special court-martial, processing of the case may proceed with preferral of charges and completion of the investigation required by Article 32, UCMJ, together with collateral actions required under Article 32. Under no circumstances may the charges be referred to trial until the appropriate action office grants authority to proceed. It is recommended that authority to proceed be sought before preferral and as soon as possible due to the length of time it takes to process these requests.

3.3.3. Preferral in Lengthy Absence Cases. Effective 14 November 1986, summary court-martial convening authorities (SCMCAs) are no longer required to receipt for charges alleging either desertion or absent without leave (AWOL) in order to toll the statute of limitations. Article 43, UCMJ. Therefore, where an unauthorized absence began after 14 November 1986, preferral and receipt for charges is not required to toll the statute of limitations. For all lengthy absence cases for which charges were preferred on or before 14 November 1986 where the member has not yet returned to military control, preferred charges, receipted for by the SCMCA are still required to toll the limitations period. The servicing SJA should obtain a written delay from the appropriate convening authority to stop the running of the RCM 707 speedy trial rule. Documentation of approved delays shall be attached to the charge sheet in the member's personnel records before sending the records to the Air Force Personnel Center. AFI 36-2911, Desertion and Unauthorized Absence. Charges for desertion or an unauthorized absence, either of which began before 14 November 1986, where there was no preferral and receipt of charges, are not viable.

3.3.4. Extension Beyond Expiration of Term of Service (ETS). Airman may be retained beyond their ETS in anticipation of the preferral of charges. If there is sufficient time, the SJA must notify the MPF separations unit in writing. If time does not permit written notification, written confirmation of the verbal notice should be provided to the MPF within five duty days. See AFI 36-3208, Administrative Separation of Airman, and AFCSM 36-699 Volume 1, Personnel Data Systems User Manual, Table 7B1, for guidelines, sample letters and rules regarding the length of extensions.

3.3.5. Accused With Prior Adjudged Punitive Discharge. If an accused has an approved, but unexecuted, prior punitive discharge, the SJA for the SPCMCA over the accused shall immediately notify AFLOA/JAJM by voice message, e-mail, or facsimile notice concerning preferral of new charges, with information copies sent to the appropriate GCM and MAJCOM SJAs. This notice enables JAJM to ensure that the execution of the previous punitive discharge does not occur, providing continuing court-martial jurisdiction over the accused.

3.3.6. Recoupment. If an accused received education assistance, special pay, or bonus money and faces separation or discharge before completion of the agreed upon period of active duty, notice of recoupment should be given when court-martial charges are preferred in accordance with Title 10, United States Code, Section 2005(g). The member should sign a statement of understanding regarding recoupment as shown in Figure 3.5. This notice is included in the ROT with pretrial allied papers in accordance with AFMAN 51-203, Records of Trial, Figure 4.1., paragraph 20.

### 3.4. Charge Sheet Preparation.

3.4.1. **Charge Sheet.** Prepare charges and specifications on the DD Form 458, Charge Sheet. The Charge Sheet should be prepared by inputting the data into AMJAMS and printing out the electronic version of the DD Form 458. Information in AMJAMS should be reflected as follows:

3.4.2. Blocks 1, 2, 3 and 4. Autofill information in AMJAMS from AFPC and ensure its accuracy. Make pen and ink changes to the charge sheet to reflect any change in the accused's grade prior to arraignment by lining through and keeping the information legible. Initial any changes.

3.4.3. Block 5. Enter the accused's assigned organization under the Duty Status tab in AMJAMS. The address should reflect the base name, state and zip. Ensure the correct pull down is selected for your MAJCOM. At squadron level, enter "111th Civil Engineer Squadron," not "111th Civil Engineering Squadron Section."

3.4.4. Block 6. The accused's current service is the date the current enlistment began for enlisted personnel and the Total Active Federal Military Service Date (TAFMSD) for officers. Extensions do not change the current enlistment date. This information can be found in the accused's personnel records or in the record review listing prepared by the servicing personnel office. Double check the RIPS against the information autofilled from AFPC.

3.4.5. Block 7. The accused's current pay per month will be entered automatically, this will need to be changed if AFPC lists the incorrect rank. If it changes prior to arraignment, correct it with a pen and ink change.

3.4.6. Blocks 8 and 9. Include any form of restraint, including restraint by civil authorities at the behest of the Air Force, by adding the pretrial restraint folder under the pretrial information in AMJAMS. An example of this is when a member in an AWOL or deserter status is apprehended pursuant to a DD Form 553, Deserter/Absentee Wanted by the Armed Forces, 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 the MCM, Part IV, and the Military Judge's Benchbook, DA Pamphlet 27-9. AMJAMS will auto-fill the charge and specification indicators in automatically.

3.4.7.1. Format. Type the words "CHARGE" and "ADDITIONAL CHARGE" in all capital letters. "Specification" includes upper and lower case letters. Where more than one charge or specification is alleged, charges are numbered with Roman numerals (e.g., I, II, III) and specifications with Arabic numbers (e.g., 1, 2, 3). A single charge or specification is not numbered.

3.4.7.2. Additional Charges. When additional charges are preferred, add "Additional Charges Preferred." AMJAMS will label the charges as ADDITIONAL CHARGES. If charges are preferred after referral of additional charges, add another "Additional Charges Preferred" folder in AMJAMS. AMJAMS will label each new set of charges with written numbers (e.g., SECOND ADDITIONAL CHARGES, THIRD ADDITIONAL CHARGES).

3.4.7.3. **Identification of the Accused.** In the specifications, identify the accused by present grade, followed by the grade on the date of the alleged offense, if different. Use all capital letters. 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 Maintenance Squadron, did, . . ." *NOTE:* Change the accused's rank from the time of the allegation only if pertinent to the offense charged. RCM 307(c)(3), *Discussion*.

3.4.7.4. **Identification of Victim.** If the alleged victim is identified in the specification, do not put the victim's name or grade in all capital letters. Do not substitute initials for the name of child or sex offense victims, as is required on court-martial orders. See paragraph 10.7 of this instruction.

3.4.7.5. **Pleading Check Cases.** Where a check or other instrument appears regularly in all respects, the contents need not be pled verbatim. In such cases, consider using the model specifications provided in the Military Judges' Benchbook, DA Pamphlet 27-9 or the sample specifications provided at Figure 3.2. If in doubt, 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 3.6) to the DD Form 458. Attach a personal data sheet on the accused (Figure 3.7) and a copy of the 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 if the convening authority delegates that authority. If delegated, receive the charges "FOR THE COMMANDER."

**3.7. Discovery.** SJAs and Trial Counsel are strongly encouraged to provide discovery to defense counsel as soon as practicable. This may be prior to the preferral of charges.

3.7.1. At the time charges are preferred, the Trial Counsel 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 commander's indorsement to the DD Form 458 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 have an adverse impact on an ongoing or proposed law enforcement investigation.

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

3.7.3. These provisions are not intended to 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 and defense counsel in accordance with the Rules for Courts-Martial.

**Figure 3.1. Sample Probable Cause Determination Memorandum.**

(Date)

MEMORANDUM FOR (JA Office)  
 (Squadron CC)  
 PCRO  
 IN TURN

FROM: \_\_\_\_\_/CC  
 (Street Address)  
 (Base, State, and Postal Code)

SUBJECT: Probable Cause Determination - (*grade, name*)

1. In accordance with RCM 305(i)(1), I, being a neutral and detached officer acting within 48 hours of imposition of confinement under military control, find adequate probable cause that the following offense(s) triable by court-martial [(was)(were)] committed and that (GRADE, NAME) committed [(it)(them)]:

	<u>Article</u>	<u>Date of Offense</u>	<u>Description of Offense</u>
a.	_____	_____	_____
b.	_____	_____	_____

2. Second, I have reasonable grounds to believe continued pretrial confinement is necessary because it is foreseeable that the confinee will not appear at [trial, pretrial hearing, or investigation,] and/or will engage in serious criminal misconduct. Finally, I have reasonable grounds to believe less severe forms of restraint are inadequate.

(Neutral and Detached Officer's  
 Signature)  
 (NAME), (Grade), USAF  
 (Duty Title)

**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 , 20 ,] [on divers occasions, between on or about , 20 , and on or about , 20 ,] 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 , 20 , 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/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 2006, 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 2006, 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 2007, 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 June 2007, 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 2007, 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 2007, 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 \_\_\_\_\_, 20\_\_.] [on divers occasions, between on or about \_\_\_\_\_, 20\_\_, and on or about \_\_\_\_\_, 20\_\_.] 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 2006 and on or about 15 December 2006, 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 06	102	\$123.45
11 Dec 06	104	150.00
15 Dec 06	105	23.00
03 Dec 06	115	20.00
12 Nov 06	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 \_\_\_\_\_, 20\_\_, 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 \_\_\_\_\_, 20\_\_, 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 2007, 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 2007, 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 2006, 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 2006, 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 2006 and on or about 6 May 2006, 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 \_\_\_\_\_, 20\_\_, [(make)(draw)] [utter to] \_\_\_\_\_ a certain [(check)(draft)] in the amount of \_\_\_\_\_, dated \_\_\_\_\_ 20\_\_, 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 2006, utter to San Antonio Jewelry, a certain check in the amount of \$215.99, dated 10 May 2006, 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 Commander’s Pretrial Confinement Memorandum.

(Date)

MEMORANDUM FOR (JA Office)  
 (SPCMCA)  
 PCRO  
 IN TURN

FROM: (Squadron CC)  
 (Street Address)  
 (Base, State, and Postal Code)

SUBJECT: Pretrial Confinement of (Grade)(Name)

1. In accordance with RCM 305(h)(2), I approve the continued pretrial confinement of (GRADE, NAME, UNIT).

2. Background Information:

a. Personal Data:

- (1) Age:
- (2) AFSC: (number and job description)
- (3) Total Service to Date:
- (4) DEROS:
- (5) Marital Status: (also include whether spouse is in local area)
- (6) 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, description of offense(s), and punishment imposed)
- (3) Other Disciplinary Actions:

3. I conclude the requirements for pretrial confinement in RCM 305(h)(2)(B) are met. First, I have reasonable grounds to believe the following offense(s) triable by court-martial [(was)(were)] committed and the confinee committed [(it)(them)]:

	<u>Article</u>	<u>Date of Offense</u>	<u>Description of Offense</u>
a.	_____	_____	_____
b.	_____	_____	_____

The attached documents support these conclusions. Second, I have reasonable grounds to believe continued pretrial confinement is necessary because it is foreseeable that the confinee will not appear at [trial, pretrial hearing, or investigation], and/or will engage in serious criminal misconduct. Finally, I have reasonable grounds to believe less severe forms of restraint are inadequate.

4. Specific reasons supporting my conclusions that the requirements for continued pretrial confinement in RCM 305(h)(2)(B) are met include: [*State reasons. Consider the factors enumerated in the Discussion to RCM 305(h)(2)(B).*]

5. [OPTIONAL: *If the commander is neutral and detached and this memorandum is completed within 48 hours of imposition of confinement, add the following sentence if this memorandum is intended to also satisfy the 48-hour probable cause determination required by RCM 305(i)(1):* Finally, in accordance with RCM 305(i)(1), I, being a neutral and detached officer acting within 48 hours of imposition of confinement under military control, find adequate probable cause that the offense(s) in paragraph 2 [(was)(were)] committed and that the confinee committed [(it)(them)].

(NAME), (Grade), USAF  
(Squadron Commander Duty Title)

Attachments

- 1.
- 2.

Figure 3.4. Sample Memorandum of PCRO’s Review of Pretrial Confinement.

(Date)

MEMORANDUM FOR (CONVENING AUTHORITY)

FROM: PRETRIAL CONFINEMENT REVIEW OFFICER

SUBJECT: Pretrial Confinement Review - *(Grade, name, and organization of confinee)*

1. PRELIMINARY MATTERS. Pursuant to AFI 51-201, *Administration of Military Justice*, Chapter 3, Section 3B, and RCM 305, I was appointed pretrial confinement review officer on *(date)* by *(name and position of commander)*. The case of the above named confinee was referred to me by *(name of appropriate commander)* at *(hours)* on *(date)* at *(place)*. At the beginning of the hearing, I advised the accused of his/her Article 31 rights, rights to counsel, and rights to make a statement and present evidence at the hearing.

2. OFFENSES ALLEGED. *(Name of Confinee)* is alleged to have committed the following offense(s):

a. *(Summarize each offense. "Legal" language is not necessary, but give the date, place, and general description of each offense including facts which indicate seriousness, such as value of property allegedly stolen or destroyed, or the extent of personal injury allegedly inflicted or threatened, etc.).*

b. ....

3. ENTRY INTO CONFINEMENT. The confinee was placed into pretrial confinement at *(name and location of confinement facility)* on *(date)*, pursuant to the order of *(Name, rank and organization of the member who ordered the confinee into confinement)*. *(Attach the confinement order to this report)*.

4. DEFENSE PARTICIPATION. *(Name of confinee)* and his/her counsel, *(Name of military/civilian counsel)*, *(were)* *(were not)* present during the hearing. *(If not present, state why not)*. *(If present: The confinee and counsel (presented) (did not wish to present) evidence at the hearing.*

5. EVIDENCE. The evidence presented during the hearing included the following:

a. *(Summarize the evidence available and attach relevant documents such as OSI or SF Reports, sworn statements, pictures of physical evidence, or statements of the accused).*

b. ....

6. FINDINGS: After considering the evidence (summarized above) and the attached documents, I (do) (do not) find probable cause to believe the confinee committed the offense(s) for which he/she is held. In addition, I (do) (do not) find continued pretrial confinement is required under the criteria set forth under RCM 305(h)(2)(B) for the following reasons:

a. *(List the factual findings that support your decision. The RCM 305(h)(2)(B) criteria, that must be addressed, are 1) an offense triable by a court-martial has been committed; 2) the confinee committed it; 3) confinement is necessary because it is foreseeable that: (a) the confinee will not appear at trial, pretrial hearing, or investigation, or (b) the confinee will engage in serious criminal misconduct; and, 4) less severe forms of restraint are inadequate. When conducting your analysis, consider and apply the additional factors enumerated in RCM 305(h)(2)(B) Discussion.*

b. ....

7. DECISION. In accordance with the above findings, (name of confinee) will be [(continued in pretrial confinement pending trial) (released from pretrial confinement)]. (Recommendations for lesser forms of pretrial restraint, if any, should be addressed in a separate paragraph 8 below - See RCM 304(a).

8. RECOMMENDATION. (If applicable, add this paragraph to set forth your recommendation and reasons for lesser forms of pretrial restraint).

(NAME), (Grade), USAF  
Organization  
Pretrial Confinement Review Officer

Attachments:

- 1. Letter of Appointment
- 2. Confinement Order
- 3. Evidence

**Figure 3.5. Sample Statements of Understanding Regarding Recoupment.**

**STATEMENT OF UNDERSTANDING REGARDING  
RECOUPMENT OF EDUCATION ASSISTANCE, SPECIAL PAY, OR BONUSES**

I understand that the Air Force may be entitled to recoup a portion of education assistance, special pay, or bonus money which I received, if any, if I separate before completing the period of active duty I agreed to serve. I understand this recoupment applies regardless of whether I voluntarily separate or I am involuntarily discharged. I further understand: (1) the recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to me, as the unserved portion of active duty bears to the total period of active duty I agreed to serve; and (2) that if I dispute that I am indebted for educational assistance, a board or other authority will make findings and recommendations concerning the validity of the indebtedness.

Signed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

**Figure 3.6. Sample Commander's Indorsement.**

1st Ind, DD Form 458, Charge Sheet, dated \_\_\_\_\_, (Grade), (Name), (Unit), (Base),  
(State Abbreviation)

FROM: (Squadron CC)

TO: (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 Forces report) (AFOSI report of investigation) (other evidence)] is attached and supports the charge(s). *[If applicable, insert: (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, *Personnel Security Program Management*, paragraph 8.9. [A written request for permission to proceed with further processing of this case has been forwarded to the appropriate special access office.]

(NAME), (Grade), USAF  
(Squadron CC Duty Title)

**Attachments:**

1. Personal Data Sheet
2. Report of Investigation

**Figure 3.7. Personal Data Sheet.**

## PERSONAL DATA SHEET

DATE PREPARED:

NAME OF ACCUSED:

ORGANIZATION:

SSAN:

GRADE:

PAY GRADE:

DATE OF BIRTH:

TAFMSD: (See Note 1)

LENGTH OF SERVICE: (See  
Note 1)

AFSC:

MILITARY TEST SCORES:

BASIC PAY:

HARDSHIP DUTY PAY:

INITIAL DATE OF CURRENT SERVICE:

TERM OF CURRENT SERVICE:

PRIOR SERVICE: (See Note 2)

OVERSEAS SERVICE (OCONUS): (See Note 3)

COMBAT SERVICE: (See Note 4)

NATURE OF PRETRIAL RESTRAINT: (See Note 5)

MARITAL STATUS:

NO. OF DEPENDENTS:

NO. OF PREVIOUS COURT-MARTIAL  
CONVICTIONS:NO. OF PREVIOUS ARTICLE 15 ACTIONS:  
(See Note 6)

AWARDS AND DECORATIONS:

## NOTES:

1. List in years and months (e.g. 2 years, 3 months) for length of service. Exclude and identify lost time (i.e., prior confinement, AWOL or periods of desertion, etc.) Adjust TAFMSD for any lost time or breaks in service. See AFI 36-2134, Air Force Duty Status Program, Chapter 3; AFI 36-2604, Service Dates and Dates of Rank.

2. Include all prior enlistments or periods of service if there was a break in service.
3. Identify dates and locations of service for which credit for overseas service was awarded per AFI 36-2110, Assignments. Include dates and locations.
4. Identify dates and locations of service for which the member was awarded "special pay for duty subject to hostile fire or imminent danger" per DoD 7000.14-R, DoD Financial Management Regulation, Volume 7A, Chapter 10. Include dates and locations.
5. Include type of restraint (See RCM 304(a)), date imposed, location, and number of days. Include restraint by civil authorities at the behest of the Air Force.
6. Do not include an Article 15 over 5 years old from the date of referral unless otherwise admissible.

## Chapter 4

### FORWARDING AND DISPOSITION OF CHARGES

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

#### **4.1. Article 32, UCMJ, Investigations (RCM 404(e), 405, 406(b)(2), 601(d)).**

4.1.1. Requirement for an Article 32 Investigation. Before any charge(s) or specification(s) may be referred to a general court-martial for trial, a thorough and impartial investigation into the matters set forth in the charge(s) and specification(s) must be made.

4.1.2. Investigating Officer (IO).

4.1.2.1. Appointment. The convening authority directs an Article 32 investigation by personally appointing the IO in writing. See sample appointment letter at Figure 4.1. All documents provided to the IO before the investigation must be listed as attachments. The charge sheet and the written evidence, which forms the basis for the charge, should be attached to the IO Appointment Letter. Normally these documents are the same as those attached to the commander's indorsement to the charge sheet. The IO is not required to consider this evidence in the investigation. The IO ensures a copy of the Appointment Letter is provided to the accused before the Article 32 investigation begins.

4.1.2.2. **Qualification of the IO.** Unless precluded by military necessity or other compelling circumstance, the IO should be senior in rank to the accused. An IO must either be a designated judge advocate or hold the grade of major or higher. An IO may be a reserve judge advocate on active duty or performing inactive duty training. ANG judge advocates must be on Title 10 orders to serve as an IO. The accuser may not act as IO. The IO must be impartial. Before appointing an officer to serve as an IO, the convening authority should consider the appointment in the context of the officer's normally assigned duties and assess whether the IO's impartiality could be questioned based on his/her relationship with the case, the parties, and the base legal office.

4.1.3. Counsel.

4.1.3.1. Government Representative. The convening authority may personally detail, or authorize the servicing SJA to detail, a government representative as counsel to represent the United States. RCM 405(d)(3). Both the detail of a government representative and the authorization to allow the SJA to detail a government representative may be verbal or in writing.

4.1.3.2. Counsel for the Accused. The accused is entitled to be represented by military defense counsel certified under Article 27(b) and sworn under Article 42(a), UCMJ. RCM 405(d)(2). The accused may also be represented by civilian defense counsel; however, civilian defense counsel must be provided at no expense to the government. RCM 405(d)(2)(C). Civilian defense counsel must take an oath to perform his or her duties faithfully when representing an accused. The IO will administer this oath. The accused may represent himself, but this right is not absolute. *United States v. Bramel*, 29 M.J. 958 (A.C.M.R.), *aff'd*, 32 M.J. 3 (C.M.A. 1990).

4.1.4. Delays and Resulting Speedy Trial Issues. The convening authority may approve a delay of the Article 32 investigation submitted by either party. The period of time of such delay shall be excluded when determining whether the period in RCM 707(a) has run. Prior to referral, the convening authority may delegate the authority to grant continuances to an Article 32 investigating officer. See RCM 707(a)(1) Discussion. Thus, when an IO has been delegated authority to grant delays, the period covered by the delay is excludable from the 120-day period under RCM 707(9)(c). See also *United States v. Lazauskas*, 62 M.J. 472 (2005).

4.1.5. Preliminary actions by the IO. The IO is responsible for an inquiry into the truth of the matter set forth in the charge(s), consideration of the form of the charge(s), and a recommendation for a disposition that takes into account the interests of justice and discipline. Therefore, the IO must review the charge sheet. The IO should also review the evidence which forms the basis for the charge(s), and any other documents attached to the IO Appointment Letter. The IO reviews the evidence to ascertain whether it will be necessary to conduct a thorough and impartial investigation. The IO may also contact the government representative, if any, and the defense counsel to discuss administrative matters, including setting the date and time for the formal hearing.

4.1.6. Witnesses.

4.1.6.1. Availability of Witnesses. The IO must determine whether witnesses are reasonably available. The “100 miles of the situs” rule found in RCM 405(g)(1)(A) is not a per se rule of unavailability. The IO must conduct a balancing test to determine reasonable availability. RCM 405(g), Discussion.

4.1.6.2. Arranging for Witnesses. If the IO considers a witness available, the IO requests the witness’ presence. Although the IO may contact witnesses to arrange for their presence at the Article 32 investigation, the IO may not discuss the substance of their testimony. The IO may delegate to the government representative the responsibility to arrange for the presence of witnesses the IO considers reasonably available.

4.1.6.2.1. Military Witnesses. The IO arranges for the presence of military witnesses directly or through the witness’ commander. Before the commander determines a military witness is not reasonably available, the commander should consider the balancing test factors in RCM 405(g), Discussion, and provide the reasons for his decision to the IO, to be included in the IO report. If the commander does not put the reasons in writing, the IO must make a memorandum for record detailing the commander’s reasons and include it in the report.

4.1.6.2.2. Civilian Witnesses. The IO may invite civilian witnesses to attend. The IO does not have subpoena power. Therefore, if the witness refuses to testify, the witness is not reasonably available.

4.1.7. Conducting the Investigation.

4.1.7.1. At the beginning of the investigation, the IO must inform the accused of the matters in RCM 405(f) and listed on the DD Form 457, Investigating Officer’s Report, Item 10.

4.1.7.2. IOs should consider all testimony and evidence that is relevant, not cumulative, and reasonably available. RCM 405(g)(1). IOs must become familiar with the rules on alternatives to testimony and evidence in RCM 405(g)(4) and (5). See RCM 405(g)(1)(B) and 405(i) (applying MREs to Article 32 investigations).

4.1.7.2.1. Procedure for Taking Testimony. All testimony, except that of the accused, is required to be taken under oath. RCM 405(h)(1)(A), Discussion. The accused may make a sworn or unsworn statement. The IO has discretion over the manner in which testimony is taken. The IO may personally question witnesses and/or allow the government representative to conduct the questioning. The IO must allow the defense counsel to question witnesses and should allow the defense wide latitude in cross-examination. Keep in mind the application of MRE 303, prohibiting degrading questions, and MRE 412, prohibiting questions regarding the alleged victim's past sexual behavior or any perceived predisposition. An IO who suspects a witness of an offense should advise the witness of his or her rights under Article 31, UCMJ.

4.1.7.2.2. Reducing Testimony to Writing. The IO is responsible for including all testimony in the report. Summarized testimony should be written in the first person. The witnesses should sign and swear to the truth of their summarized testimony, unless this would unduly delay completion of the investigation. If the witness reviews and signs the summarized testimony in the United States, use this language above the witness' signature block: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)." If outside the United States, use: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)." 28 U.S.C. §1746. The IO need not be present for a witness to sign their summarized testimony. If the witness is not available to sign their summarized testimony, the IO may swear that the summary is accurate.

4.1.7.3. Reports of Investigation (ROI). AFOSI and Security Forces ROIs contain documents that are evidence, alternatives to evidence or alternatives to testimony. RCM 405(g)(4),(5). For example, a sworn statement by a witness is an alternative to testimony. RCM 405(g)(4)(A)(i),(B)(i). The narrative portion of an ROI is usually an "unsworn statement describing the evidence" as that term is used in RCM 405(g)(5)(A)(v). Also, photographs or photocopies of physical evidence in ROIs are usually unauthenticated copies, photographs or reproduction of similar accuracy of the evidence. RCM 405(g)(5)(A)(ii) and (B)(ii). IOs are discouraged from considering ROIs in their entirety. In order to consider an ROI, IOs must look at each part of the ROI and determine whether it is evidence or an alternative to testimony. If so, the IO must also determine whether the witness or evidence is reasonably available and apply the rules in RCM 405(g)(4) and (5). The IO should note in the report what parts of the ROI were considered and why. An investigator familiar with the matters in the ROI may testify over defense objection about both unavailable evidence and his or her participation in the investigation, including relating hearsay. RCM 404(g)(5)(B)(i). Witnesses whose statements appear in the ROI may adopt their statements as part of their testimony.

4.1.7.4. Accused's Statements. An accused is not considered a witness for purposes of RCM 405. Therefore, a witness may testify about statements the accused made to the

witness if relevant, not cumulative and not otherwise prohibited by RCM 405(i). Similarly, a written statement by the accused is evidence.

4.1.7.5. Argument. Because an accused may present anything in defense, extenuation and mitigation, and make a statement in any form, the IO may allow the accused or counsel, on behalf of the accused, to make a brief argument, if requested. RCM 405(f)(11),(12).

4.1.7.6. Objections (RCM 405(h)(2)).

4.1.7.6.1. The following are potential bases for objections:

4.1.7.6.1.1. Violations of MRE 301 - 303, 305, 412 and Section V.

4.1.7.6.1.2. Failure to comply with the procedural requirements of RCM 405.

4.1.7.6.1.3. A determination that a witness or evidence is not reasonably available. RCM 405(g)(2)(D).

4.1.7.6.2. IOs are required to note objections in their reports. RCM 405(h)(2). The IO may require counsel to put objections in writing before noting them in the report. The IO may also set a time limit for filing objections.

4.1.8. Tape Recordings and Verbatim Transcripts. Tape recordings of witness testimony and any verbatim transcripts at an Article 32 investigation are permitted only with the advance written approval of the SJA for the convening authority that directed the investigation. When considering such requests, SJAs should consider the likelihood the witness will be unavailable or refuse to testify at a later trial, whether the testimony of an important witness is best evaluated by reviewing the verbatim testimony, and the discovery interest of the accused. If approved, all tape recordings or stenographic notes, which could be subject to release under the Jencks Act, 18 U.S.C. § 3500, or RCM 914, must be retained until the case is completed.

4.1.9. Open Proceedings. Ordinarily, Article 32 investigations are open to the public. All efforts to keep the investigation open should be explored before closing the investigation.

4.1.9.1. Closing. Access by spectators to all or part of the proceeding may be restricted or foreclosed at the discretion of the convening authority that directed the investigation or the IO when warranted by the particular circumstances. RCM 405(h)(3). The convening authority directing the investigation may retain sole authority over a decision to open or close an Article 32 investigation by giving the IO procedural instructions at the time of appointment or at any time thereafter. RCM 405(c).

4.1.9.1.1. Specific Reasons. If the hearing is closed, the convening authority or IO ordering it closed should articulate specific, substantial reasons, in writing, for closure. These reasons should be attached to the IO's report of investigation. Such reasons ordinarily will be only those circumstances under which a court-martial may be closed. MRE 412(c) (evidence of a victim's prior sexual conduct); MRE 505(i) and (j) (classified information); MRE 506(i) (government privilege). RCM 405(h)(3), Discussion. Make every effort to close only those portions of the investigation that are clearly justified and keep the remaining portions of the investigation open.

- 4.1.9.1.2. Reopening a Closed Investigation. A convening authority may open an Article 32 investigation an IO has closed. Prior to issuing procedural instructions to reopen an investigation, the convening authority must consider the IO's written reasons for closing the investigation.
- 4.1.9.2. Potential Witnesses. It is within the IO's discretion to exclude potential witnesses.
- 4.1.10. Media. See Section 13D for issues dealing with the news media.
- 4.1.11. Investigating Uncharged Misconduct. If evidence received at an Article 32 investigation indicates the accused committed uncharged misconduct, the IO may investigate the subject matter of such offense and make a recommendation as to its disposition prior to preferral of charges on that offense. The IO should ensure the accused is present at the investigation, is informed of the nature of each uncharged offense investigated, and is afforded the right to counsel, cross-examination and presentation of evidence. If the uncharged misconduct is subsequently charged, consult RCM 405(b) as to the need for further investigation. Article 32(d), UCMJ.
- 4.1.12. Drafting the IO's Report of Investigation. The IO prepares a report using DD Form 457, Investigating Officer's Report, with supplemental pages, if necessary. See RCM 405(j)(2) and MCM, Appendix 5, for what must be included in the IO report. The report must clearly state what evidence the IO considered. The standard of proof is whether reasonable grounds exist to believe that the accused committed the offense(s) alleged, not whether the government has presented a prima facie case. RCM 405(j)(2)(H); DD Form 457, Item 18. Reasonable grounds exist when the evidence convinces a reasonable, prudent person there is probable cause to believe a crime was committed and the accused committed it. A finding that reasonable grounds exist does not require a recommendation of trial by court-martial.
- 4.1.13. Assembly of the IO Report.
- 4.1.13.1. The IO report is the first indorsement to the IO Appointment Letter.
- 4.1.13.2. The IO report includes the DD Form 457, its supplemental pages, and exhibits. Exhibits include the charge sheet, summarized or verbatim testimony, and other evidence, whether or not considered.
- 4.1.14. Distribution of the Report.
- 4.1.14.1. The IO should deliver the report through the convening authority's SJA to the convening authority who directed the Article 32 investigation. The SJA makes photocopies of the report and delivers the report to the convening authority. The process should be described in the IO Appointment Letter. RCM 405(j)(3).
- 4.1.14.2. The convening authority that directed the investigation, or the SJA on behalf of the convening authority, shall promptly cause a copy of the report to be served on both the accused and accused's counsel. RCM 405(j)(3). Upon delivery, the accused and the accused's counsel shall sign receipts of service, showing the date and time of service. Append the receipts as attachments to the IO Appointment Letter.
- 4.1.15. Objections to the IO Report. Any objections to the report must be submitted to the convening authority that directed the investigation within 5 days of receipt of the report by

the accused and counsel, whichever is later. The day the report is delivered is not counted in calculating the 5-day period. RCM 103(9); 405(j)(4). The convening authority, upon receipt, may direct the investigation be reopened or take other action, as appropriate. However, this does not prohibit a convening authority from referring charges to trial or taking other action within the 5-day period. RCM 405(j)(4).

4.1.15.1. If timely objections are received after the convening authority has taken action on the report, the convening authority may reconsider the prior action taken in light of the objections received. If the report has been forwarded to a superior court-martial convening authority for disposition in accordance with paragraph 4.1.16 below, forward the objections to that convening authority by the most expeditious means so that the objections may receive appropriate consideration.

4.1.15.2. Objections not received in a timely manner are waived. However, relief from the waiver may be granted for good cause shown. RCM 405(k).

4.1.15.3. Append objections as attachments to the IO Appointment Letter.

4.1.16. Forwarding the Article 32 Report of Investigation to a Superior Convening Authority. If the convening authority who directed the investigation decides to forward the Article 32 report to a superior court-martial convening authority for disposition, the convening authority who directed the investigation prepares a forwarding letter which includes a recommendation for disposition of the charges. This letter is forwarded to the superior court-martial convening authority, through the superior convening authority's SJA, and must include the following documents as attachments:

4.1.16.1. The Charge Sheet,

4.1.16.2. The commander's indorsement to the charge sheet, and

4.1.16.3. The IO Appointment Letter with attachments (including the IO Report, accused and defense counsel receipts and any objections).

4.1.17. If the superior convening authority needs to detail members to a court-martial to try the case, forward a list of court member nominees with Credit data. *United States v. Credit*, 2 M.J. 631 (A.F.C.M.R. 1976); RCM 912. A list of court member nominees may not be required if the case will ultimately be referred to a court-martial previously impaneled to try cases (i.e., a standing panel to try cases that may arise in a specified period).

### ***Section 4B— Courts of Inquiry***

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

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 statute or regulation otherwise provides specific investigative procedures for a matter. 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. A court of inquiry shall consist of three or more commissioned officers. The senior member is the president. All members should be senior to any person whose conduct is the subject of an inquiry.

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. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses and to introduce evidence.

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 the sample format in Figure 4.2 to convene a court of inquiry. 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 in the order. The convening order should set the time and place of the court of inquiry. The convening order is provided to the parties and counsel.

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). See also AFMAN 51-203, paragraph 16.12.5.

4.2.8. Challenges. Members of a court of inquiry may be challenged by a party but only for cause stated to the court. The president of the court, with advice from the counsel for the court of inquiry, rules on challenges.

4.2.9. Oaths. The members, counsel, reporter and interpreter take an oath or affirmation to faithfully perform their duties. Article 135(e), UCMJ. The president or counsel for the court of inquiry may administer oaths. Article 136, UCMJ.

4.2.10. Procedures and Rules of Evidence. The rules of evidence and procedure that apply to an Article 32 investigation apply to a court of inquiry.

4.2.11. Witnesses. The president of the court may issue subpoenas for civilian witnesses. RCM 703(e)(2)(C). All witnesses testifying before a court of inquiry do so under oath or affirmation. Members of the court of inquiry, the counsel to the court of inquiry and the counsel to a party may examine all witnesses. A party cannot be compelled to testify, but may testify under oath subject to cross-examination or make an unsworn statement.

4.2.12. Written Report by the Court of Inquiry. The court of inquiry makes findings of fact, but may not make conclusions and recommendations, unless required to do so by the convening authority. Dissenting views are authorized.

4.2.13. Record of the Court of Inquiry. Each court shall keep a record of its proceedings. 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.** The rules governing qualification of counsel who may perform duties before courts-martial apply to counsel representing the parties at a deposition. The deposition should affirmatively indicate the qualifications of counsel. See Figure 4.3.

### **4.4. Recording and Authentication.**

4.4.1. Written Depositions. 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.

4.4.2. Oral Deposition. Conduct oral depositions in accordance with the procedures in RCM 702(g)(1). Figure 4.4 provides a sample format for conducting and transcribing the proceeding. Record and transcribe oral depositions verbatim, noting the times and dates of the opening, closing, recesses and adjournment. An oral deposition may be recorded by a reporter or other means, including videotape. RCM 702(g)(3). The deposition officer is the custodian for the record of deposition.

4.4.2.1. If the deposition is recorded, the transcriber shall certify the transcription is true and accurate. See Figure 4.5. The deposition officer must authenticate the record of deposition. See Figure 4.6. The certification and authentication shall be the last pages of the deposition.

4.4.2.2. For depositions recorded by other means, a written transcript is not required unless the convening authority or military judge directs one. RCM 702(g)(3). However, the record of deposition, whether it is a videotape, audiotape or sound film, must still be authenticated by the deposition officer. The authentication is attached to the recording. A sample format for the authentication of a videotaped deposition is at Figure 4.7.

### ***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 Staff Judge Advocate." The SJA's advice is required for all GCMs and is optional for SPCMs and SCMs.

4.5.2. **Mandatory Contents.** The pretrial advice must include the conclusions and recommendation enumerated in RCM 406(b). The pretrial advice must also address the following matters, when applicable:

4.5.2.1. **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(b)(4). In a case where the death penalty is authorized, but not mandatory, and the convening authority decides to refer the case as noncapital, the referral should include special instructions stating the case is referred as noncapital. RCM 201(f)(1)(A)(iii).

4.5.2.2. **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 GCM, 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.

4.5.3. **Format and Length.** Pretrial advice need not contain any underlying analysis or rationale for the conclusions contained in it. In addition, lengthy summaries of evidence, detailed explanations of elements of offenses, and extensive discussions of possible defenses are not required. See sample format for pretrial advice at Figure 4.8.

**4.6. Forwarding of Pretrial Advice.** The charge sheet, the commander's indorsement, forwarding letters or other indorsements, and, if applicable, the investigating officer's appointment letter with attachments (including the report of investigation, receipts of report and any objections) should be forwarded with the pretrial advice to the convening authority. If the Article 32 investigation is waived, forward the accused's waiver. If an Article 32 investigation is not conducted, forward the documentary evidence that the SJA relied upon to conclude the charges and specifications are warranted, such as investigative reports, witness statements and other documents containing relevant information. If the convening authority needs to detail members to a court-martial to try the forwarded case, forward appropriate documentation for court-member selection. See paragraph 4.1.17.

**4.7. Referral of Charges to Courts-Martial (RCM 601).** The convening authority must sign either the referral section on the DD Form 458, Charge Sheet, 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 by a specified court-martial.

4.7.1. **Completing the Referral Block on Charge Sheet.** The designation of the convening authority on the charge sheet should be the same as on the convening order. Use the date the convening authority referred the charges. If the convening authority personally signs the referral, strike out "by ... Command or Order ... 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 referral "FOR THE COMMANDER."

4.7.1.1. Include special instructions in the referral block when appropriate. RCM 601(e). For example, when additional charges are referred, include the following: "To be tried

with the original (charge) (charges), dated \_\_\_\_\_ [date of preferral of original charge(s)]." Also, when a capital case is referred as noncapital, include the following: "To be tried as a noncapital case."

4.7.1.2. The SPCMCA SJA must have the accused's records examined to ascertain the accused's nationality no later than twenty four hours after referral, even if a claim of foreign nationality has not been made. See paragraph 13.10.3. Comply with the reporting requirements of paragraph 13.10.1.

4.7.2. Dismissing Charges (RCM 401(c)(1)). If the convening authority determines some of the charges and/or specifications will be dismissed instead of referred to court-martial, the dismissed charges and/or specifications should be lined out, and the dismissal dated and initialed (e.g., "Dismissed on 15 Sep 02, [initials]"). This may be accomplished by the convening authority, a judge advocate authorized to sign referrals on the convening authority's behalf, or the trial counsel at the direction of the convening authority. The remaining charges should be renumbered if necessary. If no charges remain, the referral must be withdrawn. See paragraph 8.2.

4.7.3. Disqualification of Convening Authority (RCM 601(c)). An accuser may not refer charges to a general or special court-martial. Further, a convening authority is disqualified if he or she has "an interest other than an official interest in the prosecution of the accused." Article 1(9), UCMJ.

4.7.3.1. If the SPCMCA is disqualified, forward the case to the GCMCA. If the GCMCA is disqualified, the MAJCOM commander determines who shall act as the GCMCA. If there is not an appropriate commander exercising GCMCA within the command, the MAJCOM SJA requests AFLOA/JAJM assistance in the designation of a commander to serve as the GCMCA.

**4.8. Withdrawing Referred Charges (RCM 604).** Reference paragraph 8.2 for withdrawing referred charges.

**4.9. Re-referring Charges.** After charges have been referred to trial, it may become necessary to refer them again on the same charge sheet. Use the following procedures for re-referring charges in rehearings and other cases, including withdrawn charges:

4.9.1. New Referral. The new referral must be documented in the same format 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 appropriate language on bond paper or by using the referral section from page 2 of another DD Form 458. When completed, cut out and attach the new referral section to the charge sheet by stapling it immediately above the original referral section. Never remove or obliterate a prior referral. If a third or subsequent referral is necessary, attach it in the same way as the second.

4.9.2. Special Instructions for Rehearings. When a case has been referred for a rehearing (whether in full, for a limited purpose, or for a new trial), incorporate the appropriate instructions in the referral section. RCM 810. 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 No. 17, Headquarters, 15 AF, dated 4 June 2007, 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 2007," or a similar instruction.

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

4.10.1. Notify AFLOA/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 AFLOA/JAJM by the most expeditious means available (e.g., facsimile or e-mail). Identify the case currently under review by providing the accused's full name, rank, and social security number, along with the case's ACM (the number assigned by JAJM Appellate Records), if available. Also provide the nature of the new charges, including 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 concerning the case.

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

**4.11. Arraignment and Pleas at 39(a) Session.** When a UCMJ, Article 39(a) session is conducted by the military judge before assembly, the arraignment may be held and the plea of the accused may be accepted at that time by the military judge. In addition, the military judge may enter findings of guilty on an accepted plea of guilty at that time.

**4.12. Docketing.** USAF/JAT shall establish docketing procedures.

**Figure 4.1. Appointment of Investigating Officer.**

MEMORANDUM FOR *(Rank and Full Name of Investigating Officer)*

FROM: \_\_\_\_\_/CC

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed as an Investigating Officer pursuant to Article 32, UCMJ, to investigate the attached charge(s) and specification(s) against *(accused's name, rank, unit, and base)*. This investigation is to be your primary duty until completed or until you are relieved.
2. In conducting your investigation, comply with the provisions of Articles 31 and 32, UCMJ; RCM 405; and AFI 51-201, Chapter 4, Section 4A. You should review each of these references before beginning your investigation. You are expected to prepare a summary of testimony as soon as practicable after a witness has testified. A verbatim transcript of the testimony of a witness may only be prepared if approved by my Staff Judge Advocate.
3. You (are) (are not) delegated authority under RCM 707(c)(1) to act upon requests for continuance or delay submitted by either party. *[Your decision granting a continuance must be in writing and attached to your report. (See paragraph 4.1.4.)]*
4. Use DD Form 457, Investigating Officer's Report, to prepare your report and recommendations. Submit your original report to me within eight days of the hearing's conclusion through my Staff Judge Advocate. Annotate all delay requests, whether granted or not, in your report and fully explain any delay in submitting your report beyond eight days.
5. My Staff Judge Advocate will provide any assistance and support you require. *[He/She may be contacted at (XXX)XXX-XXXX].*

(Signature Block)  
Commander

Attachments:

1. Charge Sheet
2. (evidence provided to the IO)
3. (other documents provided to the IO)

**Figure 4.2. Convening Order for Court of Inquiry.**

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 20TH FIGHTER WING  
TYNDALL AFB, FLORIDA 32403

SPECIAL ORDER AA-1

15 April 2007

A court of inquiry is hereby convened. It will proceed at 0730 hrs on 20 April 2007 in the Tyndall AFB courtroom. The court will be constituted as follows:

## MEMBERS

COLONEL ALLEN L. GARRET, PRES	325 MDSS	AET	THIS STATION
COLONEL GERALD F. SMITH	325 LSS	AET	THIS STATION
COLONEL JEFFREY A. SINGLETON	325 SFS	AET	THIS STATION
COUNSEL FOR COURT			
LT COL JOHN F. MILLER	325 FW	AET	THIS STATION
COUNSEL FOR KNOWN PARTY			
MAJ HELEN M. GREGORY	USAF JUDICIARY	AFLOA	THIS STATION
KNOWN PARTY			
LT COL EDWARD J. SCHMIDT	325 CES	AET	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, express opinions and submit recommendations) (include only a factual summary of the matter being investigated.)  
AUTHORITY: AFI 51-201.

ALLEN S. CURTIS, Brig Gen, USAF  
Commander

FOR THE COMMANDER

ROBIN B. DUFFY, Colonel, USAF  
Staff Judge Advocate

DISTRIBUTION  
- 1 Ea Individual  
- 1 Ea Orgn  
- 15 325 FW/JA

**Figure 4.3. Appointment of Deposition Officer.**

MEMORANDUM FOR *(Rank and Full Name of Deposition Officer)*

FROM: \_\_\_\_\_/CC

SUBJECT: Appointment of Deposition Officer

1. You are hereby appointed as Deposition Officer pursuant to Article 49(c), UCMJ, to conduct a deposition of *(name and address of witness(es) to be deposed)*.
2. You must read and comply with the provisions of Article 49, UCMJ; RCM 702; and AFI 51-201, Chapter 4, Section 4C. [You are hereby authorized to record the deposition by (a reporter) (videotape) (audiotape) (other means).] Use DD Form 456 for written depositions. Upon completion of the record of the deposition, you must authenticate it and forward it to me.
3. [*(My Staff Judge Advocate)* *(Name of other Staff Judge Advocate)*] will provide any assistance and support you require. [(He)(She)] may be contacted at [(XXX) XXX-XXXX].

(Signature Block)  
Commander

Attachment:  
Request for Deposition

**Figure 4.4. Sample Format for Oral Deposition Transcript.**

UNITED STATES            )  
   )  
 v.                                    )                                    DEPOSITION  
   )  
 A1C JOHN J. DOE            )  
 3rd Services Squadron     )  
 Elmendorf AFB, AK         )

DO: The proceedings will now come to order at (time, date and place). These proceedings are being recorded by [(a reporter)(videotape)] pursuant to Rule for Court-Martial 702(g)(3).

DO: The persons present are: (Name), Deposing Officer (DO); (Name), Trial Counsel (TC); (Name), Defense Counsel (DC); (Name), Accused (AC); (Name), [(Reporter)(Video Recorder Operator)]; and (name), Witness, whose address is (address).

DO: Counsel (and the reporter) [(has/have)] been previously sworn.

DO: The purpose of this proceeding is to take the deposition of (Witness), to be used in evidence in the case of the United States versus (name of accused). Charges were preferred against the accused on (date) and referred to trial on (date), by order of (convening authority). Authority to take the deposition is vested in me, (Name), as Deposing Officer, by order of (convening authority) by letter dated (date), a copy of which shall be inserted 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 (Witness).

DO: Now I will advise the accused of his rights to counsel. (Advise accused of right to counsel under RCM 506). Do you understand your rights to counsel?

ACC: \_\_\_\_\_.

DO: Do you wish to be represented by (defense counsel) in this deposition?

ACC: \_\_\_\_\_.

DO: At this time, defense counsel please state your qualifications.

DC: I am a judge advocate certified according to Article 27(b), UCMJ.

DO: I will advise the accused and counsel for the government that objections, including the grounds for such objections, shall be stated at the time of the taking of this deposition. All objections will be noted during the deposition and will be ruled upon at the time of the trial.

DO: (Administer the oath to the witness)

DO: You may now examine the witness.

[EXAMINATION OF THE WITNESS BY TRIAL AND DEFENSE COUNSEL.]

DO: This deposition is concluded at \_\_\_\_ hours on \_\_\_\_\_, 20\_\_.

**Figure 4.5. Authentication of Deposition by a Transcriber.**

**AUTHENTICATION OF DEPOSITION**  
of  
*(name of witness)*  
  
**In the Case of**  
**UNITED STATES**  
v.  
*(name of Accused)*

**TRANSCRIBER'S CERTIFICATE**

I certify that the foregoing transcript is an accurate translation of the machine, electronic or coded record of the deposition of the above-named witness [(I recorded) (was provided to me by (deposition officer))] on *(date)*.

(Date)

(Signature Block of Transcriber)

Figure 4.6. Authentication of Deposition by Deposition Officer.

**AUTHENTICATION OF DEPOSITION**  
of  
*(name of witness)*

**In the Case of**  
**UNITED STATES**  
v.  
*(name of Accused)*

**DEPOSITION OFFICER'S CERTIFICATE**

In my capacity as deposition officer and custodian of the foregoing transcript, and in accordance with Rule for Court-Martial 702(f)(8), I certify that the above deposition was duly taken by me and recorded by a reporter ([sworn by me] [previously sworn]) in the presence of the accused and his/her counsel, and that the above-named witness, having been duly sworn by me, gave the testimony in the foregoing transcript. I further certify that the foregoing transcript is a true and accurate account of the testimony of the above-named witness.

(date)

(Signature Block of Deposition Officer)

**Figure 4.7. Authentication of Videotaped Deposition.**

**AUTHENTICATION OF DEPOSITION**  
of  
*(Typed name of witness)*

**In the Case of**  
**UNITED STATES**  
v.  
*(Typed name of Accused)*

In my capacity as deposition officer and custodian of the attached record, and in accordance with Rule for Court-Martial 702(f)(8), I certify that the above deposition was duly taken by me in the presence of the accused and (his/her) counsel. I further certify that I caused the deposition to be recorded by ([videotape] [audiotape] [other means]) on (date), that the above-named witness was duly sworn by me and provided the testimony recorded on the ([videotape] [audiotape] [other means]), and that the ([videotape] [audiotape] [other means]) is a true, accurate, and verbatim account of the testimony of the above-named witness. The ([videotape] [audiotape] [other means]) referenced herein is labeled "Deposition of (Witness)" and is dated (date). The order appointing me as deposition officer and authorizing recording of the testimony of this witness is attached hereto.

(Date)

(Signature Block of Deposition Officer)

**Figure 4.8. Sample Pretrial Advice.**

MEMORANDUM FOR \_\_\_\_\_/CC

FROM: \_\_\_\_\_/JA

SUBJECT: Pretrial Advice – *United States v. Rank and Name*, (SSN), Unit and Base

1. The accused is charged with three specifications of making 19 worthless checks with the intent to defraud, in violation of Article 123a, UCMJ. (The charge was preferred on 15 May 2007, investigated under Article 32, UCMJ, on 16 and 17 May 2007, and forwarded by the investigating officer on 22 May 2007 with a recommendation for referral to trial by general court-martial.) *OR* (The charge was preferred on 15 May 2007. On 25 May 2007, the accused submitted a waiver to his/her right to an investigation under Article 32, UCMJ.) The commander (SPCMCA) forwarded the charge on 2 June 2007 with a recommendation for trial by general court-martial.

2. Pursuant to Rule for Court-Martial 406 and Article 34, UCMJ, I provide you the following advice:

a. The charge and specifications are generally in proper form. *[If applicable, add the following for minor amendments: A minor amendment to specification 2 should be made:*

The specification should be amended at check 147 to reflect, “pay to the order of AFO-147,” vice “Air Force Commissary.”]

b. The charge and specifications *[if applicable, insert: , “as amended,”] (allege offenses under the UCMJ).*

c. The charge and specifications are warranted by the evidence contained in the [(Article 32 report) (documents listed below as attachments)].

d. The accused is on active duty in the United States Air Force. I am satisfied a court-martial would have jurisdiction over the accused and the offenses charged.

[NOTE: If applicable, include information on an accused’s outstanding combat or overseas record and, in capital cases, address aggravating circumstances. *See* paragraph 4.5.2.]

3. I recommend you refer the charge and specifications *(if applicable, insert: “as amended,”)* to trial by general court-martial.

(NAME), (Grade), USAF  
Staff Judge Advocate

Attachments:

1. Charge Sheet
2. Commander's Indorsement with attachments
3. Forwarding letter(s)
4. Investigating Officer Appointment Letter *OR* Waiver of Article 32 Investigation
5. Article 32 Report (*Identify the documentary evidence, Receipts for Report supporting the charges and specifications*)
6. Defense Objections (*if applicable*)

## Chapter 5

### COURT-MARTIAL COMPOSITION AND PERSONNEL, REPORTERS, AND 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 HQ USAF/JAT.

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 or written. Include written orders, if any, in the ROT. Announce on the Record the authority detailing the military judge.

5.1.2.1. A military judge from another U.S. Armed Force may be detailed to Air Force courts-martial according to the other Armed Force's regulations applicable to military judges and with the approval of TJAG.

5.1.2.2. TJAG has authority to make Air Force military judges available for detail to trials convened by another U.S. Armed Force.

##### **5.2. Summary Court-Martial Officer (SCMO) (RCM 1301; 1302).**

5.2.1. Detailing SCMOs. A SCMO is detailed to a summary court-martial in a convening order. The convening order may be a separate order prepared in accordance with RCM 504(d) or it may consist of a notation on the charge sheet signed by the convening authority. See RCM 1302(c). For qualifications of a SCMO, see RCM 1301(a).

5.2.2. Reservists as SCMOs. A reservist on active duty who is a commissioned officer may serve as a SCMO under RCM 1301. Reservists on inactive duty for training (IDTs) are not on active duty and cannot serve as SCMO. Air National Guard officers who are serving on active duty in federal service may serve as summary court-martial officers under RCM 1301.

5.2.3. Selection of Officers. The SCMO must be impartial. Before appointing an officer to serve as a SCMO, the convening authority should consider the appointment in the context of the officer's normally assigned duties and assess whether the SCMO's impartiality could be questioned based on his or her relationship with the case, the parties, and the base legal office.

##### **5.3. Detail of Counsel (RCM 503(c)).**

5.3.1. Procedure.

5.3.1.1. A Senior Defense Counsel (SDC) may detail an Area Defense Counsel (ADC) from a base within that SDC's region as defense counsel to any court-martial within that region. The Chief, Trial Defense Division, or a Chief Senior Defense Counsel (CSDC) retains the authority to override such detailing decision.

5.3.1.2. When requested by the SDC in the region where a court-martial is to be held, an SDC may detail an ADC from a base within that SDC's region as defense counsel to a court-martial outside that region, with the concurrence of the Chief, Trial Defense Division, or a CSDC.

5.3.1.3. A CSDC may detail any ADC or SDC as defense counsel to any court-martial. The Chief, Trial Defense Division, retains the authority to override such detailing decision.

5.3.1.4. The Chief, Trial Defense Division, may detail any ADC, SDC, or CSDC as defense counsel to any court-martial.

5.3.1.5. An SJA, Chief Senior Trial Counsel (CSTC), Senior Trial Counsel (STC), or the Chief or Deputy Chief, Government Trial and Appellate Counsel Division (AFLOA/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.

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

5.3.1.7. The Chief, Military Justice Division (AFLOA/JAJM), is TJAG's designee with authority to make Air Force counsel, with the exception of those assigned to AFLOA/JAJA, available for detail to trials convened by another Armed Force. AFLOA/JAJA exercises this authority over ADCs and SDCs.

### 5.3.2. Qualifications.

5.3.2.1. 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.

5.3.2.2. Special Court-Martial. Attorneys detailed as defense counsel for a 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.

5.3.2.2.1. If, because of physical conditions or military exigencies, an accused is not afforded the opportunity to be represented by defense counsel certified according to Article 27(b), UCMJ, the convening authority must make a detailed written statement, to be included in the ROT, stating why counsel with such qualifications could not be obtained. Article 27(c)(1), UCMJ.

5.3.2.3. Summary Court-Martial. An accused facing trial by SCM may request representation by a military defense counsel but is not entitled to military defense counsel certified according to Article 27(b), UCMJ. RCM 1301(e). An attorney who has been designated a judge advocate under 10 U.S.C. § 8067(g) and AFI 51-103 may be detailed to represent the Government.

5.3.2.4. **Air Reserve Component Members.** The requirements of certification and designation set out in 5.3.2.1 through 5.3.2.3 apply to reserve component judge advocates. Only those reservists assigned as senior trial or senior defense counsel may be certified annually. Other reserve component judge advocates are certified according to AFI 51-103. Reserve component judge advocates must be on active duty or performing inactive duty training to be detailed as trial counsel or military defense counsel, and they must be in Title 10 status at all times when performing trial duties. See paragraph 5.4.5 for guidance on reserve component judge advocates performing individual military defense counsel (IMDC) duties.

5.3.2.5. **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 bar membership and standing.

5.3.3. **Disqualifications (Articles 26(d) and 27(a), UCMJ; RCM 502(d)(4)).** An IO for an Article 32, UCMJ, investigation may never serve as a member of the prosecution or as military judge in the same case. A judge advocate who served as the accuser or 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 individual's prior involvement in the case.

**5.4. Requests for Individual Military Defense Counsel (RCM 502(d)(3) and 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.

5.4.1. **Format of IMDC Requests.** An IMDC request must be in writing and signed by the accused or detailed counsel and shall include the following, as applicable:

5.4.1.1. The date of the Article 32 investigation or trial;

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

5.4.1.3. Whether the accused is represented by other counsel (not the requested counsel) and, if so, the name of that counsel;

5.4.1.4. Whether the accused has entered into an attorney-client relationship with the requested counsel concerning the charges being investigated or tried, (including any statement required by 5.4.4);

5.4.1.5. In the case of a requested counsel presently unavailable, whether the counsel is expected to be available before the Article 32 investigation or trial; and,

5.4.1.6. 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.

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

5.4.2.1. Medical Legal Consultants and Advisors;

5.4.2.2. Attorneys in the National Capital Region assigned to the Air Force Legal Operations Agency, excluding any individual detailed to perform duties as a SDC or ADC;

5.4.2.3. Attorneys attending an Air Force Institute of Technology (AFIT) sponsored program such as an LL.M (Master of Laws) program;

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

5.4.2.5. Attorneys detailed to perform duties as a STC. Detailed trial and assistant trial counsel in the same or an allied case;

5.4.2.6. Staff Judge Advocates, and for commands having a general court-martial convening authority, Deputy Staff Judge Advocates.

5.4.3. Reasonably Available. A counsel is "reasonably available" if not considered unavailable by the terms of the MCM or this instruction, and the appropriate approval 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. In determining the reasonable availability of a counsel, the approval authority may consider the following:

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

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

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

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

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

5.4.3.6. The distance from the expected site of the proceedings; and

5.4.3.7. Whether requested counsel is likely to be a necessary witness at trial or is otherwise conflicted from representing the accused under the Air Force Rules of Professional Conduct or Air Force Standards for Criminal Justice.

5.4.4. Exception: Attorney-Client Relationship. When an attorney-client relationship exists, as determined by the approval authority, exceptions to non-availability based upon assignment to a position identified in RCM 506(b)(1) and paragraph 5.4.2 should ordinarily be granted. An attorney-client relationship exists when, at the time of the accused's IMDC request, the accused and the requested attorney had a bilateral understanding as to the nature of services to be provided in the case, and the requested attorney was actively engaged in the preparation and pretrial strategy of the case. *United States v. Spriggs*, 52 M.J. 235 (2000). A statement claiming the attorney-client relationship signed by the requested attorney and accused must accompany the IMDC request (see paragraph 5.4.1.4). The statement must provide an overview of the relationship.

5.4.5. IMDC Requests for Air Reserve Component (ARC) Attorneys. Only ARC attorneys on extended Title 10 active duty tours can be requested. The reasonable availability of ARC attorneys is assessed in the context of RCM 506(b)(1) and paragraph 5.4.2; i.e., the restrictions apply to the active and reserve components alike. ARC attorneys must be in Title 10 status at all times when performing as an IMDC. Requests for ARC attorneys are processed IAW paragraph 5.4.7.

5.4.6. Processing IMDC Requests for ADCs and SDCs.

5.4.6.1. IMDC requests for ADCs and SDCs are forwarded through defense channels to the appropriate approval authority as follows:

5.4.6.1.1. Senior Defense Counsel (SDCs) determine the availability of and take action on IMDC requests for ADCs assigned to them. However, a Chief Senior Defense Counsel (CSDC) may override a SDC's decision to grant an IMDC request.

5.4.6.1.2. The Chief, Trial Defense Division, or a CSDC determines the availability of SDCs and takes action on IMDC requests for SDCs. However, the Chief, Trial Defense Division, may override a CSDC's decision to grant an IMDC request.

5.4.6.1.3. The Chief, Trial Defense Division, determines the availability of a CSDC and takes action on IMDC requests for the CSDC.

5.4.6.2. An accused may appeal the disapproval of an IMDC request to the Chief, Trial Defense Division, whose decision is final. There is no appeal from an IMDC request initially disapproved by the Chief, Trial Defense Division.

5.4.7. Processing IMDC Requests for Other Counsel. IMDC requests for all other counsel (not addressed in paragraph 5.4.6.) are forwarded to the convening authority through the trial counsel, if any. RCM 506(b)(2). Because the Trial Defense Division is responsible for defense services throughout the Air Force, it is incumbent upon those IMDCs who are not assigned to JAJD to notify the Chief, Trial Defense Division, of their association with a case as soon as practicable. These IMDCs should also keep the regional SDC informed about the progress of the case. Additionally, the IMDC must coordinate in advance any anticipated expenditure of JAJD funds for travel or other reasons.

5.4.7.1. Disposition when Counsel is Not Reasonably Available. If the requested counsel is not reasonably available for a reason identified in RCM 506(b)(1) or paragraph 5.4.2, and the accused does not assert an attorney-client relationship, the convening authority denies the request and notifies the accused.

5.4.7.2. Disposition when Counsel May Be Available. If the requested counsel appears to be reasonably available (i.e., not apparently unavailable IAW RCM 506(b)(1) or paragraph 5.4.2), the convening authority forwards the request to the appropriate approving authority identified below. The approving authority evaluates availability (see paragraph 5.4.3), 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.

5.4.7.2.1. Attorneys Assigned to AFLOA or HQ Air Force. Send requests for attorneys in the Civil Law and Litigation Directorate (AFLOA/JAC), Air Force Judiciary Directorate (AFLOA/JAJ), Legal Information Services Directorate

(AFLOA/JAS), AFJAGS or HQ Air Force directorates to the respective director or division chief. Requests for ADCs and SDCs shall be forwarded in accordance with paragraph 5.4.6.

5.4.7.2.2. LL.M. Students. Send requests for attorneys in an LL.M. program to the Director, Professional Development Division, HQ USAF/JAX.

5.4.7.2.3. Staff Judge Advocates. Send requests for staff judge advocates to the SJA's commanding officer.

5.4.7.2.4. All Others. Send requests for all other attorneys to the requested counsel's SJA, supervising officer, or commander.

5.4.8. Appeals. The accused may request review of a disapproved IMDC request by the next higher level of supervision of the officer who denied the request. Appeals shall be forwarded to the convening authority through the trial counsel.

5.4.8.1. If the convening authority originally denied the request, and declines to grant the request on appeal, forward the appeal to the convening authority's superior officer for review and decision. The final decision is returned to the convening authority, who notifies the accused. There is no appeal from an IMDC request initially disapproved by a MAJCOM commander or higher authority.

5.4.8.2. If an approval authority originally denied the request, the appeal is forwarded by the convening authority to that approval authority. If the approval authority declines to grant the request on appeal, he or she forwards the appeal to the approval authority's superior officer for review and decision. The Deputy Judge Advocate General (DJAG) reviews denials by Directors of AFLOA/JAJ, AFLOA/JAC, AFLOA/JAS, AFJAGS or by HQ USAF directorate chiefs. There is no review of denials made by the Deputy Judge Advocate General. The final decision is returned to the convening authority, who notifies the accused of the decision.

5.4.8.3. A military judge may, for good cause, determine that a particular IMDC is reasonably available, notwithstanding any provision of this instruction.

## **5.5. Oaths (Article 136, UCMJ; RCM 807).**

5.5.1. One-Time Oath. Military judges certified according to Article 26(b), UCMJ, military counsel, certified according to Article 27(b), UCMJ, and court reporters may take a one-time oath.

5.5.1.1. 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.

5.5.1.1.1. For military judges, 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)."

5.5.1.1.2. For military counsel, send the original and one copy to HQ USAF/JAX. Use the following oath: “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).”

5.5.1.1.3. For court reporters, give the original to the reporter 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), do (swear) (affirm) that I will faithfully perform the duties of (reporter) in any proceeding under the Uniform Code of Military Justice to which I am detailed, (so help me God).”

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

5.5.3. Interpreters. In a GCM or SPCM, the trial counsel or military judge administers an oath to the interpreter. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath (e.g., summary court-martial officer, deposition officer, investigating officer). The oath must be included in the record of the proceeding. An interpreter is properly sworn after an affirmative response to the following oath: “Do you, [name of interpreter], (swear) (affirm) that you will faithfully perform the duties of interpreter in this proceeding, (so help you God)?”

**5.6. Defense Investigative Support.** Defense requests for investigative support will be made in writing to the servicing SJA, who will forward the request along with a recommendation to the convening authority. If the convening authority grants the request and investigative resources are available within the convening authority’s command that would satisfy the needs of the defense, other than AFOSI investigators, the convening authority appoints an investigator.

5.6.1. If the convening authority concludes that appointment of an AFOSI special agent is necessary under the circumstances, the convening authority will inform the local AFOSI detachment commander. The AFOSI detachment commander will forward the request through command channels for a determination of whether or not investigative resources exist to support the defense request. If AFOSI/CC agrees that appointment of a special agent is appropriate and an agent is available, he or she will appoint one. The AFOSI/CC is the decision authority for appointment of AFOSI agents as defense investigators, except in the extraordinary case where a trial judge specifically mandates the appointment of an AFOSI special agent. In all cases, the convening authority will provide the funding IAW 51-201, Figure 6.8, Note 9. See *United States v. Pomarleau*, 57 MJ 351 (CMA 2002). Contact AFOSI/JA with any questions regarding this policy or its application including provisions that apply to the conduct of AFOSI special agents who have been assigned to provide defense investigative support.

## ***Section 5B— Court Reporters***

### **5.7. General Information.**

5.7.1. 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. The reporter is neutral and should not express personal opinions about the case being reported. Reporters are normally detailed to all Air Force GCMs and SPCMs. The reporter records everything that is said or done verbatim, from the initial Article 39(a) session until the court adjourns and maintains the reporter's notes and recordings according to the Air Force Records Disposition Standards. 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. 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."

5.7.2. Detailing Court Reporters. The Air Force court reporter program is managed by the Superintendent, USAF Judiciary. Requests for support, other than expeditionary court reporting requirements and mishap investigation boards, will be sent directly from the requesting office to the Superintendent for assignment. Following assignment, 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)). Requests for expeditionary court reporting requirements and mishap investigation boards will be sent to the Superintendent from the Command requesting support.

5.7.3. Methods of Reporting. Digital recording will be used as the primary method of recording; stenotype may also be utilized, however, digital is preferred. Court reporters must use both a primary and backup system to ensure a record can be accurately prepared. The backup method for stenotype reporting will be digital recording.

**5.8. Enlisted Court Reporters.** The primary role of the enlisted court reporter is to fulfill the expeditionary court reporting requirement and support mishap investigation boards. They also report and transcribe courts-martial, administrative discharge boards, Article 32 hearings, depositions, and other proceedings as the expeditionary mission allows.

***Section 5C—Detailing and Excusing Members (RCM 501, 502(a), 503(a) and 505); Convening Orders (RCM 504)***

**5.9. Detailing Members.** Convening authorities detail the best qualified persons for courts-martial in accordance with the criteria in Article 25(d), UCMJ. Enough members should be detailed so that, after challenges, a general court-martial will be comprised of at least five members and a special court-martial will be comprised of at least three members. Convening authorities may detail members under their command or others made available by their commander. When detailing court members, convening authorities may consider nominees submitted by subordinate commanders. The SJA must guard against unlawful command influence or the appearance of such in the court member selection process, which includes ensuring no involvement by trial counsel or assistant trial counsel. When advising the convening authority on court member selection, the SJA reiterates the Article 25(d), UCMJ, criteria. The SJA may prepare a list of proposed nominees. If such a list is used, the SJA also informs the convening authority that he or she may consider persons on the nomination list as well as any other eligible person subject to his or her command or others made available by their commanders. The SJA maintains all documents submitted to the convening authority.

5.9.1. **Enlisted Members (RCM 503(a)(2)).** If an enlisted accused requests that enlisted members serve as court members, the convening authority details enlisted members, following the guidance in this section. The convening authority should detail enough enlisted members so that, after challenges, the court will be comprised of at least one-third enlisted members. If officer members have already been detailed, the convening authority may replace officer members with enlisted members, or may detail enlisted members without excusing officer members. If the membership of the court falls below one-third enlisted members, the convening authority must detail additional enlisted members.

**5.10. Changing or Excusing Detailed 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 servicing SJA or other principal assistant 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. RCM 505(c).

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

5.11.1. Generally. Prepare convening orders in accordance with RCM 504, 1302, and this chapter. Authenticate convening orders according to this instruction. Cite the current Department of the Air Force Special Order or other document authorizing the commander to convene courts (Figure 5.1). Convening orders can be amended. To reflect changes in court members, except when members are excused without replacement, amend the original order (Figure 5.2). If excusal of a member without replacement is not reduced to writing, the excusal must be announced on the record. Generally, issue no more than two amendments to the original order. If it is necessary to further amend the convening order, do not issue a new amending order; instead, publish a new order convening a court-martial with a savings clause that transfers all cases in which the court has not yet been assembled to the new order (Figure 5.3). Ensure all amendments to a convening order and all convening orders with a savings clause cite all prior orders. Give a copy of all convening orders and amendments to convening orders to the military judge and include in all copies of the ROT.

5.11.2. Numbering Convening Orders. Orders convening courts-martial are special orders that are numbered consecutively on a fiscal year basis, starting with number 1. The number shall follow an A-series letter prefix. AFI 33-328, Administrative Orders, Table 2.1, Rule 17. Use an A letter prefix for general courts-martial and an AB letter prefix for special courts-martial.

5.11.3. 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, i.e. social security number. If a detailed member is not under the command of the convening authority, ensure the special order clearly indicates that the member has been detailed with the concurrence of the member's commander. See Figure 5.1.

5.11.4. 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.**

(G-06-003 dated 8 November 2006, was the last Special Order of this headquarters published in FY 07) OR (There were no Special Orders published in FY 07.)

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, 14TH AIR FORCE (AFSPC)  
VANDENBERG AFB, CA 93437-6285

SPECIAL ORDER  
A-1

14 Dec 2006

Pursuant to authority contained in Special Order A-####, Department of the Air Force, dated, \_\_\_\_ 2007, a general court-martial is hereby convened. It may proceed at Vandenberg AFB, CA, to try such persons as may be properly brought before it. The court will be constituted as follows:

MEMBERS

COLONEL ALONZO PETIT	14 AF	AFSPC	THIS STATION
LIEUTENANT COLONEL JOHN SMITH	30 CES	AFSPC	THIS STATION
**MAJOR DON F. WARREN	DET 9 SMC	AFSPC	THIS STATION
FIRST LIEUTENANT SID J. PORTER	30 MDG	AFSPC	THIS STATION
SECOND LIEUTENANT WILLIAM RHODES	30 OSS	AFSPC	THIS STATION

\*\*With concurrence of commander concerned.

RICHARD T. EARLY, Major General, USAF  
Commander

FOR THE COMMANDER

CHARLES W. THOMAS, Colonel, USAF  
Staff Judge Advocate

DISTRIBUTION  
- 1 Ea Individual  
- 1 Ea Orgn  
- 15-14 AF/JA

SO A-1

**Figure 5.2. Sample Amendment to Convening Orders.**

DEPARTMENT OF THE AIR FORCE  
 HEADQUARTERS, 14TH AIR FORCE (AFSPC)  
 VANDENBERG AFB, CA 93437-6285

SPECIAL ORDER  
 A-3

17 Jan 2007

The following members are detailed to the general court-martial convened by Special Order A-1, this headquarters, dated 14 December 2006, vice MAJOR DON F. WARREN, and SECOND LIEUTENANT WILLIAM RHODES, relieved.

CHIEF MASTER SERGEANT BOB L. GRAYSON	30 CES	AFSPC	THIS STATION
MASTER SERGEANT J.W. JONES	30 MSS	AFSPC	THIS STATION
STAFF SERGEANT JOHN SMITH	30 CS	AFSPC	THIS STATION

RICHARD T. EARLY, Major General, USAF  
 Commander

FOR THE COMMANDER

CHARLES W. THOMAS, Colonel, USAF  
 Staff Judge Advocate

DISTRIBUTION  
 - 1 Ea Individual  
 - 1 Ea Orgn  
 - 15-14 AF/JA

SO A-3

**Figure 5.3. Sample Special Court-Martial Convening Order with a Savings Clause.**

DEPARTMENT OF THE AIR FORCE  
 HEADQUARTERS, 30TH SPACE WING (AFSPC)  
 VANDENBERG AFB, CA 93437-6261

SPECIAL ORDER  
 AB-6

20 Apr 2007

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

## MEMBERS

LIEUTENANT COLONEL JOHN E. JONES	30 CES	AFSPC	THIS STATION
MAJOR SUSAN D. SMITH	30 CS	AFSPC	THIS STATION
**MAJOR DON F. WARREN	DET 9 SMC	AFSPC	THIS STATION
FIRST LIEUTENANT SID J. PORTER	30 MDG	AFSPC	THIS STATION
SECOND LIEUTENANT WILLIAM RHODES	30 OSS	AFSPC	THIS STATION

\*\*With concurrence of commander concerned.

All cases referred to the special court-martial convened by Special Order AB-2, this headquarters, dated 16 April 2007, as amended by Special Order AB-3, this headquarters, dated 17 April 2007, and Special Order AB-5, dated 19 April 2007, in which the court has not yet been assembled, will be brought to trial before the court hereby convened.

JOSEPH A. HART, Colonel, USAF  
 Commander

FOR THE COMMANDER

CHARLES W. HOGAN, Lt Col, USAF  
 Staff Judge Advocate

DISTRIBUTION  
 - 1 Ea Individual  
 - 1 Ea Orgn  
 - 15-30 SW/JA

SO AB-6

## Chapter 6

### TRAVEL FUNDING, WITNESS PRODUCTION, AND IMMUNITY

#### *Section 6A—Travel Funding*

**6.1. Funding Authorities.** AFI 65-601, Volume 1, Budget Guidance and Procedures, (hereinafter “AFI65-601v1”), Table 10.2, prescribes the travel funding authorities for persons required for boards, investigations and courts-martial. AFI 65-601v1 is controlling; however, the travel funding table is reprinted at Figure 6.9.

**6.2. AFLOA Central Travel Funding.** AFLOA/JAJM centrally funds and manages travel for persons identified in AFI 65-601v1, Table 10.2, for travel required for Article 32 investigations and courts-martial. AFLOA/JAJM does not fund travel for other matters related to UCMJ proceedings, such as travel to and from depositions and administrative actions. If a court-martial, board, or investigation is conducted within active duty channels for a Category A or B Reservist, the applicable active duty convening authority prescribed in **Figure 6.9** is responsible for witness travel costs.

**6.2.1. Requesting AFLOA Central Travel Funds.** RCM 703(c) governs the initial determination of whether to produce a witness. Once the determination is made to require the presence of a person whose travel is funded by AFLOA/JAJM, including a witness required by the military judge, the SJA requests travel funds electronically through the Witness Funding Management System (WFMS). WFMS will monitor all requests submitted by legal offices. This system provides an up to date status on each request. In addition, the system has bulletin and e-mail capability that allows JAJM’s Central Witness Funding (CWF) branch to provide essential information to the requesting base. The requester will need a FLITE ID and password to log into the database. The SJA, and the Chief and NCOIC of Military Justice are appointed as WFMS managers. WFMS managers have the ability to reset permissions and ensure the correct WFMS managers are posted at all times. All personnel assigned to the requesting legal office can create a request in the system. However, only WFMS managers can approve, cancel and forward the request to JAJM. WFMS managers are responsible for managing the status of witnesses until the witness voucher has been paid and, if applicable, expert fees are paid. WFMS managers will ensure all fields are completed prior to forwarding the request to JAJM.

**6.2.2.** All requests should be sent electronically to AFLOA/JAJM at least 10 calendar days before the requested person is required to travel using the WFMS link on FLITE at [https://aflsa.jag.af.mil/flite/training/jaguar/wfms/wfms\\_home](https://aflsa.jag.af.mil/flite/training/jaguar/wfms/wfms_home). An electronic approval will be sent via e-mail to the original requester and the approving WFMS manager. Upon receipt of the approval, the requesting legal office will provide the witness with a Memorandum of Understanding (MOU) that both the witness and the Defense Travel System (DTS) approving official sign and then fax or email to AFLOA/JAJM (DSN 754-7487 Comm 202-404-7487) so that cross-organizational funding can be accomplished in DTS. *See Figure 6.1.* Military witnesses must also be briefed that available dining facilities will be used for at least two meals a day. Once received, CWF will forward a fund-cite authorization letter to the DTS approving official. If a unit does not have access to DTS, coordinate with the witness’s unit to manually complete a DD Form 1610 and then ensure the form is

forwarded to ALFOA/JAJM for certification. The requesting legal office is responsible for ensuring all TDY arrangements are made (flight reservations, billeting, rental car). AFLOA/JAJM does not fund rental cars unless it is determined to be advantageous to the government.

6.2.3. **Fund Citations and Travel Itinerary.** AFLOA/JAJM furnishes procedural instructions for JAJM funded travel. Justification is required for witnesses requiring more than five temporary duty days including travel for stateside travel and seven temporary duty days for overseas travel. Obtain prior approval from AFLOA/JAJM for any deviations to the travel itinerary, or the organization approving such deviation may be responsible for additional costs. Witnesses subject to recall should remain in the local area until released to avoid travel itinerary deviations.

6.2.4. **Additional Responsibilities.** The requesting legal office WFMS manager must notify AFLOA/JAJM as soon as possible when the presence of a centrally funded witness is no longer required. In cases involving an expert urinalysis witness, the SJA for the requesting legal office must also certify the attendance of expert witnesses before payment of expert fees may be made.

6.2.5. **Experts in Urinalysis Cases.** AFLOA/JAJM centrally funds experts (forensic experts, e.g., chemists, toxicologists, qualified physicians) approved by a convening authority to testify at courts-martial relating to urinalysis testing. Follow the instructions above and include the witness fee per day, travel costs and per diem. The request must include a statement of the convening authority's approval of the expert and the amount of compensation. Before requesting funding for a civilian expert witness, trial counsel must first ascertain the non-availability of the forensic urinalysis experts at the Air Force Drug Testing Laboratory, Brooks AFB, Texas, or any other expert under contract with the Air Force. SJAs should obtain written agreements with non-government civilian expert witnesses fixing their rate of compensation and reimbursement for expenses. A sample agreement is provided at Figure 6.3.

6.2.5.1. **Fee Limits.** AFLOA/JAJM funding for urinalysis expert witness fees is limited to \$1,000 per day, with a maximum of \$4,000 per witness, per case for in-court testimony only. 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 is not binding on AFLOA/JAJM and may result in the convening authority paying the difference.

6.2.5.2. **Inconvenience Fees.** AFLOA/JAJM may fund up to \$500 per witness, per case, for inconvenience or cancellation fees for prior approved urinalysis experts. Inconvenience fees not approved in advance by AFLOA/JAJM will not be paid from central witness funds. Payment will not be considered appropriate unless a written agreement provided for inconvenience or cancellation fees at the time the witness' services were contracted. In every case, there must be a showing of actual inconvenience and financial loss to the witness, and cancellation within five days of the authorized travel date. In order to demonstrate actual inconvenience and financial loss, more than mere cancellation is required. Expert witnesses are expected to mitigate any financial loss caused by cancellation.

6.2.5.3. Consultants. Central witness funds are to be used for expert witnesses, not consultants. The convening authority is responsible for payment of consultant services and fees. The funding request constitutes a representation the witness is expected to testify at the trial. However, should a JAJM approved and funded expert witness not testify at trial, funding authority will not be revoked.

### ***Section 6B— Witness Production***

**6.3. Military Witnesses.** Provide notice to the witness and their commander of the time, place, and date the witness' presence is required, and request the commander issue any necessary orders to the witness. RCM 703(e)(1).

**6.4. Civilian Witnesses.** Except as provided in paragraphs 6.4.4, 6.4.5, and 6.4.6, use DD Form 453, Subpoena, and DD Form 453-1, Travel Order, to obtain the presence of civilian witnesses and to authorize reimbursement for their travel expenses. Mark through any inapplicable dollar amount in parentheses on DD Form 453-1 and insert the applicable dollar amount in the space provided. RCM 703(e)(2) Discussion.

6.4.1. Informal Service for Willing Witnesses. When a civilian witness will appear voluntarily and a subpoena is issued, informal service of process by mail, including arrangements for travel and advance travel pay, is authorized. Figure 6.4. is a sample letter to accomplish informal service. RCM 703(e)(2)(D), Discussion.

6.4.2. Formal Service for Unwilling Witnesses. If a witness is unwilling to attend the court-martial voluntarily, serve the subpoena personally on the witness and tender travel orders and prescribed fees. RCM 703(e)(2)(D) and Discussion. Appropriate fees and mileage must be paid or tendered when serving the subpoena to meet the threshold requirement for requesting a Warrant of Attachment and subject the witness to federal prosecution under Article 47, UCMJ. Consult with the base Accounting & Finance Office (AFO) to determine the proper method of obtaining the necessary funds. 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 that 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 or AFOSI detachment nearest the witness.

6.4.3. Failure to Appear. If 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. See RCM 703(e)(2)(G), Discussion; *United States. v. Ortiz*, 35 M.J. 391 (CMA 1992). The witness may be prosecuted for failure to comply.

6.4.3.1. Requirements for a Warrant of Attachment. A Warrant of Attachment may be issued only if in compliance with the provisions set out in RCM 703(e)(2)(G)(ii).

6.4.3.2. Processing a Warrant of Attachment.

6.4.3.2.1. In most cases, a Warrant of Attachment should be executed by the U.S. Marshal Service. Otherwise, anyone 18 years or older may execute a Warrant of

Attachment. Military law enforcement may execute a Warrant of Attachment. However, military law enforcement should only be considered a last resort.

6.4.3.2.2. Provide the U.S. Marshal's Service with the following:

6.4.3.2.2.1. A copy of the Warrant of Attachment;

6.4.3.2.2.2. A copy of the subpoena;

6.4.3.2.2.3. A copy of the certificate of service or receipt;

6.4.3.2.2.4. An affidavit indicating that appropriate fees and mileage were tendered to the witness and the amount, reasons that witness is material and why it is believed the witness refuses or willfully neglects to appear;

6.4.3.2.2.5. A Military Interdepartmental Purchase Request (MIPR) number. See paragraph 6.4.3.4.

6.4.3.2.3. The U.S. Marshal's Service General Counsel's Office will review the Warrant of Attachment and determine the appropriate executing office. As this process can take some time, trial counsel or the Government representative should consider requesting relief pursuant to RCM 707(c) if applicable.

6.4.3.2.4. If the U.S. Marshal Service is executing the Warrant of Attachment, it will make travel, lodging, and housing arrangements for the escorts and witness as appropriate. Otherwise, the Government is responsible for making travel, lodging and housing arrangements for the escorts and witness.

6.4.3.2.5. Only such non-deadly force as is necessary to bring the witness to the proceeding is authorized.

6.4.3.3. Escorting and Detaining a Civilian Witness. Once a Warrant of Attachment is executed, the civilian witness must be under escort or otherwise accounted for at all times. Escort and housing of a civilian witness ceases once a determination is made by the authority issuing the warrant that the witness is no longer needed for the proceeding.

6.4.3.3.1. If the U.S. Marshal's Service or other civilian law enforcement agency did not execute the Warrant of Attachment, a civilian witness must be accompanied by a minimum of two escorts at all times. Armed escorts should be use as a last resort and only if absolutely necessary.

6.4.3.3.2. If it is necessary to house a civilian witness prior to the proceeding and the U.S. Marshal's Service or other civilian law enforcement agency did not execute the Warrant of Attachment, coordinate with the U.S. Marshal's Service to arrange for housing of the witness in the nearest available civilian detention facility. Every effort should be made to minimize the amount of time a civilian witness is housed in a civilian detention facility. Never house a civilian witness in a military confinement facility.

6.4.3.4. Funding. The funding authority responsible for funding the travel of the witness pursuant to Figure 6.9 is also responsible for funding the travel of personnel necessary to effect the execution of the Warrant of Attachment and escort the witness to the location specified in the subpoena. If detention of the witness is required, either at the location the Warrant of Attachment is executed or at the location specified in the subpoena, the

funding authority responsible for funding the travel of the witness is also responsible for fees charged by the facility detaining the witness. If the entity executing the Warrant of Attachment is another Federal agency, such as the U.S. Marshal's Service, funding will be accomplished through a MIPR.

6.4.4. Subpoena Limitations. A civilian witness may not be subpoenaed to testify at a court-martial outside the United States or at an Article 32, UCMJ, hearing. Issue Invitational Travel Orders (Figure 6.5) to a civilian witness who voluntarily agrees to appear at such proceedings. Joint Federal Travel Regulations (JFTR), Vol. 2, Appendix E. A sample letter to accompany the Invitational Travel Order is at Figure 6.4.

6.4.5. **Civilian Expert Witnesses (not employees of the United States).** When a party considers government employment of a civilian expert witness is necessary, the party shall submit a written request to the convening authority, with notice to the opposing party, to authorize the employment and fix the expert's compensation. RCM 703(d). The terms of employment in approved requests should be memorialized in a Memorandum of Agreement for Expert Witnesses. See sample at [Figure 6.3](#) Use Invitational Travel Orders ([Figure 6.5](#)) to authorize travel of civilian experts and to notify them of billeting and travel arrangements. Also process a DD Form 453-1 and forward to AFLOA/JAJM for certification. When making the request, take into account differences in time zones to allow for ample time for processing. JTR, Vol. 2, paragraph C3103 and Appendix E.

6.4.6. Civilians Employed by the United States. Civilian employees of the United States can be required to testify incident to their employment with appropriate travel orders issued for this purpose. A subpoena is not required. For DoD civilian employees requested as witnesses, the appropriate travel order is the DD Form 1610, Request and Authorization for TDY Travel of DoD Personnel. For non-DoD federal civilian employees providing testimony incident to their employment, the employee's agency will prepare the appropriate travel order. Do not use Invitational Travel Orders for federal civilian employees, contractors or Non-Appropriated Fund employees.

6.4.7. Subpoenas to the Media. Air Force policy requires the exercise of due care when issuing subpoenas to media organizations to avoid unnecessary imposition on the news gathering process and thereby protect the media's First Amendment role.

6.4.7.1. Prior to issuing a subpoena to a member of the news media, trial counsel will consult with the Special Court-Martial Convening Authority (SPCMCA) staff judge advocate (SJA). The SPCMCA SJA will forward a request to the General Court-Martial Convening Authority (GCMCA) SJA addressing the following points:

6.4.7.1.1. That all reasonable attempts were made to obtain the information sought from alternative sources;

6.4.7.1.2. That all reasonable alternative investigative steps were taken to obtain the information sought;

6.4.7.1.3. The results of negotiations with the media. Negotiations should make clear the government's needs in the particular case and its willingness to respond to particular concerns of the media;

6.4.7.1.4. That reasonable grounds exist to conclude, based on information obtained from other sources, that a crime has occurred and that the information sought is essential to the case; and,

6.4.7.1.5. That to the extent possible, the subpoena is directed at material information regarding a limited subject matter, will cover a reasonably limited period of time, and will avoid requiring production of a large volume of unpublished material.

6.4.7.2. The GCMCA SJA will approve or disapprove the issuance of the subpoena. The SPCMCA SJA will immediately file a Special Interest Report (SIR) IAW paragraph 13.8 of this instruction.

6.4.7.3. In the event exigent circumstances prevent prior consultation with the GCMCA SJA, a trial counsel may only issue a subpoena with the SPCMCA SJA's approval. In that case, the SJA will immediately inform the GCMCA SJA, MAJCOM SJA, and AFLOA/JAJM by e-mail or fax of the issuance of the subpoena and the exigent circumstances that precluded prior consultation.

6.4.7.4. The principles set forth in this guidance are not intended to create or recognize any legally enforceable right in any person.

#### 6.4.8. Rates for Civilian Witnesses.

6.4.8.1. Civilians Employed by the United States. When summoned as a witness, a civilian in the employ of the government shall be paid as authorized by the JTR, Vol. 2 (for DoD civilian employees) or by the Federal Travel Regulation, 41 C.F.R. §§ 300-304 (for non-DoD civilian employees).

6.4.8.2. Civilians Not Employed by the United States. Pay fees and allowances authorized under 28 U.S.C. § 1821 (per diem, mileage, subsistence). JTR, Vol. 2, para. C4562 and Appendix E.

6.4.9. **Processing Travel Vouchers.** The requesting legal office shall ensure travelers promptly prepare and submit travel vouchers. All voucher and expert fee payment documentation should be faxed or emailed to ALFOA/JAJM within 5 days of completion. All DTS users will accomplish their vouchers through DTS and it is the base's responsibility to ensure ALFOA/JAJM promptly receives a copy of the paid DTS voucher. Manual travel vouchers (DD Form 1351-2) will only be used when the member does not have access to DTS; manual vouchers are filed at the base where the witness is assigned. If a witness files a voucher 30 days after the suspense date, the travel voucher will be returned as "no order on file" and a letter from his/her squadron commander will be required to explain why the voucher was not done in a timely manner prior to filing.

6.4.10. **Processing Expert Fee Vouchers.** Use the SF 1034, *Public Voucher for Purchases and Services Other than Personal* or SF 1164, *Claim for Reimbursement for Expenditures on Official Business*. The SJA with administrative responsibility for the proceeding in which the expert witness testified ensures the expert witness prepares and submits the appropriate forms to the finance office servicing the base where the court convened; however, Centrally Funded Witnesses' forms are sent to AFLOA/JAJM for processing. Before AFLOA/JAJM pays for a civilian expert witness, the SJA must certify the dates of attendance and any scheduled witness fees (expert testimony, inconvenience, etc.). See [Figure 6.8](#)

## 6.5. Special Witness Production Issues.

6.5.1. **Foreign Area Clearance and Passport Applications.** Allow appropriate time for the processing of foreign area clearances when witnesses must travel to courts-martial convened outside the United States. (AFI 24-405, *DoD Foreign Clearance Guide*; DoD Directive 4500.54, *Official Temporary Duty Travel Abroad*). Ensure the prospective witness has a passport or applies for one. The responsible SJA may request that the base nearest the requested witness process the passport application or the witness can personally process the passport application. The State Department will normally process a passport application without the normal fee if the orders expressly provide for it. Contact the nearest Passport Office for further guidance.

6.5.2. AFOSI. Submit requests for AFOSI agents to the AFOSI detachment to which the agent is assigned. Submit requests for threatened airmen and confidential sources to the local AFOSI detachment. Only AFOSI may contact another installation to request threatened airmen and confidential sources.

6.5.3. Deployed Witness. Contact AFLOA/JAJM in cases requiring the return of a deployed witness.

## Section 6C—Immunity

**6.6. Grants of Immunity (RCM 704 & MRE 301(c)).** Only a GCMCA possesses the authority to grant immunity to witnesses. All grants of immunity must be in writing and attached to the ROT as an allied paper. Figure 6.8 is a sample grant of immunity and order to testify.

6.6.1. Witnesses Not Subject to UCMJ. The GCMCA may disapprove immunity requests for witnesses not subject to the UCMJ without DOJ coordination. However, the GCMCA may approve such requests only after receiving authorization from the Attorney General of the United States or other authority designated under 18 U.S.C. § 6004. Prepare requests for DOJ authorization in accordance with paragraph 6.6.4.

6.6.2. Witnesses Who May Be Considered for Federal Prosecution. If DOJ has an interest in investigating and prosecuting a witness suspected of criminal activity 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 (found in the Manual for Courts Martial, Appendix 3), prepare the immunity request according to paragraph 6.6.4, regardless of whether the witness is subject to the UCMJ.

6.6.3. National Security Cases. Process immunity requests for witnesses suspected of criminal activity involving national security, as specified in 13.8.2.3, according to 6.6.4, regardless of whether the witness is subject to the UCMJ. AFLOA/JAJM is responsible for coordinating such cases with the DOJ and other interested United States agencies. NOTE: Complete the additional reporting and processing requirements specified in 13.8 for national security cases independent of immunity authorization requests.

6.6.4. Requests for DOJ Authorization. In cases requiring DOJ authorization, the SJA administering the court-martial initiates the request for DOJ authorization. When the GCMCA indicates an intent to grant immunity, the GCMCA SJA forwards the request with written endorsement, preferably by facsimile, directly to AFLOA/JAJM, with information

copies to the MAJCOM SJA. Forward requests 30 days in advance of the date the witness is expected to testify. Consider requesting a delay pursuant to RCM 707(c)(1) while authorization is pending. Include the following information in the request:

- 6.6.4.1. Case name and nature of the proceeding for which requesting immunity;
- 6.6.4.2. Nature of the charges against the accused and anticipated date of the proceeding;
- 6.6.4.3. Name, social security number, date and place of birth, and address of the witness;
- 6.6.4.4. The witness' military status and organization, if any;
- 6.6.4.5. Whether the defense or prosecution requested the immunity;
- 6.6.4.6. Name, grade, organization, and mailing address of the GCMCA who will grant the immunity after receiving DOJ authorization and a statement that the GCMCA supports the immunity request. (Note: Immunity is not actually granted until approved by the GCMCA after receiving DOJ authorization.);
- 6.6.4.7. 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;
- 6.6.4.8. Whether the witness is currently incarcerated and, if so, the location, cause, and length of incarceration;
- 6.6.4.9. A summary of the witness' expected testimony;
- 6.6.4.10. 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;
- 6.6.4.11. The likelihood of the witness testifying, should immunity be granted;
- 6.6.4.12. Name, title, address and telephone number of the representative from the local State's Attorney's Office and United States Attorney's Office with whom trial counsel coordinated the request. Include information on whether the representative supports or opposes the request.

6.6.5. Preliminary Discussions of Immunity. Judge advocates and investigators must be exceedingly careful in discussing the possibility of immunity with anyone involved in an investigation or potential prosecution. Avoid creating a perceived expectation of immunity that may be unfounded. The best practice is to first coordinate potential grants of immunity with the convening authority, and when appropriate, DOJ.

**Figure 6.1. MEMORANDUM OF UNDERSTANDING  
CENTRAL WITNESS FUNDING.**

This memorandum certifies that the **Defense Travel System (DTS)** approving official and requested witness (traveler) agree to the responsibilities identified below. Before a fund cite authorization letter is issued **both** parties must agree to these requirements by signing this memorandum of understanding and returning it to Central Witness Funding (CWF). The signed document, travel orders, and completed vouchers should be faxed to DSN: 754-7487 or Comm: 202-404-7487.

**Witness Responsibilities**

- Provide CWF a copy of the travel order immediately upon completion
- Complete travel voucher within 5 days of return from TDY
- Provide CWF a copy of the all receipts and draft travel voucher before it is finalized
- Provide CWF a copy of the paid travel voucher immediately upon completion

**Approving Official Responsibilities**

- Follow the guidelines of the fund cite letter submitted by CWF
- Ensure CWF has your correct name, phone number, and E-mail address to CWF

**Witness:**

**DTS Approving Official:**

**Printed Name:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Rank/Grade:** \_\_\_\_\_

**Rank/Grade:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**For questions, please call DSN: 297-8870/1539 or Comm: 202-767-8870/1539**

**Figure 6.2. DELETED.**

**Figure 6.3. Sample Memorandum of Agreement for Employment of Civilian Expert Witness.**

MEMORANDUM OF AGREEMENT  
FOR  
EMPLOYMENT 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. 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. Act as an expert technical consultant for the (government) (defense).
  - c. Assist the (trial counsel) (defense counsel) to prepare for the expert witness's in-court testimony, and to be available for pretrial interview by opposing counsel.
  - d. 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 observe and evaluate the testimony of any expert witness for the opposing side.
  - e. Provide a copy of the expert's resume or curriculum vitae to the (trial counsel) (defense counsel).
  - f. Submit a Government travel voucher for payment, following the instructions provided, and accompanied by required documentation of travel, lodging, and other expenses.
  - g. 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. Reimbursement for actual travel costs, either coach air travel or mileage, according to the Joint Federal Travel Regulations (JFTR).
  - b. 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 JFTR.
  - c. A fee of \$ \_\_\_\_\_ per day for in-court testimony.
  - d. A fee of \$ \_\_\_\_\_ when professional advice and services are rendered, but no travel or in-court testimony is involved.

e. 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. Consequently, this fee is to be reduced to the extent other gainful activities may be undertaken. The expert witness must provide written substantiation in the form of demonstrable actual inconvenience and financial loss to support payment of an inconvenience fee.

4. *[Optional: If the defense requested and the convening authority granted confidentiality to the expert, add: Discussions between the expert witness and the defense counsel, the accused, and any member of the defense team regarding this case are confidential. However, if the expert witness is called as a witness by the defense, the content of those conversations may, subject to the Military Rules of Evidence, lose confidential status.]*

5. Payment will be under DFAS-DE/Air Force Interim Guidance, *Procedures for Travel Accounting Operations*, July 2001, Section 5, Part U. *[If urinalysis expert, add: Payment under this agreement has been approved by the Air Force Legal Operations Agency, Military Justice Division, AFLOA/JAJM. Payment will be made from the Air Force Central Travel Fund, up to a maximum of \$\_\_\_\_\_. The balance has been approved and will be paid by the court-martial convening authority in this case.]*

Signed by the parties on the dates entered below:

\_\_\_\_\_  
Staff Judge Advocate (Date)  
(or Trial Counsel)

\_\_\_\_\_  
Expert Witness (Date)

**Figure 6.4. Sample Letter to Accompany Subpoena & Travel Order (Informal Service).**

[Letterhead]

Date

Name of Trial Counsel  
 Office Symbol  
 Mailing Address  
 Base, State, Zip Code

Name of Witness  
 Mailing Address  
 City, State Zip Code

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

Please find enclosed two copies of a subpoena, officially summoning you to the court-martial proceeding entitled *United States v.* \_\_\_\_\_. On the first copy, marked "copy 1", please sign your name on the line marked by the "X" and, next to your signature, insert the date you signed. Please mail "copy 1" back to me immediately in the enclosed self-addressed-stamped envelope. You should keep the subpoena marked "copy 2" for your records.

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

[Optional] The Government prepaid for your airline ticket so you can fly from \_\_\_\_\_ to \_\_\_\_\_, the airport nearest \_\_\_\_\_ Air Force Base. [(The airline tickets are enclosed.) or (Arrangements have been made for you to pick up your flight tickets and boarding pass from the airline on the departure date. You will need to present appropriate identification at the airport to obtain these items.)] Please retain a copy of these documents and bring them with you. Your flight schedule is as follows:

	<u>Place</u>	<u>Time</u>	<u>Day &amp; Date</u>	<u>Airline</u>
Depart:				
Arrive				
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 while you are on base.

[*Optional*] ([I made reservations for you to stay in the \_\_\_\_\_ quarters on base.] [I made reservations for you to stay off base because quarters on base are not available.]) Upon arrival, you should contact the billeting office at Building \_\_\_\_\_, located at \_\_\_\_\_. The billeting office will (assign you quarters) (give you directions to the off base accommodation). Since your accommodation may be some distance from the billeting office, you should have your transportation wait for you while you check in.

[*Optional*] While at \_\_\_\_\_ Air Force Base, you may eat at \_\_\_\_\_.

[*Optional*] Since you will be driving to \_\_\_\_\_ from your private residence and back in your private vehicle, you will be paid \$0.\_\_\_\_ per mile.

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 an 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.

I hope the above information will assist you. Your testimony will be very important in this case. If you have any questions or if I can be of further assistance, please call me at (\_\_\_\_)\_\_\_\_-\_\_\_\_\_.

Sincerely

(NAME), (Grade), USAF  
Trial Counsel

Attachments:

1. Subpoena, DD Form 453 (2 copies)
2. Travel Order, DD Form 453-1
3. Self-addressed, Stamped Envelope
4. Advance Payment Check
5. Airline Tickets (*if applicable*)
6. Map of Area
7. Map of Base

[*SJA Note: Mark enclosed subpoenas as "copy 1" and "copy 2"*]

Figure 6.5. Sample Invitational Travel Order.

[Letterhead]

(Date)

INVITATIONAL TRAVEL ORDER NUMBER \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

FOR: MR. JOHNATHAN H. SMITH

[home address]

[and, if applicable, position or job title, employer and work address]

You are invited to proceed from ([home address] [work address]) on [date travel begins] to arrive at [place required] by [time required] for the purpose of [purpose of travel, e.g., testifying in the Article 32 investigation of A1C John Doe] for approximately \_\_\_ days. Upon completion, you shall return to the point of origin.

You are authorized to travel by: \_\_\_ Rail \_\_\_ Commercial Air \_\_\_ Military Aircraft \_\_\_ Bus \_\_\_ and/or Privately Owned Conveyance (*see below*)

\_\_\_ The order-issuing agent has arranged transportation.

\_\_\_ Transportation tickets are included with this order.

\_\_\_ Transportation tickets shall be provided at a later date.

(NOTE: PLEASE GUARD TRANSPORTATION TICKETS CAREFULLY. If a transportation ticket in your possession is lost or stolen, you must immediately report it to [name and phone number of POC at legal office]. You must return unused transportation tickets with the travel claim.)

\_\_\_ To arrange transportation, call: (\_\_\_\_) \_\_\_\_ - \_\_\_\_.

\_\_\_ You may arrange transportation. The following rules apply:

You must arrange your transportation with a travel office under contract with the U.S. Government when the travel office is authorized by contract to arrange transportation for travelers who are not Government employees. If you are in a foreign country, except for Canada and Mexico, you may use a travel office not under contract to the Government if ticketing cannot be secured from a branch office or general agent of an American-flag carrier. If you purchase transportation from a travel office not under contract to the Government, reimbursement is limited to the cost to the Government on a constructive basis for transportation that would have been arranged by a travel office under contract with the Government if available. If the contract between the Government and the travel office does not permit the travel office to arrange transportation for contractor/contractor employees or others who are not Government employees, reimbursement for

transportation may not exceed coach class air accommodations unless otherwise permitted in the Joint Federal Travel Regulations (JFTR), para. C2204-A.

DoD policy in using regularly scheduled air transportation is:

- (a) accommodations selected shall be the least costly service that permits satisfactory accomplishment of the mission of the traveler, and
- (b) United States carriers must be used for all commercial foreign air transportation if service provided by those carriers is available; otherwise, reimbursement for the cost of transportation is not allowed.

\_\_\_ You are authorized to travel by Privately Owned Conveyance as advantageous to the Government. Reimbursement shall be at the rate of \$0. \_\_\_ per mile, plus the cost of necessary parking fees and bridge, ferry and tolls incurred, including per diem, while in travel status under this travel order.

\_\_\_ You are authorized to travel by Privately Owned Conveyance on a constructive basis. You would normally be authorized to travel by common carrier. Reimbursement shall be limited to the cost of travel by the usual mode of common carrier, including per diem.

Receipts: Ticket stubs are required to substantiate your transportation cost. Receipts are required for lodging. Receipts are required for all items of expense in an amount of \$75 or more, plus any applicable tax.

\_\_\_ You are paid a per diem allowance to cover your expenses for lodging and meals and incidental expenses (M&IE). Room taxes at locations in the 50 states, District of Columbia, territories and possessions and the Commonwealths of Puerto Rico and Northern Mariana Islands are reimbursed separately. Room taxes in foreign areas are included in the total lodging cost and are not reimbursed separately. While traveling in connection with the Invitational Travel Order, you are authorized a per diem equal to the daily amount you pay for lodging, plus a fixed amount for meals and incidental expenses (M&IE). That amount is limited to the applicable maximum amount prescribed on the Per Diem Committee homepage: <http://www.dtic.mil/perdiem/pdrates.html> for the locality concerned. Even if your costs, particularly for lodging, are more than the applicable maximum per diem rate prescribed, only the maximum per diem rate is payable. (See the Joint Federal Travel Regulations (JFTR), Chapter 4, Part L, for applicable rules.)

Applicable per diem rates:

Locality:

Maximum Lodging Rate:

M&IE Rate:

Total Per Diem:

\_\_\_ You shall be paid an actual subsistence expense allowance (AEA) for lodging and a per diem for meals and incidental expenses (M&IE). You are required to itemize your lodging expenses only.

\_\_\_ You shall be paid an actual subsistence expense allowance (AEA) for lodging and meals and incidental expenses (M&IE). You must itemize all your subsistence expenses. Subsistence expenses include lodging; meals; fees and tips to waiters, bellboys, maids and porters; personal laundry, pressing and dry cleaning (*see* NOTE below); local transportation (including usual tips) between places of lodging, duty and where meals are taken; and other necessary expenses. You shall be reimbursed for the actual expenses incurred, but not to exceed the maximum amount authorized for the locality concerned. (*See* the Joint Federal Travel Regulations (JFTR), Chapter 4, Part M, for applicable rules.)

Applicable rates when AEA authorized:

Locality:

Maximum AEA:

Amount allowed for M&IE (if authorized on a per diem basis):

(NOTE: The cost you incur during travel (not after returning) for laundry/dry cleaning and pressing of clothing is a separately reimbursable expense in addition to per diem/AEA when travel is within CONUS and requires at least 4 consecutive nights lodging while on Government travel. There is no separate reimbursement for laundry/dry cleaning and pressing of clothing when travel is OCONUS. Those costs are part of the per diem/AEA when travel is OCONUS.)

The JTR is available at <http://www.dtic.mil/perdiem/>. Address any inquiries regarding this travel order to [*name and phone number of POC at legal office*].

The travel authorized herein has been determined to be in the public interest, and is chargeable to: [*fund cite*].

FOR THE COMMANDER

[*typed name*]  
Approving Official

[*typed name*]  
Authenticating Official

**Figure 6.6. Sample Letter to Civilian Witness for Article 32 Investigations/Overseas Travel.**

[Letterhead]

Date

Name (e.g., Trial Counsel, Investigating Officer)  
Office Symbol  
Mailing Address  
Base, State, Zip Code

Name of Witness  
Mailing Address  
City, State Zip Code

Dear (Mr.) (Mrs.) (Ms.) (Grade) (Name)

This letter confirms our recent phone conversation about your participation as a witness in the [(Article 32 pretrial investigation) *or* (special) (general) court-martial] of (*Rank and Name of accused*). Enclosed are copies of invitational travel orders authorizing you to travel at government expense.

[*Optional*] The Government prepaid for your airline ticket so you can fly from \_\_\_\_\_ to \_\_\_\_\_, the airport nearest \_\_\_\_\_ Air Force Base. [(The airline tickets are enclosed.) *or* (Arrangements have been made for you to pick up your flight tickets and boarding pass from the airline on the departure date. You will need to present appropriate identification at the airport to obtain these items.))] Please retain a copy of these documents and bring them with you. Your flight schedule is as follows:

	<u>Place</u>	<u>Time</u>	<u>Day &amp; Date</u>	<u>Airline</u>
Depart:				
Arrive				
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 while you are on base.

[*Optional*] [(I have made reservations for you to stay in the \_\_\_\_\_ quarters on base.), *or* (I have made reservations for you to stay off base because quarters on base are not available.)]. Upon arrival, you should contact the billeting office at Building \_\_\_\_\_, located at \_\_\_\_\_. The billeting office will [(assign you quarters) (give you directions to

the off base accommodations)]. Since your accommodations may be some distance from the billeting office, you should have your transportation wait for you while you check in.

[Optional] While at \_\_\_\_\_ Air Force Base, you may eat at \_\_\_\_\_.

[Optional] Since you will be driving to \_\_\_\_\_ from your private residence and back in your private vehicle, you will be paid \$0.\_\_\_\_ per mile.

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 an 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.

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 you have any questions or if I can be of further assistance, please call me at (\_\_\_\_) \_\_\_\_-\_\_\_\_.

Sincerely

(NAME), (Grade), USAF  
(Investigating Officer)(Trial Counsel)

Attachments:

1. Invitational Travel Orders
2. Advance Fees
3. Airline Tickets (*if applicable*)
4. Map of Area
5. Map of Base

**Figure 6.7. Sample Grant of Immunity and Order to Testify.**

(Date)

MEMORANDUM FOR (Grade, Name, and Address of Witness)

FROM: (GCMCA Unit and Address)

SUBJECT: Grant of [(Testimonial) [(Transactional) Immunity [for witness not subject to the UCMJ and (Order to Testify)]

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

2. *[For witness subject to UCMJ where DOJ authorization was not required]* By authority vested in me in my capacity as a general court-martial convening authority, under Rule for Court-Martial 704(c)(1), Manual for Courts-Martial, United States,

2. *[For witness subject to UCMJ where DOJ authorization was required]* 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, and by the Attorney General of the United States pursuant to Title 18, United States Code, Section 6004,

2. *[For witness not subject to UCMJ]* By authority vested in me in my capacity as a general court-martial convening authority, by Rule for Court-Martial 704(c)(2), Manual for Courts-Martial, United States, and by the Attorney General of the United States pursuant to Title 18, United States Code, Section 6004,

*[Continuation of paragraph 2]* I hereby grant you [(testimonial) *or* (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.

3. *[For testimonial immunity (preferred)]* Under this immunity, your testimony and statements, as well as information directly or indirectly derived there from, may not be used against you in a later [(trial by court-martial) *or* (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.

3. *[For transactional immunity]* 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 \_\_ and \_\_ of the Uniform Code of Military Justice.) *or* (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) (Rank), USAF  
Commander

**Figure 6.8. Sample Certification Memorandum for Civilian Expert Witnesses.**

(Date)

TO: AFLOA/JAJM

FROM: (JA Office)

SUBJECT: SJA Certification for Expert Witness / Inconvenience Fee

1. The following information is provided to prepare voucher for payment:

- a. Invoice Number: (leave blank, JAJM will complete)
- b. Payable to: Payee's name and address (or DNS number)
- c. SSN of Witness:
- d. Fund Cite: (leave blank, JAJM will complete)

2. I certify payment for entitlement of [(inconvenience) or (expert witness)] fees in the amount of \$\_\_\_\_\_ (JAJM fees only, *see* paragraph 6.2.4.) for the services verified and/or performed and accepted. Expert witness services were performed on (date).

(NAME) (Rank), USAF  
Staff Judge Advocate

**Figure 6.9. Funding for Travel Connected with Administrative Boards or Disciplinary Procedures. Reprinted from AFI 65-601, Volume I, Table 10.2., Budget Guidance and Procedure, 3 Mar 05.**

R U LE	A	B	C
	If the witness is	and the type of travel is	Then the travel is funded by
1	Involved in an Aircraft Accident Investigation		Convening Authority
2	Involved in an Administrative Board		Convening Authority
3	Accused	Inter-command	AFLOA/JAJM (see note 1)
4	Accused	Intra-command	Convening Authority (see note 1)
5	Military Judge		Centralized Docketing Office
6	Court Reporter		Convening Authority
7	Trial Counsel		Convening Authority (see note 2)
8	Defense Counsel		(See note 3)
9	Investigating Officer		Convening Authority (see note 2)
10	Individual Defense Counsel		(See notes 3 & 4)
11	Court Member		Convening Authority
12	DAF Civilian Employee	Inter-command	AFLOA/JAJM
13		Intra-command	Convening Authority
14	Other DoD Civilian Employee		Convening Authority
15	Member of other Service		Convening Authority (see note 5)
16	Civilian (non-DoD and non-federal)		Convening Authority
17	AF Active Duty Military	Inter-command	AFLOA/JAJM
18		Intra-command	Convening authority
18	Threatened Airman	Inter-command	(See note 5)
19	Confidential Source (AFOSI)		(See note 5)
20	AFOSI Agent		HQ AFOSI (see note 7)
21	Expert Witness (Urinalysis)		AFLOA/JAJM (see note 8).
22	Non-DoD federal civilian employees (FBI, USPS, etc.)		Convening Authority (Exception -- see note 8)
23	Reservist (Active Duty)	Intra-command	Convening Authority
24		Inter-command	AFLOA/JAJM
25	Reservist (Non-Active Duty)		Convening Authority
26	Government Representative		Convening Authority (see note 2)
27	ANG member		Convening Authority (see note 9)
28	Prisoner (appearing as witness)		Convening Authority (see note 10)
29	Prisoner Escort		Convening Authority (see note 10)

## NOTES:

1. The JFTR, volume 1, chapter 7, part O, covers travel of members for disciplinary action. The TDY orders for members traveling as an Accused must include a statement "member not entitled to per diem expenses in connection with disciplinary action."
2. Funding by the Centralized Docketing Office for USAF Judiciary Members. The Convening Authority funds costs for other individuals.
3. AFLOA/JAJM will fund the travel if the IMDC is not assigned to the USAF Judiciary at the time the IMDC request is made and had no prior attorney-client relationship with the requester on the matter in issue.
4. The JFTR, volume 1, paragraph U7060, directs that travel expenses of members summoned as witnesses shall be paid from funds of the requesting service.
5. Submit requests through local AFOSI detachments. Fund according to the status of the person requested (e.g., AF Active Duty, Reservist, ANG, civilian, etc. as noted in the table).
6. AFOSI agents assigned as defense investigators to an accused and defense counsel are funded by the convening authority.
7. For expert witnesses in urinalysis cases, request AFLOA/JAJM funding in accordance with AFI 51-201, Administration of Military Justice. All fees in excess of AFLOA/JAJM established fee limits shall be paid by the convening authority. The convening authority funds civilian expert consultants and lab technicians in urinalysis cases.
8. Funding for testimony of federal civilian employees belonging to non-DoD agencies is a convening authority responsibility. However, if a non-DoD civilian employee is called to present testimony in a case that involves an activity in connection with which he or she is employed, funding from the employing agency may be possible. See 5 U.S.C. §5751 and 28 C.F.R., Part 21, Section 21.2(d). The Comptroller General has defined the extent to which the case must be related to the agency's activity as a condition to the agency's responsibility for payment in 23 Comp. Gen. 47, 49 (1943) which states "the employing agency is required to pay . . . the traveling expenses incurred by the employee witness only where the information or facts ascertained by the employee as part of his official duties forms the basis of the case, or where the proceeding is predicated upon law that that agency is required to administer." Funding from other agencies under 5 U.S.C. §5751 should only be sought in situations where the other agency's funding responsibility can be clearly established under the law. Furthermore, if the employing agency is not forthcoming with the funds, ultimate responsibility for funding to ensure the presence of necessary witness remains with the convening authority.
9. AFLOA/JAJM will fund ANG members who are in Title 10 status at the time travel is required if it involves inter-command travel between the Title 10 duty station and the location of the UCMJ proceeding.
10. The JFTR, volume 1, paragraph U7451, and AFI 31-205, The Air Force Corrections System, cover funding of prisoners and prisoner escorts. The prisoner's travel will be funded according to the status of the prisoner (e.g., AF Active Duty, Reservist, ANG, civilian, etc. as noted in the table). The convening authority requesting the prisoner's appearance will provide escort funding.

## Chapter 7

### VICTIM AND WITNESS ASSISTANCE

#### *Section 7A—Purpose and Objectives*

**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 and DoD Instruction 1030.2, Victim and Witness Assistance Procedures. This chapter establishes responsibility for the VWAP at the Headquarters Air Force and subordinate 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 the 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. Figure 7.1 provides a list of VWAP responsibilities with the corresponding responsible base agencies. 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. VWAP Council.** Each installation Local Responsible Official (LRO) shall establish a VWAP Council, when practicable, to ensure victim and witness service providers follow an interdisciplinary approach. The following agencies or functions, when present on the installation, will designate a VWAP Council representative: Security Forces, AFOSI, Surgeon General, the Airman and Family Readiness Center, installation chaplaincy, and Staff Judge Advocate. In addition, the installation commander will appoint a squadron commander and a first sergeant to the VWAP Council and may appoint other representatives as appropriate. The LRO will chair the VWAP Council, which will meet, at a minimum, annually.

**7.1.2. 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 if any portion of the investigation is conducted primarily by the DoD Components. 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 have particular responsibility for the VWAP, the provision of victim and witness assistance 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. Victims include, but are not limited to:

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 incompetent, incapacitated, deceased, or under 18 years of age, one of the following may represent the victim (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. An authorized representative of the institutional entity.

**7.4. Witness.** A person who has information or evidence of a 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 addressed to the base SJA by duty title rather than name. The SJA may further delegate the LRO duties and responsibilities in writing to a VWAP Coordinator while maintaining oversight and overall responsibility for the program. References in this chapter to the LRO include the SJA or VWAP Coordinator, if delegated LRO duties and responsibilities, and other individuals tasked by the LRO to assist with the VWAP.

**7.8. VWAP Coordinator.** The individual selected by the SJA to implement and manage the VWAP. Responsible for ensuring the accomplishment of required training by all local agencies. The VWAP Coordinator may also serve as victim liaison as appropriate under the circumstances of a particular case.

**7.9. Victim Liaison.** An individual appointed by the LRO or delegate, 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. Communications between a liaison and a victim are not confidential or privileged (See MRE 513 regarding the privilege in judicial proceedings for communications between psychotherapists and patients).

**7.10. 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 Forces Center (HQ AFSFC/SFC), Corrections Division/VWAP Central Repository, 1517 Billy Mitchell Boulevard, Lackland AFB, TX 78236-0119. COMM: (210) 925-5607, Toll Free (877) 273-3098.

### *Section 7C— Victim's Rights*

**7.11. Victim's Rights.** A victim has the following rights:

- 7.11.1. To be treated with fairness and respect for the victim's dignity and privacy;
- 7.11.2. To reasonable protection from a suspect or the accused;
- 7.11.3. To notification of all court-martial proceedings;
- 7.11.4. 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;
- 7.11.5. To confer with trial counsel in the case;
- 7.11.6. To appropriate restitution, when available; and
- 7.11.7. To information about an accused's conviction, sentencing, confinement and release.

### *Section 7D— Services Provided to Victims and Witnesses*

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

- 7.12.1. Designate a victim liaison to assist individual victims when necessary.
- 7.12.2. 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
- 7.12.3. Inform the victim of any restitution or other relief to which the victim may be entitled and how to obtain the relief.
  - 7.12.3.1. 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.

7.12.3.2. 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 due to riotous, violent, or disorderly conduct. See Chapter 6, AFI 51-502, Personnel and Government Recovery Claims. Ensure an Article 139 investigation does not interfere with any criminal investigation or court-martial proceedings.

7.12.4. Inform victims of intra-familial abuse offenses of the availability of limited transitional compensation benefits, waiver of mandatory forfeitures, and possible entitlement to a portion of the active duty member's retirement benefits under 10 U.S.C. §§ 1058, 1059 - 1408.

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

7.12.6. Assist the victim in contacting agencies providing necessary services and relief.

7.12.7. 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 the accused. Instruct the victim to immediately report any intimidation, harassment or similar conduct to military authorities. See 18 U.S.C. §§ 1512 and 1513.

7.12.7.1. 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.

7.12.8. Provide the victim with the earliest possible notice of:

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

7.12.8.2. 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;

7.12.8.3. Preferral and referral of charges or a decision not to pursue prosecution;

7.12.8.4. A pretrial confinement hearing and/or Article 32 investigation;

7.12.8.5. Notification of the scheduling, including changes and delays, of each court-martial proceeding the victim is entitled to or required to attend;

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

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

7.12.9. During trial proceedings provide the victim with:

7.12.9.1. A waiting area removed from and out of the sight and hearing of the accused and defense witnesses; and

7.12.9.2. Appropriate assistance in obtaining available services such as transportation, parking, child care, lodging, and courtroom translators or interpreters.

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

7.12.11. 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. However, this does not entitle victims to formal legal assistance, AFI 51-504, Legal Assistance, Notary and Preventive Law Programs.

7.12.12. Under ordinary circumstances, consult with the victim and obtain their view concerning:

7.12.12.1. Decisions not to prefer charges;

7.12.12.2. Dismissal of charges;

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

7.12.12.4. Pretrial agreement negotiations, including PTA terms;

7.12.12.5. Plea negotiations;

7.12.12.6. Discharge or resignation in lieu of trial by court-martial; and

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

7.12.13. Consultation may be limited when it could endanger the safety of the victim or a witness, jeopardize an ongoing investigation, disclose classified or privileged information, or unduly delay disposition of an offense. 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 the prevention of service-discrediting conduct.

7.12.14. After trial, provide the victim the earliest possible notice of:

7.12.14.1. Consideration of the accused by the SECAF Clemency and Parole Board for clemency or parole;

7.12.14.2. The escape, work release, furlough, or any other form of release from custody of the accused; or,

7.12.14.3. The death of the accused, if the accused dies while in custody.

7.12.15. Ensure that any property of the victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed.

**7.13. Airman and Family Readiness Center (A&FRC) Responsibilities to Crime Victims.** The A&FRC maintains information on available treatment, counseling, and support programs, acting as the focal point between victims and those programs. The A&FRC chief or a designee works with other installation agencies to identify victims' needs and determine

appropriate forms of assistance and resources available through military and community services. The A&FRC provides information to victims on available medical, financial, legal, and other social services, and assists victims in obtaining those services. At installations without an A&FRC, the LRO appoints an individual to provide information to victims.

7.13.1. In cases where referring a victim to the A&FRC for information may potentially cause undue embarrassment for the victim, LROs are encouraged to provide VWAP information directly to the victim.

**7.14. Sexual Assault Prevention and Response Program.** It is Air Force and Department of Defense policy to eliminate sexual assault within the Department of Defense by providing a culture of prevention, education and training, response capability, victim support, reporting procedures, and accountability that enhances the safety and well-being of all its members. A key component of this policy is to provide an immediate, trained response capability for each report of sexual assault in all locations, including deployed locations, and to ensure victims of sexual assault are protected, treated with dignity and respect, and receives timely access to appropriate treatment and services.

7.14.1. Within the Air Force, the Sexual Assault Response Coordinator (SARC) implements and manages the installation level Sexual Assault Prevention and Response Program (SAPR). In addition to assisting commanders in meeting annual sexual assault prevention and response training requirements, the SARC serves as the single point of contact for integrating and coordinating sexual assault victim care from an initial report of sexual assault, through disposition and resolution of issues related to the victim's health and well-being.

7.14.2. Air Force Victim Advocates (VA) are appointed by the SARC to provide essential support, liaison services and care to the victim. Responsibilities include providing crisis intervention, referral and ongoing non-clinical support, including information on available options and resources to assist the victim in making informed decisions about the case. VA services will continue until the victim states support is no longer needed. VAs do not provide counseling or other professional services to a victim but refer the victim to the appropriate agency for clinical, legal, and other professional services. VAs may accompany the victim, at the victim's request, during investigative interviews and medical examinations.

7.14.3. The VWAP and SAPR programs are distinct but complimentary programs providing support and services to the victims as required by their governing directives. The LRO, or other officials appointed in this chapter, and the SARC and VA, must work in concert to discharge their individual responsibilities and provide the victim appropriate information on available options and resources, notice of relevant events in the investigative and judicial processes, and support. The LRO, or any other official appointed in this chapter, remains responsible for the delivery of VWAP services.

**7.15. LRO Responsibilities to Witnesses.** The LRO or other officials designated in this chapter shall:

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

7.15.1.1. 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 to 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, the accused being placed in pretrial confinement, being released from pretrial confinement, or escaping from pretrial confinement.

7.15.1.2. 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, under AFI 51-504, Legal Assistance, Notary and Preventive Law Programs..

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

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

7.15.1.5. Inform witnesses 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.

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

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

**7.16. LRO Responsibilities to 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. If requested, the LRO or other officials designated in this chapter shall notify the individuals of the following:

7.16.1. Apprehension of a suspect or an accused.

7.16.2. Initial appearance of an accused before a pretrial confinement review officer or other judicial official.

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

7.16.4. Court-martial proceedings, including:

7.16.4.1. Any pleas by the accused;

7.16.4.2. Findings; and

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

***Section 7E— Notifications, Form Processing, and Miscellaneous Information***

**7.17. Law Enforcement and Investigative Personnel.** At the earliest opportunity after identification of a crime victim or witness and when appropriate, law enforcement and investigative personnel shall provide to each victim and witness DD Form 2701, Initial Information for Victims and Witnesses of Crime. The number of DD Forms 2701 distributed annually is reported to the base SJA or equivalent. Therefore, the date this information is provided to the victim or witness shall be annotated on any incident report form. When circumstances dictate, law enforcement and investigative personnel shall promptly inform all victims about the availability of emergency medical care and applicable social services. When necessary, secure the assistance of the A&FRC or victim liaison in obtaining available services in the military and/or civilian community.

**7.18. Government Trial Counsel or Designee.**

7.18.1. Prior to trial, the government trial counsel or designee provides the victim with a DD Form 2702, Court-Martial Information for Victims and Witnesses of Crime, explaining victims' rights and access to services. The number of DD Forms 2702 distributed annually is reported to the base SJA or equivalent.

7.18.2. 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, and 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.

7.18.3. 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. The number of DD Forms 2703 distributed annually is reported to the base SJA or equivalent.

7.18.4. 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 Inmate Status. Send one copy of the form to the Central Repository, Headquarters Air Force Security Forces Center (HQ AFSFC/SFC), 1517 Billy Mitchell Boulevard, Lackland AFB TX, 78236-0119, one copy to the confinement facility where the accused is in post-trial confinement and give a redacted copy to the victim or witness. The victim's/witness' copy must not contain the accused's SSN or any information concerning other victims or witnesses.

7.18.4.1. The date the DD Form 2704 is given to the victim or witness must be recorded and the number of DD Forms 2704 distributed annually reported to the base SJA or equivalent.

7.18.4.2. Do not attach a copy of the DD Form 2704 to any portion of any record to which the convicted member has access, including the ROT. Doing so could endanger

the victim or witness. The DD Form 2704 is exempt from release under the Freedom of Information Act (FOIA).

#### **7.19. Additional Confinement Notification Requirements.**

7.19.1. If the sentence includes confinement, the SJA or VWAP coordinator 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.

7.19.2. Upon an offender's entry into confinement, the VWAP 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 AFSFC/SFC 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 who wants to be informed of the inmate's status.

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

7.19.4. 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 Inmate Status, to notify the victim or witness. The date notifications are given must be recorded and the number of DD Forms 2705 distributed annually reported to the base SJA or equivalent. Provide the earliest possible notice of:

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

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

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

7.19.4.4. The release of the inmate to parole supervision.

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

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

7.19.5. 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 AFSFC/SFC.

7.19.6. Report the status of victim and witness notification requests to the Central Repository, HQ AFSFC/SFC, annually.

7.19.7. 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. Each victim is responsible to keep HQ AFSFC/SFC informed of the victim's current address.

**7.20. Local Civilian Agencies.** 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 7F— Training and Self-Inspection*

### **7.21. Training.**

7.21.1. **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.

7.21.2. Development of the Training Program. The installation SJA, Chief of Security Forces (SF), Air Force Office of Special Investigations (AFOSI) detachment commander, medical facility commander (SG), Airman and Family Readiness Center director (AFRC), installation chaplain (HC) and representatives from commanders and first sergeants develop local training programs to ensure compliance with the VWAP. Figure 7.2 provides a list of references for use in developing a training program.

7.21.3. 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.

7.21.4. Preparation of Victim Information Packet. Prepare a victim information packet at each installation through the coordinated efforts of the SJA, SF, AFOSI, SG, AFRC, HC and commanders and first sergeants. Provide the packet to each identified victim or witness. A model packet is at Figure 7.3.

7.21.5. Training Requirements for Investigative and Law Enforcement Personnel. Investigative and law enforcement personnel are often the first individuals to have contact with the victims of crimes. Their training must emphasize responsibilities to victims. At the earliest opportunity after detection of a crime and without interfering with the investigation, investigative and law enforcement personnel should make all efforts to:

7.21.5.1. Identify the victim of a crime.

7.21.5.2. Inform the victim of the name, title, business address and telephone number of the AFRC 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.

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

7.21.5.4. 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.

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

**7.22. 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: for example, the dates

information packets and notifications were provided (with copies of all notification letters and indorsements). Figure 7.4 provides a model VWAP Self-Inspection Checklist.

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

### ***Section 7G—Reporting Requirements***

**7.23. Reporting Requirements.** TJAG shall submit an annual report using the DD Form 2706, Annual Report on Victim and Witness Assistance, 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. Each base SJA or equivalent reports the information required to be reported by 7.23.1. through 7.23.4. through JA channels to their major command or equivalent. Major commands, FOAs and DRUs consolidate the reports and forward them to AFLOA/JAJM to arrive no later than 15 February of each year. The report shall include:

7.23.1. The number of victims and witnesses who received a DD Form 2701 from law enforcement or criminal investigations personnel.

7.23.2. The number of victims and witnesses who received a DD Form 2702 from the government trial counsel or designee.

7.23.3. The number of victims and witnesses who received a DD Form 2703 from the government trial counsel or designee.

7.23.4. The number of victims and witnesses who elected via the DD Form 2704 to be notified of changes in confinee status.

7.23.5. Each confinement facility reports the information required to be reported by paragraphs 7.22.6 and 7.22.7. to the central repository at HQ AFSFC/SFC, who will forward a consolidated report to AFLOA/JAJM to arrive no later than 15 February of each year.

7.23.6. 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.

7.23.7. 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.

7.23.8. AFLOA/JAJM consolidates the numbers from the major commands, FOAs, DRUs and HQ AFSFC/SFC, records them on the DD Form 2706, and forwards the DD Form 2706 to TJAG.

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

VICTIM and WITNESS PROGRAM RESPONSIBILITIES

Responsibility.....	Responsible Agencies
Responsible Official, USAF.....	TJAG
Local Responsible Official.....	Installation Commander; or SJA or VWAP Coordinator, if delegated
Develop training syllabus.....	JA, SF, AFOSI, SG
Accomplish training.....	JA, SF, AFOSI, SG, A&FRC, HC
Prepare notice forms.....	JA
Identify victims.....	SF, AFOSI, JA, Commanders, First Sergeants, A&FRC, SG, HC
Notify victims of rights/services.....	SF, AFOSI, JA, SG, A&FRC
Notify victims of state crime victims' funds.....	JA
Coordinate/deliver services.....	A&FRC, SG, other base agencies
Pretrial arrangements/dispositions, decisions, victim consultation (e.g., PTAs).....	JA
Care of evidentiary property.....	SF, AFOSI
Protection from offender.....	SF, AFOSI, civilian authorities
Separate waiting area.....	JA
Preferral of charges, pleas or dismissal.....	JA
Schedule judicial	JA

proceedings.....

Notify victim of release/transfer/detention status of suspect JA, SF

Notice of trial results..... JA

Notice of victim's post-trial rights..... JA

Central Repository of information of prisoner status..... HQ AFSFC/SFC

Figure 7.2. List of References.

**REFERENCE LIST****A. GENERAL REFERENCES:**

1. Victim and Witness Protection Act of 1982, 42 U.S.C. §§ 10601 - 10605.
2. Victims' Rights and Restitution Act of 1990, 42 U.S.C. §§ 10606, 10607.
3. DOD Directive 1030.1, *Victim and Witness Assistance Procedures*
4. DoD Instruction 1030.2, *Victim and Witness Assistance Procedures*
5. AFI 36-3024, *Transitional Compensation for Abused Dependents*
6. Uniformed Services Former Spouses Protection Act – Benefits for Dependents who are Victims of Abuse by Members Losing Right to Retired Pay, 10 U.S.C. § 1408 (h)
7. *Department of the Air Force Policies and Procedures For the Prevention of and Response to Sexual Assault, 3 June 2005*

**B. SOURCES OF APPLICABLE SERVICES:****1. Emergency Medical Services:**

- (a) USAF medical treatment facilities (AFI 41-115, *Authorized Health Care and Health Care Benefits in the Military Health Services*)
- (b) SAF authorization for extraordinary medical assistance for abused dependents and certain former spouses (AFI 41-115, Chapter 2)
- (c) Waiver of charges for emergency medical treatment and examination for evidentiary purposes (AFI 41-101, *Obtaining Alternative Medical And Dental Care*)
- (d) Locally available civilian medical and psychiatric services

**2. Social Services:**

- (a) Family Advocacy programs (AFI 40-301, *Family Advocacy*)
- (b) Abuse shelters (liaison with civilian agencies)
- (c) Rape counseling (liaison with civilian agencies)
- (d) Air Force Aid Society financial assistance programs (AFI 36-3109, *Air Force Aid Society*)
- (e) American Red Cross assistance (AFI 36-3105, *Red Cross Activities Within the Air Force*)
- (f) Legal Assistance Program (AFI 51-504, *Legal Assistance, Notary, and Preventive Law Programs*)
- (g) Local community, county, and/or state social services
- (h) *See also Sexual Assault Prevention and Response Program, Department of the Air Force Policies and Procedures For the Prevention of and Response to Sexual Assault, 3 June 2005*

**3. Restitution:**

- (a) Tort Claims (AFI 51-501, *Tort Claims*) (limited application in CONUS)
- (b) Other legal methods
- (c) AFI 51-502, *Personnel and Government Recovery Claims*, Chapter 6
- (d) Redress of injuries to property under UCMJ (Article 139, UCMJ)
- (e) Possible condition of a pretrial agreement (RCM 705(c)(2)(C))
- (f) Potential clemency factor for convening authority's consideration
- (g) Private lawsuits, civilian sources, congressional special relief bills
- (h) State crime victim fund [Note: 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:**

- (a) Chaplain services (AFI 52-101, [*Chaplain*] *Planning and Organizing*)
- (b) Clinical psychologist and/or clinical social worker (mental health services)
- (c) Information and referral counseling
- (d) AFI 36-3009, *Family Support Center Program* [now called *Airman and Family Readiness Center*]
- (e) Sexual Assault Prevention and Response Coordinator and victim advocate, *Department of the Air Force Policies and Procedures For the Prevention of and Response to Sexual Assault, 3 June 2005*

**5. Corrections Process for Offender:**

- (a) Security Forces, Corrections Program (AFI 31-205, *The Air Force Corrections System*)
- (b) AFLOA/JAJR

**6. Other Services:**

- (a) Security Forces activities (AFI 31-201, *Security Police Standards and Procedures*)
- (b) Coordination with civilian law enforcement and prosecutors
- (c) Coordination with civilian community services
- (d) Early return of dependents from overseas (AFI 36-2110, *Assignments*)
- (e) Humanitarian reassignment (AFI 36-2110)

**C. REASONABLE PROTECTION FROM A SUSPECTED OFFENDER:**

1. Security Forces assistance (AFI 31-201, *Security Police Standards And Procedures*)
2. AFOSI
3. Threatened Person Assignments (AFI 36-2110, Attachment 12)
4. Local, State, or Federal law enforcement agencies

**Figure 7.3. Model Victim Information Packet.****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 U.S. 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: *[List providers, addresses and telephone numbers]*
- b. Social services: *[List providers, addresses and telephone numbers]*
- c. Restitution (or other relief): *[Identify sources of restitution, addresses and telephone numbers]*
- d. For further information and referrals concerning victim counseling, treatment, and support programs: *[List providers, addresses and telephone numbers]*

**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, Administration of Military Justice, paragraph 7.12.12*), 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 ROT 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 guilt.

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 AFSFC/SFC, 1517 Billy Mitchell Boulevard, Lackland AFB TX, 78236-0119. The victim is responsible for keeping 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 7.4. Victim and Witness Assistance Program Self-Inspection Checklist.****VICTIM AND WITNESS ASSISTANCE SELF-INSPECTION 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 in writing?
  - a. Has the SJA been named the Local Responsible Official for the installation?
  - b. Has the SJA selected a VWAP coordinator in writing?
  - c. 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, SF, SG, AFOSI, HC, DP (Airman and Family Readiness 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-martial proceedings related to the offense, unless the military judge determines the victim's testimony would be materially affected if the victim heard other testimony;
- 5) the right to confer with the trial counsel in the case;
- 6) the right to appropriate restitution, when available; and
- 7) the right to information about an accused's conviction, sentencing, confinement, and release?

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;
- 4) if needed, assistance is provided in obtaining available services such as transportation, parking, childcare, lodging and courtroom translators or interpreters that may be necessary to allow the victim or witness to participate in court proceedings; and,
- 5) the victim 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. 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?
  - c. 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?
  - d. 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?
10. After court proceedings, has appropriate action been taken to ensure the property of a victim or witness held as evidence is safeguarded and returned as expeditiously as possible.
11. Has the installation commander established an effective means of regularly evaluating the quality of the victim and witness assistance program?

### *Section 7H— Administrative Disposition*

**7.24. Disclosure of Administrative Disposition.** In cases where allegations against a suspect are disposed of other than by trial, a victim or witness may want to be informed of the alternate disposition. Victims and witnesses should be provided as much relevant information as possible, consistent with the privacy rights of the accused. In accordance with 5 U.S.C. 552a (the Privacy Act), records and information related to Article 15 punishment and administrative discharge proceedings may be disclosed as a routine use to victims and witnesses of a crime for the purposes of providing information consistent with the requirements of VWAP and the Victims' Rights and Restitution Act of 1990. When analyzing Privacy Act exceptions, consider the Air Force's interest in fostering cooperation of victims and witnesses in the instant case, whether the accused has made any disclosures about the action or disposition that would diminish his/her expectation of privacy, and other relevant factors. Because each case presents unique facts and

circumstances, decisions to release information must be reviewed on an individualized basis, in light of the Privacy Act and the exceptions allowing disclosure, as provided therein.

## Chapter 8

### TRIAL MATTERS

#### *Section 8A—Changes to and Withdrawal of Charges and Specifications after Referral to Trial*

**8.1. Changes.** Minor and major changes may be made to charges and/or specifications after referral as authorized and explained in RCM 603. Changes should be made by lining through the material while ensuring the form remains legible. All changes and modifications should be initialed. Do not use white-out tape or liquid for minor or major changes.

8.1.1. Minor Changes. Make minor changes to a charge and/or specification on the Charge Sheet. Initial and date the change. Minor changes may be accomplished without having the charge sworn anew by the accuser. Promptly provide copies of the Charge Sheet with the changes to the accused and defense counsel. After arraignment, only a military judge may authorize minor changes to the charge sheet.

8.1.2. Major Changes. Major changes or amendments to a charge and/or specification cannot be made over the objection of the accused unless the charge and/or specification affected are preferred anew. A new referral will also be necessary and, in the case of a general court-martial, a new Article 32 investigation will be required if the charge and/or specification, as changed, was not covered in the prior investigation.

8.1.2.1. Make a major change or amendment to a charge and/or specification on the original Charge Sheet. Initial and date the change. If the accused objects to the change, a new preferral and referral of the changed or amended charge and/or specification must be accomplished by attaching an indorsement to the original Charge Sheet containing the following matters: a new preferral, notification to the accused, receipt by summary court-martial convening authority, referral, and service under RCM 602.

8.1.2.2. Even if an accused does not object to a major change or amendment, it may be prudent to prefer anew. Re-preferral and re-referral may avoid a jurisdictional issue as to whether the accused was improperly tried for a charge never referred to trial by the convening authority in an actual order or functional equivalent. *United States v. Wilkins*, 29 M.J. 421 (C.M.A. 1990).

**8.2. Withdrawal.** Before findings are announced, a convening authority may cause any charges or specifications to be withdrawn from a court-martial. RCM 604. Withdrawal of charges or specifications extinguishes the jurisdiction of a court-martial over them, unlike a dismissal that extinguishes the charges themselves. Withdrawn charges and/or specifications should be disposed of promptly (e.g., dismissed, re-referred to another court-martial, or forwarded to another convening authority for disposition). An officer authorized to sign referrals or trial counsel may withdraw charges and/or specifications at the direction of the convening authority.

8.2.1. Complete Withdrawal. To withdraw all charges and specifications from a court-martial, line through the referral section (Part V) of the Charge Sheet, specify the disposition and the date, and initial the action taken (e.g., “Withdrawn on 15 Sep 03, [initials]”). If the convening authority directs both withdrawal and dismissal of all charges and specifications, reflect accordingly (e.g., “Withdrawn and Dismissed on 15 Sep 03, [initials]”).

8.2.2. Partial Withdrawal. To withdraw a specific charge and/or specification from a court-martial, while allowing the other offense(s) to proceed to trial, line through the affected charge and/or specification, specify the disposition and the date, and initial the action taken. (e.g., “Withdrawn on 15 Sep 03, [initials]”). If the convening authority directs both withdrawal and dismissal of a particular charge and/or specification, reflect accordingly (e.g. “Withdrawn and Dismissed on 15 Sep 03, [initials]”). The trial counsel must determine whether any remaining charges and/or specifications should be renumbered (and if renumbered, initial the renumbering). The following rules apply to renumbering charges and/or specifications:

8.2.2.1. When charges and/or specifications are withdrawn before arraignment, the remaining charges and/or specifications must be renumbered and the new numbers reflected on the charge sheet and throughout the ROT.

8.2.2.2. When charges and/or specifications are withdrawn after arraignment and after they have come to the attention of court members (or the military judge sitting alone), the remaining charges and/or specifications should not be renumbered. The military judge instructs the members that the withdrawn charges and/or specifications should not be considered for any reason.

8.2.2.3. When charges and/or specifications are withdrawn after arraignment but before the court members are aware of the charges, the remaining charges and/or specifications should, at the direction of the military judge, be renumbered. The new numbers should be reflected on the charge sheet and referred to throughout the ROT from the point of renumbering. If the military judge directs renumbering, withdrawn charges and/or specifications should not be brought to the attention of the members. If the military judge does not direct renumbering, the remaining charges and/or specifications should not be renumbered and the military judge instructs the members that they should not draw any inference from the numbering of the charges and/or specifications.

### ***Section 8B— Conditional Guilty Plea***

**8.3. Conditional Guilty Plea.** RCM 910(a)(2); *United States v. Monroe*, 50 M.J. 550 (A.F. Ct. Crim. App. 1999) and *United States v. Phillips*, 32 M.J. 955 (A.F.C.M.R. 1991). When approving a guilty plea conditioned on preserving review of an adverse determination of a pretrial motion, the military judge should make the following findings on the record: (1) the offer is in writing and clearly details the motion that the accused wishes to preserve on appeal; (2) the government's consent is in writing and signed by an official authorized to consent; (3) the particular motion was fully litigated before the military judge; and, (4) the motion is case dispositive. The SJA or Acting SJA to the convening authority, or the trial counsel at the direction of the SJA or Acting SJA, is authorized to consent for the government to the accused entering a conditional guilty plea.

### ***Section 8C— Pretrial Agreements (RCM 705)***

**8.4. Policy Considerations.** Use caution whenever a pretrial agreement (PTA) is being considered. A PTA is appropriate when there are benefits to the government and the accused. PTAs should not be entered into by the government solely for expediency, i.e. to dispose of a case quickly with minimal consideration for the consequences of the agreement.

8.4.1. PTAs that would include a provision for waiver of mandatory forfeitures must be carefully scrutinized to ensure the accused's expectations will be met. For example, when an accused enters a no-pay status upon the expiration of his or her term of service, there will be no pay available to forfeit, and therefore no amount to waive for the benefit of dependents. An agreement predicated upon terms including a waiver that is thwarted due to no pay entitlement may render pleas by an accused improvident and result in reversal of a conviction. *United States v. Mitchell*, 58 M.J. 251 (2003); *United States v. Perron*, 58 M.J. 78 (2003).

8.4.2. 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.

### **8.5. Authorization Required To Enter into PTA Discussion in National Security and Related Cases.**

8.5.1. In General. The Chief, Military Justice Division (AFLOA/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. AFLOA/JAJM ensures coordination with DOJ according to DoD Directive 5525.7 (MCM, Appendix 3). AFLOA/JAJM permission is not required for the convening authority to reject a PTA offer.

8.5.2. Request for Permission to Negotiate. The GCMCA personally or through his or her SJA requests permission to negotiate a possible PTA from AFLOA/JAJM by the most expeditious means available. Include the following information in the request:

- 8.5.2.1. Background information on the accused including name, rank and organization;
- 8.5.2.2. The offenses charged;
- 8.5.2.3. A summary of evidence against the accused;
- 8.5.2.4. Terms of the accused's PTA offer; and,
- 8.5.2.5. Factors warranting a PTA.

8.5.3. 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.

**8.6. Authority to Conclude Agreement.** Unless withheld by a superior 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 that referred the case to trial. *United States v. Caruth*, 6 M.J. 184 (C.M.A. 1979). The accused is entitled to have the convening authority personally act upon the offer before trial. *United States v. Upchurch*, 23 M.J. 501 (A.F.C.M.R. 1986).

**8.7. Terms and Format.** See RCM 705(b) and (c) for terms and conditions which may be in a PTA. 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 pertaining to a PTA, including Appendix A, changes, or modifications, in the ROT. Figure 8.1 is a sample PTA, but it may be modified to fit the circumstances of a case. However, modification of Figure 8.1 should be undertaken very cautiously; the sample language reflects generally required and legally acceptable agreement terms.

8.7.1. Changes in PTA. If the negotiation results in an agreement for different relief for the accused than such 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 still appear in the first paragraph of Appendix A. If another Appendix A or offer is prepared, attach the original Appendix A or offer to the ROT as an allied paper.

8.7.2. 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. RCM 705(c)(2)(A).

**8.8. Withdrawal from PTAs.** Either party may withdraw from a PTA as provided in RCM 705(d)(4). Withdrawals by the convening authority must be in writing and signed by the convening authority. Give a copy to the accused and defense counsel. Withdrawals by the accused should be in writing and given to the SJA or trial counsel. The PTA and the withdrawal, by either side, should be included in the ROT as a pretrial allied paper. AFMAN 51-203, Figure 4.1.

8.8.1. Post-Trial Matters. If the accused does not fulfill a promise to conform his or her conduct to certain conditions before action or during any period of suspension of the sentence, as agreed to in the PTA, the convening authority may be relieved of the obligation to fulfill the PTA. However, the accused's promise must be included in the PTA and there must be compliance with the hearing requirements in RCM 1109 before an alleged violation by the accused may relieve the convening authority of the obligation to fulfill the agreement. RCM 705(c)(2)(D); *United States v. Smith*, 46 M.J. 263 (1997).

**8.9. In-Court Inquiry.** 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 a trial 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 that are subject to in-court inquiry, whether or not accepted by the military judge, are appellate exhibits in the ROT. See RCM 705(e) for PTA nondisclosure requirements.

### *Section 8D—Evidentiary Matters*

**8.10. 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-2 and 42 CFR § 2.12.

8.10.1. Although the interchange of records entirely within the Armed Forces are exempt from the prohibitions in paragraph 8.10, the Department of Defense adopted the standards as a matter of policy to the extent it provides such records may not be used to initiate or substantiate any criminal charges against the rehabilitant, except as authorized by a court order issued under 42 U.S.C. § 290dd-2 and as allowed in AFI 44-120, Drug Abuse Testing Program, (implementing DoDD 1010.1, Military Personnel Drug Abuse Testing Program).

8.10.2. Disclosure of these records is permitted at the request of, and with written consent of, the accused-patient:

8.10.2.1. As evidence for the defense before findings.

8.10.2.2. As evidence in mitigation or extenuation in pre-sentencing proceedings.

8.10.2.3. After trial in support of clemency or clemency petitions to TJAG or SECAF.

8.10.3. Follow the procedure outlined in 42 C.F.R. § 2.31 in authorizing release of the records by the accused-patient. Avoid discussion of the records in open court to the extent feasible.

8.10.4. Only release necessary and relevant portions of the records for purposes of paragraph 8.10.2. 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 matters among counsel, or by an in camera review of the records by the military judge.

8.10.5. 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. *United States v. Evans*, 20 M.J. 504 (A.F.C.M.R. 1985); *United States v. Fenyo*, 6 M.J. 933 (A.F.C.M.R. 1979), pet. denied, 7 M.J. 161 (C.M.A. 1979).

**8.11. Psychotherapist-Patient Confidentiality.** When psychotherapist-patient communications are involved, consult the psychotherapist-patient privilege under MRE 513 and, when applicable, the evidentiary protections and limitations extended to an accused entered in the Limited Privilege Suicide Prevention Program (LPSP) under AFI 44-109, Mental Health, Confidentiality, and Military Law.

8.11.1. MRE 513 is a limited evidentiary privilege protecting confidential communications between a patient and a psychotherapist, or an assistant to a psychotherapist, if the communications were made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition. It applies only to communications made after 1 November 1999. While the privilege broadly applies to all "patients," including military members, the privilege is narrowed by eight exceptions enumerated in the rule. If an exception applies, no privilege under the rule exists to preclude disclosure.

8.11.2. MRE 513 provides that the privilege applies only to "case[s] arising under the UCMJ." It extends to all stages of a proceeding under the UCMJ, including law enforcement investigations into suspected offenses, proceedings for search authorizations, nonjudicial punishment proceedings, court-martial actions, and other proceedings enumerated in MRE 1101. MRE 513 has no application outside such UCMJ proceedings. As stated in the MCM's Analysis to this rule, "there is no intent to apply Rule 513 in any proceeding other

than those authorized under the UCMJ. . . . Rule 513 applies only to UCMJ proceedings, and do[es] not limit the availability of such information internally to the services, for appropriate purposes.” MCM, Appendix 22.

8.11.3. Therefore, the MRE 513 privilege has no application if access to the confidential communications between a military member and a psychotherapist is sought for a non-UCMJ-related purpose. In these situations, confidential communications should be disclosed to persons or agencies with a proper and legitimate need for the information and authorized by law or regulation to receive them. When UCMJ proceedings are pending against the member whose confidential communications are being sought for a non-UCMJ-related purpose, no privilege applies.

8.11.4. Disputes between a requestor and a psychotherapist or patient may arise over the disclosure of confidential communications. AFI 44-109 has established procedures that address this issue. The installation SJA is authorized to resolve the dispute and determine whether disclosure should be made. When the request is for non-UCMJ purposes, the focus should be on whether the requestor has a proper and legitimate need for the confidential communications and is authorized by law or regulation to receive them. When the request seeks disclosure for UCMJ purposes, the SJA’s focus should be on whether an enumerated exception in MRE 513 authorizes disclosure. The SJA, in UCMJ cases, must guard against improper disclosures to investigators and trial counsel that may “poison the case” with inadmissible evidence.

8.11.5. The MRE 513 privilege also interacts with the protections afforded members in the LPSP Program. Confidential communications of members in the LPSP program cannot be used against them in a UCMJ action, even if an exception in MRE 513 applies. Members may be entered into the program once they are officially notified that they are either under investigation or suspected of committing an offense under the UCMJ.

**8.12. Confidentiality of Sexual Assault Protected Program Records.** When communications between a victim of sexual assault and a Sexual Assault Response Coordinator (SARC) and/or Victim Advocate (VA) are involved, consult the confidential reporting program for victims of sexual assault established by DoDD 6495.01, Sexual Assault Prevention and Response (SAPR) Program, and Department of the Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault.

8.12.1. Restricted reporting allows a sexual assault victim to confidentially disclose the details of his or her assault to specified individuals and receive medical treatment and counseling, without triggering the official investigative process. Service members who are sexually assaulted and desire restricted reporting under this policy may only report the assault to the SARC, VA or a HCP. In cases where a victim elects restricted reporting, the SARC, assigned VA (whether uniformed or civilian), and HCPs may not disclose covered communications to law enforcement or command authorities, either within or outside the Department of Defense, except as provided by the DoDI and/or AF Policy.

8.12.2. The disclosure will be limited to information necessary to satisfy the purpose of the disclosure in the event an authorized disclosure is made.

8.12.3. Disclosure may be made to:

8.12.3.1. Command officials or law enforcement (including SF and AFOSI or other criminal investigative service) when the disclosure is authorized in writing by the victim;

8.12.3.2. Command officials or law enforcement when disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual or another;

8.12.3.3. Disability Retirement Boards and officials when disclosure by a healthcare provider is required for fitness for duty for disability retirement determinations, limited to only that information which is necessary to process the disability retirement determination;

8.12.3.4. SARC, VAs or healthcare provider when disclosure is necessary for the supervision of direct victim services;

8.12.3.5. Military or civilian courts of competent jurisdiction when disclosure is ordered by a military, Federal, or State judge, or other officials or entities as required by a Federal or State statute or applicable U.S. international agreement.

8.12.4. The SARC, assigned VA, and healthcare providers will consult with the servicing legal office, in the same manner as other recipients of privileged information, to determine if the exception criteria apply. Until those determinations are made, only non-identifying information should be disclosed. When there is uncertainty or disagreement on whether an exception applies, the matter shall be brought to the attention of the senior commander for decision.

### ***Section 8E—Pre-sentencing Matters (RCM 1001)***

**8.13. Personal Data and Character of Prior Service.** "Personnel records of the accused," as referenced in RCM 1001, 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, and previous court-martial convictions.

8.13.1. Personnel Information File. Relevant material contained in an accused's unit personnel information file (PIF) may be admitted pursuant to RCM 1001(b) if:

8.13.1.1. Counsel provided a copy of the document or made the document available to opposing counsel prior to trial; and

8.13.1.2. There is some evidence on the document or attached to it that:

8.13.1.2.1. 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,

8.13.1.2.2. The document is not over 5 years old on the date the charges were referred to trial.

8.13.1.3. 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 8.13.1.2.1. and 8.13.1.2.2., if, in the military judge's discretion, other competent means of authenticating the material have been presented to the court. *United States v. Strong*, 17 M.J. 263 (C.M.A. 1984).

8.13.2. Nonjudicial Punishment. 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).

8.13.3. Performance Reports. Trial counsel offers all Enlisted or Officer Performance Reports maintained according to departmental directives, as evidence of the character of the accused's prior service. RCM 1001(b)(2); *United States v. Wingart*, 27 M.J. 128 (C.M.A. 1988).

8.13.4. Previous Convictions. The DD Form 493, Extract of Military Records of Previous Convictions, may be used to introduce evidence of an accused's previous conviction. Do not offer evidence of a previous conviction by SCM, in which counsel did not represent the accused, unless the accused waived the right to counsel. *United States v. Booker*, 5 M.J. 238, 246 (C.M.A. 1977). A conviction by SCM is not admissible until reviewed pursuant to Article 64(a), UCMJ. See also RCM 1001(b)(3).

**8.14. Hate Crimes.** Trial counsel may present evidence in aggravation that the accused intentionally selected a victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person. RCM 1001(b)(4).

#### *Section 8F—Matters Requiring Air Force Legal Operations Agency Assistance*

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

8.15.1. 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 (AFLOA/JAJG). The SJA decides whether to file such notice of appeal with the convening authority's concurrence.

8.15.2. After filing a notice of appeal conforming to the requirements of RCM 908(b) with the military judge, trial counsel sends notice to AFLOA/JAJG within 20 days, 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:

8.15.2.1. A copy of the charges and specifications;

8.15.2.2. An original and two copies of the verbatim record of the applicable proceedings, or, if not available, a summary of the evidence and facts;

8.15.2.3. Trial counsel's certification that the appeal is not taken to delay the case;

8.15.2.4. 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

8.15.2.5. 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.

8.15.3. AFLOA/JAJG decides whether to file the appeal with AFCCA, and notifies the trial counsel and SJA.

**8.16. 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.

**8.17. Officer Resignations for the Good of the Service (RILOs).** SPCMCAs, GCMCAs and MAJCOM commanders are authorized to deny RILOs submitted prior to the referral of charges. If denied, the officer may again submit a RILO after referral of charges. Once referral of charges occurs, RILOs may only be acted upon at the Secretarial level. A RILO may not be submitted post-arraignment.

8.17.1. Procedure. Forward all pre-referral RILOs, in which approval is recommended, and all post-referral officer RILOs expeditiously to AFLOA/JAJM through the command channels outlined in AFI 36-3207, Separating Commissioned Officers, chapter 2, section 2C.

8.17.1.1. Forward the original and two copies of the RILO package. Base legal offices should also determine whether AFPC and MAJCOM reviewing authorities will need additional 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:

8.17.1.1.1. Any reports of investigation, statements, or other documents supporting the charges or accusations against the officer;

8.17.1.1.2. The charge sheet, forwarding letters and any indorsements with attachments, including the personal data sheet on the officer;

8.17.1.1.3. The report of the Article 32 investigation with attachments;

8.17.1.1.4. Recommendations on disposition of the RILO from each commander required to review the RILO; and

8.17.1.1.5. A comprehensive legal review from the base level (or equivalent) legal office where the RILO originated, including the view of each victim of the alleged offense(s) (*see* paragraphs [7.3](#) and [7.12.12.6](#)).

8.17.1.2. Documents submitted by the defense after the original submission of the resignation package will be considered at the discretion of the recommendation and decision authorities.

8.17.1.3. Written legal reviews are not required at intermediate levels of command between the originating legal office and AFLOA/JAJM, unless an 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.

8.17.1.4. Do not delay processing court-martial charges through referral solely because a RILO is pending.

8.17.2. Requests to Proceed to Trial Pending Action on Officer Resignation. Prior authorization from AFLOA/JAJM is required before proceeding to trial in all officer cases in which action on a RILO is pending. For purposes of this paragraph, the start of trial is defined as the acceptance of pleas at arraignment. 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 SECAF issues a decision on the resignation. A Request to Proceed is not required to conduct pre-arraignment preliminary sessions pursuant to Article 39(a)(1), (2) and (4), UCMJ, including conducting evidentiary hearings and other motions which may help expeditiously process the case in the interests of judicial economy.

8.17.3. Seven Day Rule for RILOs. Do not proceed to trial in any officer case with a RILO pending without prior authorization from JAJM. AFLOA/JAJM will normally approve requests to proceed to trial while a RILO is pending, if the RILO is submitted more than seven calendar 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 AFLOA/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 unless submitted post-arraignment. All timely RILOs must be forwarded through channels for Secretarial action, even if submitted more than seven days after service of charges under RCM 602.

**8.18. Classified or Controlled Information.** Special procedures and requirements apply in cases where classified information may be used as evidence. In all such cases, contact AFLOA/JAJM as soon as possible for guidance on how to proceed.

8.18.1. Asserting the MRE 505 Privilege. Only SECAF, or the head of a government agency for documents owned by agencies outside the Air Force, may claim the privilege from disclosure of classified information (MRE 505). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on his or her behalf. Forward requests for assertion of the privilege to AFLOA/JAJM.

8.18.2. Classified Material in the Record. When a ROT contains classified material, declassify the material when proper. If it is impossible to declassify the material, the record must be classified. In determining whether a particular ROT must be classified because of its content, consideration should be given to DOD 5200.1-R, Information Security Program, and AFI 31-401, Information Security Program Management. See AFMAN 51-203, Chapter 6, for additional guidance.

8.18.3. Controlled Material in the Record. When a ROT contains controlled material (e.g., promotion testing materials, PME test materials, CDC EOC Exams, etc.), safeguard the materials to prevent further disclosure or unauthorized access. See AFMAN 51-203, Chapter 6, for additional guidance.

**8.19. Disclosure of Government Information other than Classified Information.** Immediately notify AFLOA/JAJM if a case involves assertion of the privilege against disclosure of government information (MRE 506).

*Section 8G—Trial by Military Judge*

**8.20. Requesting Trial by Military Judge.** To request a trial by military judge alone, the accused should use the DD Form 1722, Request for Trial Before Military Judge Alone. If the DD Form 1722 is used, it must be included in the ROT as an appellate exhibit. AFMAN51-203, Figure 4.1. Refer to RCM 903 for additional guidance.

*Section 8H— Use of Audiovisual and Teleconferencing Technology*

**8.21. Audiovisual and Teleconferencing Technology.** The use of audiovisual and teleconferencing technology is authorized by SECAF to the extent and under the conditions allowed for in RCM 804(b), 805(a), 805(c), and 914B.

*Section 8I— Findings and Sentencing Worksheets*

**8.22. Use of Findings and Sentencing Worksheets.** The following forms may be used to assist court members put court-martial findings and sentences in the format required by the Manual for Court-Martial:

8.22.1. AF Form 1092, Court-Martial Findings Worksheet.

8.22.1.1. Where a specification against a service member alleges wrongful acts on “divers occasions,” trial counsel should request members be instructed that any findings made by exceptions and substitutions that remove the “divers occasions” language should clearly reflect the specific instance of conduct upon which the modified findings are based. Such changes can generally be accomplished through reference in the substituted language to a relevant date or other facts in evidence that will clearly put the accused and the reviewing court on notice of what conduct served as the basis for the finding. *United States v. Waters*, 58 MJ 391 (CAAF 2003).

8.22.2. AF Form 1093, Sentence Worksheet (Special Court-Martial).

8.22.3. AF Form 835, Sentence Worksheet (General Court-Martial).

**Figure 8.1. Sample Format of Offer for Pretrial Agreement and Appendix A.**

**Offer for Pretrial Agreement:**

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

**OFFER FOR PRETRIAL AGREEMENT**

I, (grade, name, SSN) , am presently the accused under court-martial charges, dated \_\_\_\_\_ (and \_\_\_\_\_). I have 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, (I offer to waive my right to a trial by members and I will elect to be tried by military judge alone) (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. 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.

(d. My failure to request or the court's refusal to grant my request to be tried by military judge alone.)

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, 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 1.*)

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

\_\_\_\_\_  
Name, Rank, USAF  
Accused

I certify I gave the accused the advice referred to above, I explained to (him/her) the elements of the offense(s) and I witnessed (his/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

\_\_\_\_\_  
Name, Rank, USAF (if applicable)  
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 (**See note 2**)

Appendix A to Offer for Pretrial Agreement: (Appendix A must be prepared as a separate document that can stand apart from the portion entitled Offer for Pretrial Agreement).

UNITED STATES )

v. )

GRADE, NAME, SSN, ORGANIZATION )

Place:

Date:

APPENDIX A TO OFFER FOR PRETRIAL AGREEMENT

1. 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 \_\_\_\_\_) (See note 3)

OR

(No punitive discharge will be approved.)

2. (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.)  
(See note 4)

Date	Name, Rank, USAF Accused

I certify I advised the accused of the effect of the foregoing and I witnessed (his/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 (See Note 5)

NOTES:

1. 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 United States v. Dawson, 10 M.J. 142 (C.M.A.

1982); United States v. Connell, 13 M.J. 156 (C.M.A. 1982); MCM, Appendix 21, Analysis, RCM 705(c)(2)(D).

2. The convening authority signs the Offer for Pretrial Agreement only if approving it and Appendix A.

3. 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 language when limiting more than one form of the punishment: "He will approve no punitive discharge, if one is adjudged, more severe than a Bad Conduct Discharge; 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."

4. See paragraph 8.8.2.

5. The convening authority signs Appendix A only if approving it and the Offer for Pretrial Agreement.

## 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 Result of Trial. Distribute the Report of Result of Trial to the accused's immediate commander, the GCM and SPCM convening authorities and their SJAs, the commander of the local SFS and AFOSI detachment, and, if the accused is in confinement, to the commanding officer responsible for the confinement facility and the confinement officer. Additional copies may be distributed as directed by the convening authority. See paragraph 9.13.1 for additional guidance on preparing the AF Form 1359 and Section 9I for additional reporting requirements on the sentence. Include "Sex Offender Notification Required," "DNA Processing Required," and/or "Crime of Domestic Violence" in the sentence block of the AF Form 1359 if applicable. See paragraphs 13.17 and 13.21 for more information.

#### *Section 9B—Post-Trial Confinement*

**9.2. Entry into Post-Trial Confinement.** Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Use the DD Form 2707, Confinement Order, to enter an accused into post-trial confinement.

##### 9.2.1. Processing DD Form 2707.

9.2.1.1. When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. The person directing confinement, typically the trial counsel, signs item 7(b). A judge advocate signs item 8(b) as the officer conducting a legal review and approval. The same person cannot sign both item 7(b) and 8(b). Before signing the legal review, the judge advocate should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

9.2.1.2. Unless limited by superior authority, the commander of the accused orders the accused into post-trial confinement. Commanders may delegate the authority to order post-trial confinement to the trial counsel or assistant trial counsel. See RCM 1101(b). A sample memorandum delegating military justice administrative duties is at Figure 13.1.

9.2.1.3. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the DD Form 2707. The servicing legal office must retain a signed copy of the DD Form 2707. Security Forces personnel must ensure the prisoner receives a medical examination within 24 hours or the next duty day after entry into confinement as required by AFI 31-205, The Air Force Corrections System, paragraph 5.3.2. Security Forces personnel ensure medical personnel complete items 9 and 10 of the DD Form 2707. Ensure a completed copy of DD Form 2707 is returned to the legal office for insertion in the ROT.

9.2.2. If an accused is in pretrial confinement, no action is normally necessary to continue that confinement. The AF Form 1359 may serve in lieu of the DD Form 2707. See AFI 31-205, paragraph 5.1.

**9.3. Effect of Pretrial Confinement.** An accused receives day-for-day credit for any pretrial confinement served in military, civilian or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984), *United States v. Murray*, 43 M.J. 507 (A.F. Ct. Crim. App. 1995) and *United States v. Pinson*, 54 M.J. 692 (A.F. Ct. Crim. App. 2001). Annotate on AF Form 1359 and DD Form 2707 any civilian and/or military pretrial confinement credit. This credit is not to be included in the convening authority's initial action; only credit that is directed for illegal pretrial confinement is to be included in the action in accordance with RCM 1107(f)(4)(F).

9.3.1. When a military judge directs credit for illegal pretrial confinement, this credit must be ordered in the convening authority's initial action (RCM 1107(f)(4)(F)), and should not be reflected on the AF Form 1359. See Figure 9.8.

**9.4. Confinement Facility (RCM 1101; 1107(f)(4)(C); 1113(d)(2)(C)).** HQ AFSFC/SFC oversees Air Force correctional facilities worldwide, is responsible for inmates gained by HQ AFSFC/SFC (inmates not ordered to serve sentences in local correctional facilities), and approves all inmate transfers between military corrections facilities. HQ AFSFC/SFC, not the convening authority, selects the corrections facility for post-trial confinement and rehabilitation for inmates gained by HQ AFSFC/SFC. Refer to AFI 31-205, for confinement rules and practices.

9.4.1. Correctional facilities other than those in the Air Force Corrections System may be used to confine inmates. HQ AFSFC/SFC 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, Air Force District of Washington (AFDW), Bolling AFB, DC, for inmates in the Air Force Corrections System.

### ***Section 9C—Preparing, Serving, and Forwarding Records of Trial***

**9.5. Preparing Records of Trial.** Prepare court-martial records of trial (ROT) in accordance with RCM 1103, RCM 1305, MCM Appendices 13-15, and AFMAN 51-203, Records of Trial. Ensure ROTs are authenticated in accordance with RCM 1104(a). See also AFMAN 51-203, chapter 12 and paragraph 10.3.

**9.6. Serving Records of Trial.** Serve the ROT on the accused in accordance with RCM 1104(b) or RCM 1305(d). Include the original proof of service, or substitute service, in the ROT.

**9.7. Forwarding Records of Trial.** Forward the ROT to the convening authority or his or her SJA, in accordance with RCM 1104(e). After the convening authority takes action, promptly forward the original ROT and required copies to AFLOA/JAJM using the most cost-effective method which provides a means to track the ROT. Do not forward incomplete ROTs (e.g., ROTs that are missing documents or have unsigned receipts). Consult AFMAN 51-203, Chapters 3 and 13, for the number of required copies that must accompany the original and for forwarding instructions.

*Section 9D—Matters Submitted by the Accused and/or Defense Counsel (RCM 1105)*

**9.8. Notice Regarding Post-Trial Submissions.** The SJA, trial counsel, or assistant trial counsel provides the accused and defense counsel a memorandum (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. Address the letter to the accused and provide a copy to the defense counsel responsible for post-trial matters. If an SJA recommendation is not required in the case, provide the letter to the detailed military defense counsel, unless the accused requested otherwise. Include a copy of the notification letter, with the accused's receipt, in the ROT as specified in AFMAN 51-203, paragraph 4.6 and Figure 4.1.

9.8.1. Waiver of Accused's Right to Submit Matters. If the accused submits a waiver of the right to submit matters, include the written waiver in the ROT. See Figures 9.2 and 9.3

**9.9. Applications to Defer Sentence and Waive Required Forfeitures.** Before action is taken on a case, an accused may submit an application to the convening authority, through the servicing SJA, to defer any adjudged and/or mandatory forfeiture of pay or allowances, reduction in grade, or service of a sentence to confinement. See Articles 57(a)(2), 57a(a), and 58b(a)(1). If an accused has dependents, an application may also be submitted to the convening authority, through the servicing SJA, to waive any mandatory forfeiture of pay and allowances under Article 58b(b), for the benefit of the accused's dependents. Applications for deferral and/or waiver may be submitted through the servicing SJA any time after the sentence is announced and before action by the convening authority. See also paragraphs 9.24.1 and 9.24.3. See Section 9G for additional guidance on deferring and waiving forfeitures of pay and allowances.

**9.10. RCM 1105 Submissions.** An accused may submit matters, including clemency recommendations, for the convening authority to consider before taking action on the case. See RCM 1105 for a discussion on matters that may be submitted, waivers, and the appropriate time periods for submissions.

**9.11. Requests for Entry in Return to Duty Program (RTDP).** The RTDP offers selected enlisted personnel with exceptional potential the opportunity to return to active duty and have their punitive discharge, if adjudged, remitted. Participants are provided with programs individually designed to address their confining offenses and improve their conduct, attitude, and productivity for continued Air Force service. The accused's defense counsel assists the accused in volunteering for the RTDP by obtaining and submitting the appropriate paperwork to the convening authority. An eligible inmate who volunteered, but was not approved by the convening authority for entry into the RTDP, may be eligible to apply for entry to the Air Force Clemency and Parole Board. See AFI 31-205, paragraph 11.6, for additional guidance on applications and requirements for entry in the RTDP.

*Section 9E—Staff Judge Advocate Recommendation and Addendum (RCM 1106)*

**9.12. Mandatory Recommendation.** A Staff Judge Advocate's Recommendation (SJAR) is required in cases where the convening authority takes action on a ROT by general court-martial or a ROT by special court-martial that includes a sentence to a bad conduct discharge or confinement for one year or more.

9.12.1. An SJAR is not required when the convening authority takes action on a ROT in a summary court-martial or special court-martial that does not include either a sentence to a

bad conduct discharge or confinement for one year. In these cases, the SJA should provide the convening authority with the ROT, the defense submission, a memorandum to be signed by the convening authority acknowledging that he or she considered the defense submissions, and a proposed action for the convening authority's signature. When an SJAR is not required, the action may be forwarded using the sample action memorandum provided in Figure 9.4. If there is a need to address new matter, use an SJAR/addendum instead of the action memorandum. Serve new matters on the accused and accused's counsel and allow 10 days from service to submit comments. See RCM 1106(f)(7)

**9.13. SJAR Format.** An SJAR 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, and the personal data sheet of the accused admitted at trial (see Figure 3.6.) to the SJAR. See sample format at Figure 9.5.

9.13.1. The AF Form 1359 is the primary source of findings and sentence information. Therefore, this form must be filled out completely and accurately, including offenses, pleas, findings and sentence. The form must accurately reflect findings of guilty to lesser included offenses and pleas or findings with exceptions and/or substitutions. The sentence portion of the AF Form 1359 should include both the sentence announced as well as the PTA sentence limitation.

9.13.1.1. Ensure specifications which have pleas and findings with exceptions and/or substitutions are entered verbatim, not simply summarized.

9.13.2. When combined with the SJAR and AF Form 1359, the personal data sheet ensures that all information required by RCM 1106(d)(3)(C) is provided to the convening authority.

9.13.3. Include the original SJAR with all attachments (AF Form 1359 and the personal data sheet) in the original ROT. The attachments must follow immediately behind the SJAR in the ROT, even if these documents are also included in other parts of the record. Place a copy of the SJAR and attachments in each copy of the ROT.

9.13.4. The SJAR must include items required by RCM 1106 that are not included on the personal data sheet or the AF Form 1359. This includes a description of the character of the accused's service prior to the charges (RCM 1106(d)(3)(C)), any clemency recommendations made by the sentencing authority (made in conjunction with the announced sentence) (RCM 1106(d)(3)(B)), and any additional credit awarded by the military judge for illegal pretrial confinement. The SJAR should also contain the maximum sentence for the guilty specifications/charges and any pretrial agreement. The terms of the agreement should include the sentence the convening authority is authorized to approve pursuant to the agreement.

9.13.5. The SJAR should address any previously approved request from the accused for deferral of confinement, forfeitures of pay, and/or reduction in grade, and any previously approved or pending request from the accused or the accused's dependents for a waiver of mandatory forfeitures under Article 58b, UCMJ. Approved deferrals and waivers must be documented in the convening authority's action and the convening authority must act upon pending requests.

9.13.5.1. If a convening authority previously disapproved a request for deferral or waiver prior to initial action on the sentence, comment in the SJAR on that request and what

action may still be appropriate. For example, a convening authority may disapprove a deferral or waiver request based upon matters adverse to the accused from outside the record, knowledge of which the accused is not chargeable. If the convening authority also considers such matters when taking action on the sentence, the accused is entitled to notice and an opportunity to rebut. See RCM 1107(b)(3)(B)(iii). Notice may be satisfied through the SJAR.

**9.14. Preparing and Signing the SJAR.** The SJAR must clearly indicate that the recommendation is from the SJA. An assistant performing the duties of the SJA may sign as "Acting SJA." An assistant SJA may prepare the recommendation, but the SJA (or if unavailable, the "Acting SJA") must review the ROT and sign the SJAR. No person who participated in the court-martial as a member, a military judge, a trial counsel, a defense counsel or investigating officer may draft or sign the SJAR or addendum or otherwise act as the SJA or legal advisor to any reviewing or convening authority in that case. See RCM 1106(b).

9.14.1. If the convening authority does not have an SJA (or "Acting SJA") or the person serving in that capacity is disqualified under RCM 1106(b) or otherwise, then the convening authority must request the assignment of another SJA to prepare the SJAR or forward the record to any GCMCA as provided in RCM 1107(a). See RCM 1106(c)(1).

9.14.1.1. If all judge advocates on the SPCMCA's staff are disqualified from preparing and signing the SJAR, forward the record to the GCMCA's SJA. That officer may prepare and sign the SJAR or designate another SJA (or "Acting SJA") in the GCMCA's command to prepare and sign the SJAR.

9.14.1.2. If all judge advocates on the GCMCA's staff are disqualified from preparing and signing the SJAR, forward the record to the MAJCOM's SJA. That officer may prepare and sign the SJAR or designate another SJA (or "Acting SJA") in the MAJCOM to prepare and sign the SJAR. If all the SJAs (or "Acting SJAs") in the MAJCOM are disqualified from preparing and signing the SJAR, the MAJCOM SJA requests AFLOA/JAJM's assistance in designating an SJA to prepare and sign the SJAR.

9.14.2. If the original SJA did not sign the SJAR, the SJA signing the SJAR must include an explanation in the allied papers of the ROT. An explanation is not required if it is clear from the ROT (e.g., forwarding memorandum, transfer memorandum) why the original SJA did not sign the SJAR.

**9.15. Service of SJAR on Defense.** Ensure copies of the SJAR, including its attachments, are served on the accused's counsel and, unless impracticable, on the accused. Obtain receipts for service of the SJAR from both and include in the ROT. If service on the accused is impracticable or if the accused so requests on the record at the court-martial or in writing, forward the accused's copy to the accused's defense counsel and attach a statement to the ROT explaining why the accused was not served. See RCM 1106(f)(1).

**9.16. Defense Counsel Response to SJAR.** The accused's counsel may submit objections or rebuttal to any matter in the SJAR and may comment on any other matter. Defense counsel must submit comments within 10 days of service of the ROT on the accused (under RCM 1104(b)) or receipt of the SJAR, whichever is later, unless the period is extended. See RCM 1106(f)(4) and (5).

**9.17. Addendum to the SJAR.** When the SJA receives matters submitted by an accused or defense counsel under RCM 1105 or 1106(f)(4) after service of the SJAR on defense, the SJA must prepare an addendum to the SJAR for the convening authority. The SJA must address whether corrective action is required when an allegation of error is raised in matters submitted under RCM 1105. The response may consist of a statement of agreement or disagreement with the matter raised by the accused or counsel. RCM 1106(d)(4). The SJA may address other matters raised by defense submissions in the addendum. Figure 9.6 is a sample addendum to the SJAR when defense matters are submitted. If matters are not submitted, the SJA should still prepare an addendum to the SJAR. See paragraph 9.17.3.

9.17.1. The Addendum to the SJAR must:

9.17.1.1. List each defense submission as a separate attachment to the addendum;

9.17.1.2. Advise the convening authority that he or she must consider all written matters submitted by the defense. RCM 1107(b)(3)(A)(iii); and,

9.17.1.3. Advise the convening authority that he or she may consider other matters prior to taking action, such as the ROT, personnel records of the accused, and such other matters as the convening authority deems appropriate. However, if the convening authority considers matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused must be notified and given an opportunity to rebut. See RCM 1107(b)(3)(B).

9.17.2. New Matters in Addendum. New matters include all references to issues that are not included in the ROT and are not served on defense counsel and the accused with the SJAR. New matters ordinarily do not include the SJA's discussion of the correctness of the defense counsel's comments on the recommendation. If the addendum includes new matters serve the accused and defense counsel with the addendum containing the new matter. They are allowed 10 days from service to submit comments. RCM 1106(f)(7).

9.17.2.1. When an addendum containing new matters is served upon the accused and defense counsel for comment, a second or additional addendum must be prepared to address defense comments or the absence of such comments. The second or additional addendum must list any additional defense submissions as an attachment, must re-advise the convening authority to comply with paragraphs 9.17.1.2 and 9.17.1.3, and may address any matters raised in additional defense submissions. If any addendum contains new matters, comply with paragraph 9.17.2.

9.17.3. If the SJA does not receive matters from the accused or defense counsel per RCM 1105 after service of the SJAR on defense per RCM 1106, the SJA must still prepare an addendum to the SJAR for the convening authority. In this case, the matters addressed in paragraphs 9.17.1.1 and 9.17.1.2 are not required, nor would paragraph 9.17.2 apply unless new matters are addressed in the Addendum to the SJAR. Figure 9.7 is a sample addendum to the SJAR when defense matters are not submitted.

**9.18. Staff Summary Sheets.** Avoid use of a staff summary sheet (SSS) in conjunction with the SJAR, addendum to the SJAR, and action memorandum. If a SSS or other document is used to forward the record (e.g., SJAR, action memorandum, RCM 1105 or RCM 1106 matters from the defense, Addendum to the SJAR, ROT) to the convening authority for action, it must be included with the ROT. The contents of any SSS should not ordinarily include any information not

previously addressed in the SJAR or addendum to the SJAR. Such information in the SSS may constitute new matter. Any document that the SJA uses to supplement the post-trial recommendation must be served on the defense counsel when it contains new matter. *United States v. Thompson*, 43 M.J. 703 (A.F. Ct. Crim. App. 1995). If the SSS adds new matter not otherwise addressed in the SJAR or addendum to the SJAR, it must be served on the accused and defense counsel for comment. *United States v. Leslie*, 16 M.J. 714 (A.F.C.M.R. 1983).

***Section 9F—Initial Action by the Convening Authority (RCM 1107).***

**9.19. When Initial Action May Be Taken.** The convening authority may not take initial action until the time period for the accused to submit matters for consideration under RCM 1105(c) has expired or the accused has waived the right to submit such matters under RCM 1105(d).

9.19.1. 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 SECAF decision (see paragraph 8.17.2).

9.19.2. Acquittals. There is no convening authority action for an acquittal of all charges and specifications. A promulgating order is required. See paragraph 10.8.1.1.

**9.20. Convening Authority Discretion.** The convening authority is not required to take any action on the findings, to review the case for legal errors, or to review the case for factual sufficiency. Action taken on the findings and sentence is a matter of command prerogative and within the sole discretion of the convening authority.

9.20.1. Convening authorities should consider an accused's service in an area of combat operations in determining what punishment, if any, to approve. Where the sentence of an accused with an outstanding record in an area of combat operations extends to a punitive discharge, convening authorities should consider suspending or remitting the discharge, provided that return to duty is in the best interests of the Air Force.

9.20.2. Convening authorities may not substitute an administrative discharge for an adjudged punitive discharge. However, in cases involving relatively minor offenses, an accused with an outstanding combat record, or other exceptional circumstances, and where restoration to duty is inappropriate, convening and reviewing authorities may consider recommending to SECAF, administrative, rather than punitive, separation under Article 74(b), UCMJ. Contact AFLOA/JAJR, 112 Luke Avenue, Room 343, Bolling AFB, DC 20032-8000, for assistance and coordination on such recommendations.

**9.21. Disqualification of Convening Authority.** A convening authority may not conduct the post-trial review of a case if the attendant facts and circumstances would lead a reasonable person to impute to him/her a personal interest in the outcome of the case or a personal bias towards the accused. *United States v. Gudmundson*, 57 M.J. 493 (2002); *United States v. Voorhees*, 50 M.J. 494 (1999); *United States v. Crossley*, 10 M.J. 376 (C.M.A. 1981); *United States v. Gordon*, 1 C.M.A. 255, 2 C.M.R. 161 (C.M.A. 1952).

9.21.1. If the SPCMCA is unable to take action in a case, forward the case to the GCMCA through the GCMCA's SJA. If the GCMCA is unable to take action, the MAJCOM commander designates a convening authority to do so.

9.21.2. The ROT allied papers must include a memorandum by the SJA (of the convening authority taking action) explaining why a different convening authority took action on the case. The memorandum is not required if it is clear from the ROT (e.g., forwarding memorandum, transfer memorandum) why a different convening authority took action on the case.

9.21.3. Transfer of responsibility for recommendation and action does not transfer authority to order or rescind deferments of sentence under Article 57a. 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.

**9.22. Format for Initial Actions.** Prepare convening authority's initial action in accordance with RCM 1107(f) and the guidance in the MCM, Appendix 16. Samples of a convening authority's initial action are at Figure 9.8.

9.22.1. **Findings.** Findings are addressed in the action only when any findings of guilty are disapproved, in whole or part. See sample formats in MCM, Appendix 16.

9.22.2. Deferred Forfeitures and Reduction in Grade and Waiver of Automatic Forfeitures. See Section 9G for guidance, and Figures 9.8 and 9.9 for sample formats for initial actions.

**9.23. Additional Considerations When Preparing Initial Actions.**

9.23.1. **Limitation on Forfeitures.** 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. Where an accused sentenced to an adjudged period of confinement and a forfeiture exceeding two-thirds pay per month has served the adjudged period of confinement prior to the convening authority's action, reduce the approved forfeiture to not more than total forfeitures for the period the accused was in confinement and not more than two-thirds pay per month thereafter, to run either for a specified period of time or up until execution of an adjudged punitive discharge. See RCM 1107(d)(2), Discussion; *United States v. Craze*, 56 M.J. 777 (A.F. Ct. Crim. App. 2002); *United States v. York*, 53 M.J. 553 (A.F. Ct. Crim. App. 2000); and *United States v. Warner*, 25 M.J. 64 (C.M.A. 1987).

9.23.2. **Duration of Forfeitures.** When total forfeitures are approved, the duration of forfeitures is not specified. An enlisted member, sentenced to a punitive discharge, confinement and total forfeitures, restored to duty after release from confinement is entitled to pay and allowances from the date the member is restored to duty, and the forfeitures become inoperative thereafter. DoD 7000.14-R, Department of Defense Financial Management Regulations, Vol. 7A, para. 480804.

9.23.3. **Application of Article 58a, UCMJ.** The provisions of Article 58a do not apply to the Air Force. All reductions in grade will be based upon adjudged and approved sentences.

9.23.4. **Suspension of Sentences and Proceedings to Vacate a Suspended Sentence.** RCM 1108 and RCM 1109. In a case where the convening authority suspends all or part of the execution of a sentence, include a copy of the suspension terms 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 or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge Under Article 72, UCMJ, and R.C.M. 1109. If the member waives the vacation hearing, the DD Form 455 is not required. Send the completed DD Form 455 or the member's waiver to AFLOA/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.

***Section 9G—Articles 57(a) and 58b, UCMJ.***

**9.24. Distinctions between Articles 57(a) and 58b, UCMJ.** Articles 57(a) and 58b are separate and distinct statutory provisions. They serve different purposes.

9.24.1. Article 57(a) mandates the effective date of any forfeiture of pay and allowances or reduction in grade that is included in the sentence of a court-martial. It provides that adjudged forfeitures and an adjudged reduction in grade will take effect upon the convening authority's action or 14 days after the sentence is adjudged, whichever occurs first. There is no additional requirement under Article 57(a) for the sentence to include confinement or a punitive discharge. Therefore, adjudged forfeitures and reductions, unless deferred, should take effect on the date provided for in Article 57(a) even if there is no confinement or punitive discharge in the case.

9.24.2. Article 58b requires forfeiture of pay (and allowances in general courts-martial) due a member during qualified periods of confinement or parole. The mandatory forfeitures (also known as required or automatic forfeitures) under this provision only take effect if three conditions exist:

9.24.2.1. The adjudged sentence includes confinement for more than six months or death, or confinement for any period and a dishonorable discharge, bad conduct discharge, or dismissal;

9.24.2.2. The accused is in confinement or on parole; and

9.24.2.3. The accused is otherwise entitled to pay and allowances that are subject to mandatory forfeitures.

9.24.3. As with adjudged forfeitures, mandatory forfeitures take effect the date of action or 14 days after the sentence is adjudged, whichever is sooner. The amount of pay and allowances forfeited in a general court-martial is all pay and allowances otherwise due the accused. The amount of pay forfeited in a special court-martial is two-thirds of pay otherwise due the accused. Allowances otherwise due are not subject to mandatory forfeitures in special courts-martial.

**9.25. Deferral and Waiver Provisions under Articles 57(a) and 58b:** Articles 57(a) and 58b contain provisions that enable a convening authority to permit payments to the accused and/or the accused's dependents that would otherwise have been forfeited.

9.25.1. Article 57(a)(2) permits the convening authority to defer either adjudged forfeitures or an adjudged reduction in grade, or both, from taking effect until action. The accused must submit a written request to have adjudged and, if applicable, mandatory forfeitures deferred. The accused's pay will not stop if the convening authority approves a deferment of both adjudged and mandatory forfeitures, or approves a deferment of only adjudged forfeitures

when there are no mandatory forfeitures. The convening authority may rescind a deferment at any time. Deferred forfeitures are paid to the accused.

9.25.2. Mandatory forfeitures can only be waived in cases where an accused has dependents. Waived forfeitures must be paid to the dependents. See paragraph 9.27 for dependency determinations.

9.25.3. Mandatory forfeitures can only be waived by the convening authority for a period not exceeding six months, or the period of confinement if less than six months.

9.25.4. Waived forfeitures cannot be applied beyond the member's expiration of term of service (ETS) because the pay entitlement ceases at that point.

9.25.5. The accused does not have to apply for a waiver of mandatory forfeitures. The convening authority may waive mandatory forfeitures on his or her initiative.

9.25.6. The convening authority can waive mandatory forfeitures either before taking action or when taking action on the case. The waiver can be retroactive, designated to begin on a date 14 days after the sentence is adjudged.

9.25.7. The convening authority must defer, suspend, mitigate or disapprove all or part of adjudged total forfeitures in order to waive any amount of mandatory forfeitures. Mandatory forfeitures can be waived for the benefit of the accused's dependents only to the extent adjudged forfeitures are not in effect. See *United States v. Emminizer*, 56 M.J. 441 (2002).

9.25.8. A convening authority can defer mandatory forfeitures (and any adjudged forfeitures) until action and then waive mandatory forfeitures for a period not to exceed six months. A combination of deferral and waiver can maximize the pay and allowances going to the accused and his or her family.

**9.26. Mechanics of Deferring and Waiving Forfeitures:** Figure 9.1 explains the relationship between adjudged and mandatory forfeitures from the date sentence is adjudged until the end of the forfeiture period. Figure 9.1 provides examples of the interplay between adjudged and mandatory forfeitures. To assist in drafting the convening authority's action on the sentence, see Figures 9.8 and 9.9.

**Figure 9.1. Relationship between Adjudged and Mandatory Forfeitures.**

FORFEITURE PERIOD	ADJUDGED FORFEITURES (AF)	MANDATORY FORFEITURES (MF) (See Note 1)
DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)	Not in effect. Accused continues to be paid unless post ETS	Not in effect. Accused continues to be paid unless post ETS

14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED TO ACTION	In effect, except for any portion the CA defers. (See Note 2)	In effect, except for any portion the CA defers (See Note 2), and/or waives and directs payment to the accused's qualifying dependents. (See Notes 3 & 4)
ACTION TO END OF FORFEITURE PERIOD	The amount the CA approves is still in effect. The CA may approve, disapprove, commute or suspend the AF in whole or in part.	Still in effect, except any portion the CA waives or has waived. (See Notes 4 & 5)

## NOTES:

1. Mandatory forfeitures (MF) only apply when the three conditions listed in paragraph 9.24.2. exist.
2. If the accused applies for deferment, the convening authority (CA) may defer all or a portion of the AF and/or MF 14 days after the date on which the sentence was adjudged until the convening authority takes action. The accused should specify whether the deferment requested is for AF, MF, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused will be paid a sum equal to the pay and allowances to which he or she is entitled, minus any amounts forfeited (AF and/or MF not deferred). The CA may rescind a deferment (AF and/or MF) at any time.
3. The CA may waive available MF with or without a request from the accused. The CA may waive MF to the extent that the accused is entitled to pay and allowances (see Note 1 above).
4. MF may be waived until the earlier of: 1) a period not to exceed six months; 2) the accused's release from confinement; or 3) the last day the accused is otherwise entitled to pay and allowances (see Note 1 above).
5. At action, the CA may waive all or portion of the available MF (if previously waived, waiver is memorialized in the action) for the benefit of the accused's dependents. The CA may disapprove, commute or suspend all or a portion of the AF to increase the amount of MF available for the CA to waive. The CA may retroactively waive MF, starting 14 days after the date on which the sentence was adjudged.

9.26.1. Accused's Deferral Request. If an accused requests a deferral of a reduction in grade and/or a forfeiture of pay (and allowances) until action is taken, the convening authority may approve the request, in full or in part, or may disapprove the request.

9.26.1.1. The accused's deferral request should specify whether a request for deferred forfeitures is for adjudged forfeitures, mandatory forfeitures, or both. If it is unclear, the convening authority may treat it as a request for deferral of both.

9.26.1.2. The convening authority's action on the request should be reflected in a signed and dated document.

9.26.1.3. The terms of approved deferrals must also be reported in a 14-day priority message in accordance with Figure 9.10 and must be reported in the action the convening authority ultimately takes on the case.

9.26.1.4. A deferral of forfeitures may be for adjudged forfeitures, mandatory forfeitures, or both, and for all pay and allowances to which the accused is entitled or a lesser sum.

9.26.2. Waiver of Mandatory Forfeitures. In cases where mandatory forfeitures are waived, whether prior to or as part of the action, the approved waiver should express the amount approved in dollar amounts per month. The exception to this is when the waiver is for total pay and allowances in a general court-martial or two-thirds pay in a special court-martial.

9.26.2.1. Approved requests must identify the dependents that will receive the waived forfeitures. If payments are made to an ex-spouse or other person on behalf of minor dependents, confirmation that the designated payee is the appointed guardian or custodian of a minor dependent is required.

9.26.2.2. If mandatory forfeitures are waived before action, the convening authority should reflect approval in a signed and dated document. Such a waiver of mandatory forfeitures should also be reported in the 14-day priority message and in the convening authority's action on the case.

9.26.2.3. Contact the local accounting and finance office to determine the accused's entitlements and the actual amount of pay and allowances the accused and/or the accused's dependents may be entitled to receive. A number of factors can impact these entitlements:

9.26.2.3.1. BAS. In most cases, the accused will lose BAS upon entering confinement. Therefore, the convening authority cannot give the accused's family any portion of the accused's BAS.

9.26.2.3.2. TAXES. Federal and state taxes will be withheld from any payments of deferred or waived forfeitures. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the amount of taxes should be factored into the calculation.

9.26.2.3.3. GRADE REDUCTION. A reduction in grade may significantly lower the amount of the accused's pay that is eligible for waiver. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the effect of a reduction in grade should be taken into consideration.

9.26.2.3.4. SPOUSE on ACTIVE DUTY. A spouse who is also an active duty military member can receive only waived forfeiture of pay, not pay and allowances.

9.26.2.3.5. ETS. There are no forfeitures to waive on any date after the accused's ETS. Any pretrial agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond his or her ETS may render pleas improvident because the accused may not receive the benefit of his bargain. Pretrial agreements containing a waiver provision must clearly state that any waiver is only applicable to pay and/or allowances that the accused is otherwise entitled to receive. See *United States v. Perron*, 58 M.J. 78 (2003) and paragraph 8.5.2.1.

**9.27. Dependency Determinations under Article 58b:** When addressing waivers of mandatory forfeitures under Article 58b, UCMJ, an issue may arise as to whether a person qualifies as a dependent.

9.27.1. Dependent Categories. RCM 1101(d)(3) provides that, for the purpose of waiving forfeitures, a "dependent" means any person qualifying as a dependent according to 37 U.S.C. § 401. This statute identifies four categories of dependents:

9.27.1.1. Spouse of the accused, regardless of military status.

9.27.1.2. Unmarried child of the accused under 21 years of age, including an adopted child or stepchild. In addition, special rules permit a child as old as 23 years of age to be a dependent if enrolled as a full-time student and a child older than 21 years of age to be a dependent if incapable of self-support due to mental or physical incapacity. However, in these two cases the accused must provide more than one-half of the child's support.

9.27.1.3. Parent of the accused. Additional dependency requirements are required, including the accused providing over one-half of the parent's support. Parents includes natural parents, stepparents, and adoptive parents of the accused or the accused's spouse; and any other person who stood in loco parentis to the accused for a continuous 5 year period before the member became 21 years of age.

9.27.1.4. Unmarried persons placed in legal custody of the member as a result of a court order for a period of at least 12 months. This category of persons, known as wards, must depend upon the accused for over one-half of their support and must meet numerous other criteria set forth in the statute (37 U.S.C. § 401).

9.27.2. Evidence of Dependency. Sufficient evidence of dependency is required to support an Article 58b waiver. The nature of this evidence will depend on the status of the dependent.

9.27.2.1. Dependency status for a spouse and/or child may be established by their enrollment in DEERS or by other competent evidence, such as a marriage certificate for a spouse or a birth certificate or court order establishing paternity and/or child support obligations for a child.

9.27.2.2. Dependency determinations for a child over 21 years of age, parents, or a ward are more complex because they only qualify as a dependent if the military sponsor provides more than one-half of their support. A thorough determination by DFAS is necessary. A precondition for waiving forfeitures for the benefit of one of these dependents should be an "approval letter" of dependency from DFAS. The accused, or other party requesting the waiver, should provide a copy of the DFAS "approval letter" with any request to waive mandatory forfeitures.

9.27.2.3. If an accused has failed to qualify or was unable to qualify the person(s) as dependent(s) with DFAS, there will normally be insufficient evidence of dependency to support an Article 58b waiver of mandatory forfeitures.

**9.28. Service of Legal Reviews on the Accused:** The Air Force Court of Criminal Appeals has addressed whether an SJA's legal advice to a convening authority regarding requests for deferral or waiver of forfeitures must be served upon the accused with an opportunity to respond. Deferrals need not be served, see 9.28.1. Waivers must be served, see 9.28.2. In either case, legal offices should process requests promptly.

9.28.1. Article 57(a) Deferral of Forfeiture Requests. In *United States v. Key*, 55 M.J. 537 (A.F. Ct. Crim. App. 2001), the Court held that an SJA review of a request for deferral of forfeitures does not need to be served on the defense for comment prior to submission to the convening authority. The Court compared such a request to a request for deferral of a sentence to confinement, for which no SJA recommendation is required and, historically, the

SJA's legal analysis of the request is not served on the accused. Any SJA review and action by the convening authority on the request must become a part of the completed ROT.

9.28.2. Article 58b Waiver of Forfeiture Requests. In *United States v. Spears*, 48 M.J. 768 (A.F. Ct. Crim. App. 1998), the Court considered whether a legal review of a request for a waiver of forfeitures must be served on the defense prior to submission to the convening authority. The Court noted that SJAs are not required to prepare legal reviews of requests for waiver of automatic forfeitures. The Court treated the request for waiver of forfeitures as a clemency request and declared that practitioners must exercise care when addressing the request for waiver of forfeitures before the record is completed. *Spears* set this basic approach: any legal review prepared by the SJA for the convening authority prior to completion of the SJAR should be attached to the SJAR and become part of the completed ROT. Any legal review that may be prepared after the SJAR should be treated as an addendum to the SJAR and served on the accused for comment when it contains matter outside the record. Serve it on the accused before submission to the convening authority and include it in the completed ROT.

**9.29. Application of Article 57(a) and 58b To Cases With Offenses Committed Prior to 1 April 1996.** For cases in which all of the charged offenses occurred before 1 April 1996, the U.S. Court of Appeals for the Armed Forces, in *United States v. Gorski*, 47 M.J. 370 (1997), held these provisions operate in violation of the ex post facto clause of the Constitution.

9.29.1. For cases affected by the *Gorski* decision, any forfeitures collected pursuant to Article 58b (mandatory forfeitures); Article 57(a)(1)(A) (adjudged forfeitures taken prior to convening authority action); and/or any pay and allowances withheld due to a reduction in grade pursuant to Article 57(a)(1)(A) (reduction in grade prior to convening authority action), are without legal effect and will be restored.

9.29.2. For cases involving offense(s) committed both before and after 1 April 1996, the Court, in *United States v. Carter*, 49 M.J. 392 (1998), applied unitary sentencing principles and limited the *Gorski* holding to those cases where the maximum sentence for any or all offenses committed on or after 1 April 1996 would induce mandatory forfeitures under Article 58b.

### ***Section 9H—Contingent Confinement***

**9.30. Contingent Confinement.** Contingent confinement is confinement authorized by a court-martial in the form of a fine-enforcement provision. See RCM 1003(b)(3) and RCM 1113(d)(3). A fine enforcement provision may be ordered executed in accordance with the procedures below.

9.30.1. 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 until the fine is ordered executed. Moreover, an accused may not be ordered to serve contingent confinement until the fine is ordered executed and the requirements of paragraph 9.31 are met. If the accused fails to demonstrate that he or she has made good faith efforts to pay the fine but cannot because of indigency, the convening authority may order the sentence of confinement executed by following the procedures outlined in paragraph 9.31.

9.30.2. 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. *Carter v. McClaughry*, 183 U.S. 365 (1902); *Peebles v. Froehlke*, 46 C.M.R. 266 (1973).

**9.31. Procedures for Executing Contingent Confinement.** Contingent confinement may be executed in accordance with the following procedures:

9.31.1. When the fine is ordered executed, the accused must be notified in writing the fine is due and payable. A specific due date should be included in the notification. If the accused is in confinement, the due date should normally be a reasonable period before the accused is scheduled for release from confinement to allow adequate time for a contingent confinement hearing and convening authority action.

9.31.2. After the fine is considered due, the SJA for the base where the accused was tried ascertains whether the accused has met his or her obligations concerning the fine. If it appears the fine has not been paid, notify the convening authority. If the convening authority finds probable cause to believe a fine is unpaid, the convening authority may order a contingent confinement hearing. The convening authority for this hearing is the officer who convened the court-martial, his or her successor in command, or the officer exercising GCMCA over the command to which the accused is assigned. If the accused is no longer a member of the Air Force, the Air Force District of Washington (AFDW) Commander (GCMCA over the Air Force Corrections System) is the convening authority. 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.

9.31.3. A military judge is detailed as hearing officer to conduct the contingent confinement hearing in the same manner as detailed to a court-martial.

9.31.4. The accused is provided 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. See Figure 6.9 for appropriate funding authority. The notice informs the accused of the following:

9.31.4.1. The accused's alleged failure to pay the fine;

9.31.4.2. The purpose of the hearing to determine whether the fine is delinquent and whether the delinquency, if any, is the result of the accused's indigence;

9.31.4.3. The accused's right to present witnesses and documentary evidence;

9.31.4.4. The accused's right to representation by military defense counsel; and

9.31.4.5. The evidence which was relied upon in issuing the notice of hearing and the options available to the convening authority.

9.31.5. Unless the hearing is otherwise waived, 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 in the approved sentence 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 of proof, by a preponderance of the evidence, of showing that payment of the fine is delinquent. The accused bears the burden of proof, by a preponderance of the evidence, of showing that any delinquency resulted from indigence. See 18 U.S.C. § 3572(a) for criteria to consider in making these determinations.

#### 9.31.6. Hearing Procedures.

9.31.6.1. The hearing officer determines the facts from the best evidence available. Rulings on evidentiary and procedural matters are final. Strict evidentiary rules do not apply and hearsay statements are admissible.

9.31.6.2. The accused may testify and present witnesses and documentary evidence. 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, before the hearing and the hearing officer determines:

9.31.6.2.1. The physical presence of the witness is critical to a fair determination of a material issue in dispute;

9.31.6.2.2. The witness is available to testify; and

9.31.6.2.3. There is no substitute for the live testimony of the prospective witness (e.g. written statements, affidavits, stipulations, or telephone conference).

9.31.6.3. The accused has a right to confront and cross-examine those witnesses testifying at the hearing.

9.31.6.4. 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 an ADC or military counsel of the accused's selection, if reasonably available (see paragraph 5.4). The accused is not entitled to representation by more than one military counsel.

9.31.6.5. 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.

9.31.6.6. The hearing officer submits a written report to the convening authority through the SJA, 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, transcribe them verbatim. The hearing officer forwards the report and/or record to the convening authority.

9.31.6.7. 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.

9.31.6.8. 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. See Figure 9.11 for a sample order executing contingent confinement. If the convening authority determines the accused has made good efforts to pay the fine, but cannot because of indigence, the convening authority may not order the sentence of confinement executed unless he or she determines that there is no other punishment adequate to meet the Government's interest in appropriate punishment. See RCM 1113(d)(3).

9.31.6.9. Forward a copy of the summarized record of the contingent confinement hearing for each copy of the ROT required by AFMAN 51-203, chapters 3 and 13 to AFLOA/JAJM.

### ***Section 9I—Notifications of Adjudged Sentence, Action of the Convening Authority, and Deferment or Waiver***

**9.32. Reporting by Base Level SJA.** In all courts-martial with mandatory forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade, the SJA of the office that prosecuted the case must send a message by the most expeditious means available to HQ AFPC/DPPPWM and the member's finance office, with informational copies to HQ AFSFC/SFC and DFAS-DE/FJPC in the format set out in Figure 9.10. The referenced message must be sent within 24 hours of the date the convening authority takes action under RCM 1107 or 14 days after the sentence is adjudged, whichever is earlier. If any portion of the punishment or mandatory forfeitures is deferred or if the convening authority waives any portion of the mandatory forfeitures prior to the date of the message, the message must include the terms of such deferment or waiver.

**9.33. Reporting by Convening Authority's SJA.** If action is taken more than 14 days after the sentence is adjudged, in any case where the approved sentence includes a reduction in grade or forfeitures (mandatory or adjudged), the SJA of the convening authority must send a second priority message within 24 hours after the convening authority's RCM 1107 action. If any portion of the punishment or mandatory forfeiture is deferred or if the convening authority waives any portion of the mandatory forfeiture, the second message must include the terms of such deferment or waiver. Send the message to the same addressees listed in paragraph 9.32 and, if the accused is confined, to the confinement facility, using the format in [Figure 9.11](#) For members who enter a prisoner status requiring a permanent change of station, also send the message to the gaining AFO.

### **9.34. Notification and Distribution of Documents to Confinement Facilities.**

9.34.1. After action by the original convening authority, the AFDW Commander exercises GCMCA over inmates transferred to Level II Regional Corrections Facilities (RCFs) and long-term corrections facilities as defined in AFI 31-205, the Federal Bureau of Prisons, and over those Air Force members and former members paroled or placed on excess leave from such facilities.

9.34.2. When an inmate (with or without a punitive separation) is transferred into the Air Force Corrections System, the servicing SJA sends:

9.34.2.1. Four copies of the court-martial order to HQ AFSFC/SFC and two copies of the court-martial order to the corrections officer of the facility housing the offender;

9.34.2.2. Two copies of any victim request to be notified of changes in the inmate's status and of clemency hearings to both HQ AFSFC/SFC and the corrections officer;

9.34.2.3. One copy of the SJAR to both HQ AFSFC/SFC and the corrections officer;

9.34.2.4. One copy of the ROT to the corrections officer, if the approved confinement is one year or more.

9.34.3. If at the time the inmate is transferred to a corrections facility, the court-martial order has not been published, send one copy of the AF Form 1359 and the convening authority's action to HQ AFSFC/SFC (facsimile transmission in lieu of mailing is permissible, DSN 473-0788) and two copies of each to the corrections officer.

### ***Section 9J—Involuntary (Required) and Voluntary Excess Leave***

#### **9.35. Excess Leave.**

9.35.1. The convening authority may place an accused that had either no confinement adjudged or already completed the period of confinement on involuntary excess leave while awaiting appellate review of an unsuspended punitive separation (*See* Article 76a, UCMJ). Members of the Air Reserve Components may be removed from active duty status rather than being placed in excess leave and recalled as necessary to complete appellate review. Contact HQ AFRC/JA for guidance.

9.35.2. 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 accused's voluntary excess leave status. Return the accused to duty or place on involuntary excess leave.

9.35.3. When an approved sentence includes unsuspended confinement, the confinement must be served, remitted, or deferred before placing an accused on either voluntary or involuntary excess leave.

9.35.4. An accused 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.

9.35.5. If the accused's sentence to a punitive separation is set aside or disapproved upon appellate review, the accused 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. The amount of pay and allowances is reduced by the amount of income, unemployment compensation, and public assistance benefits received by the accused from any government agency during the period of excess leave.

9.35.6. The convening authority may order the accused to begin involuntary excess leave upon completion of a sentence to confinement in the RCM 1107 action, upon completion of a

sentence to confinement or at any time following approval of a sentence which includes a punitive discharge, subject to paragraph 9.36.3. Such involuntary excess leave may continue until the date the discharge is executed, unless terminated at any earlier date.

9.35.7. When a convening authority directs excess leave for an accused serving in an overseas area, the convening authority directs reassignment to the Mission Support Squadron at the base nearest the appellate leave address provided by the accused.

9.35.7.1. An accused may go directly to his or her leave address without reporting into the gaining unit. The accused will determine whether to physically report into the gaining unit before departure.

9.35.7.2. The losing commander, consistent with the accused's election, will direct the accused to travel from the overseas location to either the appellate leave address or the gaining unit as soon as possible after completion of out processing. After arrival, the accused will commence taking accrued leave, if so elected, and/or required excess leave.

9.35.7.3. The accused will be considered assigned to the Mission Support Squadron at the gaining base on the date the member physically reports to the unit or, in cases where the accused does not physically report to the gaining unit, the date determined by the local MPF's Personnel Relocations Element based upon the accused's departure date and travel time.

9.35.7.4. Overseas members may provide a leave address in an OCONUS state or territory of the United States (e.g., Alaska, Hawaii, Guam) and HQ AFPC may assign the member to the Mission Support Squadron nearest such leave address. Overseas airmen in foreign countries must provide an appellate leave address in a state or territory of the United States and will be reassigned to a Mission Support Squadron at the base nearest the leave address. Overseas members in foreign countries will be required to depart the foreign country.

9.35.8. Procedures for Placing an Accused on Excess Leave. When the convening authority orders an accused to take excess leave, the convening authority sends the accused a letter (Figure 9.12), through command channels, directing the excess leave and informing the accused of entitlements, status, and responsibilities while on excess leave. If the convening authority directed the excess leave in the action (see Figure 9.8.), the convening authority's SJA, or Acting SJA, may sign and send the letter to the accused. The SJA for the convening authority directing excess leave ensures a signed copy of this letter, with the accused's receipt and any subsequent address changes, is sent to the servicing MPF. In cases of an accused being reassigned from overseas, send a copy of the letter to the SJAs of the SPCMCA and GCMCA of the gaining unit, the gaining excess leave MSS/CC, AFLOA/JAJM and AFLOA/JAJA. See Figure 9.12.

9.35.8.1. Action to place the accused on voluntary or involuntary excess leave must comply with JFTR, paragraph U7506, and AFIs 36-3003, *Military Leave Program*, 36-2110, *Assignments*, 36-2102, *Base-Level Relocations Procedures* and 31-205, *The Air Force Corrections System*. Ensure AMJAMS is updated to reflect the accused's appellate leave address.

9.35.9. Travel of Personnel Awaiting Completion of Appellate Review (Excess) Leave. An accused involuntarily placed on excess leave 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 the JFTR, Volume I. 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 accused'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. In such cases, publish an "A" Series order.

**Figure 9.2. Submission of Matters by the Accused.**

(Date)

MEMORANDUM FOR (Grade and Name of Accused)

FROM: (JA Office)

SUBJECT: Submission of Matters to the Convening Authority – *United States. v. (Grade and Name of Accused)*

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 that might affect the convening authority's decision to approve or disapprove any findings of guilt 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 ROT, or copies of evidence introduced at trial.
  - c. Matters in mitigation that were 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. *See* AFI 31-205.
2. You should consult with 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. You may indicate any waiver of your rights to submit matters on the indorsement to this letter or by submitting a separate written waiver.

4. [For a GCM or SPCM, insert:] You have 10 days to submit matters for consideration by the convening authority from the date you receive a copy of the authenticated ROT or, if applicable, the date both you and your defense counsel receive a copy of the recommendation of the staff judge advocate, whichever is later. 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.

[For a SCM, insert the following as paragraph 4:] 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)(time). 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.

5. In addition to the submissions described above, you may submit an application to the convening authority, through the servicing SJA, to defer any forfeitures of pay or allowances, reduction in grade, or service of a sentence to confinement. If you have dependents, you may also submit an application to the convening authority, through the servicing SJA, to waive any mandatory forfeitures of pay and allowances under Article 58(b), UCMJ, with the amount waived paid to your dependents. Applications for deferral and/or waiver may be submitted immediately. In order for the convening authority to give such requests proper consideration, they should normally be submitted no later than the time provided in paragraph 4 above.

(NAME), (Grade), USAF  
(Duty Title)

cc: Defense Counsel

1st Ind, (Grade and Name of Accused)

(Date)

MEMORANDUM FOR (JA Office)

Receipt acknowledged at (time) on (date).

I have consulted with my defense counsel concerning my rights to submit matters for the convening authority's consideration before the convening authority takes action in my case. After considering the advice of my defense counsel, I (waive)(do not waive) my right to submit such matters. I (will)(will not) submit any matters for the convening authority's consideration.

(NAME), (Grade), USAF  
Accused

**Figure 9.3. Waiver of Clemency Matters by the Accused (No Request for Deferment of Reduction in Grade or Forfeitures, or Waiver of Mandatory Forfeitures).**

(Date)

MEMORANDUM FOR (Defense Counsel)

FROM: (Grade and Name of Accused)

SUBJECT: Waiver of Right to Submit Clemency Matters – *United States v. (Grade and Name of Accused)*

1. I have been briefed by my defense counsel, (Name and Grade of Defense Counsel), (Location), concerning my rights to submit matters to the convening authority, detailed in Article 60, UCMJ, (and) Rule for Court-Martial 1105 (and Article(s) 57a (and 58b), UCMJ), before he/she takes action in my case. After considering my rights and the advice of my counsel, I hereby elect that I will not submit any matters for the convening authority's consideration. This waiver is voluntary and no one has coerced me in any way or made any promises in regard to my decision.
  
2. I understand my rights and the time limitations to make submissions to the convening authority. *[For a GCM or SPCM insert:]* I understand that I have 10 days from (the later of) my receipt of a copy of the authenticated record of trial (or receipt of the Staff Judge Advocate's Recommendation (, or Addendum, if served upon me)) to submit matters. I understand that I may request an extension of up to 20 additional days to submit matters and, for good cause, the convening authority or that authority's staff judge advocate may grant my request. *[For a SCM, insert:]* I understand that I have 7 days from the date my sentence was announced to submit matters for the convening authority's consideration. I understand that I may, for good cause, apply to the convening authority, through the convening authority's staff judge advocate, for an extension of the period.
  
3. I understand that the convening authority may, for any reason, disapprove findings of guilt to any charge and/or specification, but may not change a finding of not guilty to guilty. I also understand that the convening authority may, for any reason, disapprove a legal sentence, mitigate [lessen] the sentence, or change a punishment to one of a different [but not more severe] nature. I understand the convening authority may not increase the severity of the punishment.
  
4. My counsel has informed me that the convening authority has sole discretion to defer sentences, including confinement, reduction in grade and (adjudged and/or mandatory) forfeitures (as well as sole discretion to waive mandatory forfeitures of pay (and allowances)). I hereby voluntarily elect that I will not submit any requests for a deferment or waiver.

(NAME), (Grade), USAF  
Accused

1st Ind, (Defense Counsel)

(Date)

MEMORANDUM FOR (Convening Authority)

1. (Name and Grade of Accused), having [received the record of trial (and) the Staff Judge Advocate's Recommendation (and Addendum), dated \_\_\_\_\_][been sentenced by summary court-martial on (date)], has, after receiving the advice of counsel concerning (his)(her) rights to submit matters to the convening authority pursuant to Article 60, UCMJ, and RCM 1105, voluntarily decided to waive the right to submit matters for consideration by the convening authority.

2. I have advised (Rank and Name of Accused) that (he)(she) may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty or to approve all or any portion of the sentence. This includes any allegations of errors affecting the legality of the findings or sentence; portions of the record of trial and copies of documentary evidence offered or introduced at trial; matters in mitigation which were not available for consideration at the court-martial; and clemency recommendations from any person. I have also advised (him)(her) that the convening authority must consider any written submissions, if any, prior to taking action.

(NAME), (Grade), USAF  
Defense Counsel

**Figure 9.4. Waiver of Clemency Matters by the Accused (Request for Deferment of Reduction in Grade or Forfeitures, or Waiver of Mandatory Forfeitures).**

(Date)

MEMORANDUM FOR (Defense Counsel)

FROM: (Grade and Name of Accused)

SUBJECT: Waiver of Right to Submit Clemency Matters – *United States v. (Grade and Name of Accused)*

1. I have been briefed by my defense counsel, (Name and Grade of Defense Counsel), (Location) concerning my rights to submit matters to the convening authority, detailed in Article 60, UCMJ, and Rule for Court-Martial 1105 (and Article(s) 57a (and 58b), UCMJ), before (he)(she) takes action in my case. I previously submitted a Request for [(Deferment of [Reduction in Grade] and/or [Forfeitures]), (Waiver of Mandatory Forfeitures)] on (date). [(Decision(s) on [that/those] request(s) (is/are) still pending.) (The convening authority previously denied my request.)] After considering my rights and the advice of my counsel, I hereby elect that I will not submit any additional matters for the convening authority's consideration. This decision is voluntary. I have not been coerced in any way or received any promises in regard to my decision.

2. I understand my rights and the time limitations to make submissions to the convening authority. I understand that I have 10 days from (the later of) my receipt of a copy of the authenticated record of trial (or receipt of the Staff Judge Advocate's Recommendation (, or Addendum, if served upon me)) to submit matters. I understand that I may request an extension of up to 20 additional days to submit matters and, for good cause, the convening authority or that authority's staff judge advocate may grant my request.

3. I understand that the convening authority may, for any reason, disapprove findings of guilt to any charge and/or specification, but may not change a finding of not guilty to guilty. I also understand that the convening authority may, for any reason, disapprove a legal sentence, mitigate (lessen) the sentence, or change a punishment to one of a different [but not more severe] nature. I understand the convening authority may not increase the severity of the punishment.

4. My counsel has informed me that the convening authority has sole discretion to defer sentences, including confinement, reduction in grade and (adjudged and/or mandatory) forfeitures (, as well as sole discretion to waive mandatory forfeitures of pay (and allowances)). I request that my prior request(s) be (approved)(reconsidered). (I do not specifically request any other specific form of clemency.)

(NAME), (Grade), USAF  
Accused

1st Ind, (Defense Counsel)

(Date)

## MEMORANDUM FOR (Convening Authority)

1. (Rank and Name of Accused), having [received the record of trial (and) the Staff Judge Advocate's Recommendation (and Addendum), dated \_\_\_\_\_] [been sentenced by summary court-martial on (date)], has, after receiving the advice of counsel concerning his/her rights to submit matters to the convening authority pursuant to Article 60, UCMJ, and RCM 1105, voluntarily elected to waive the right to submit matters for consideration by the convening authority.

2. I have advised (Rank and of Accused) that (he)(she) may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty or to approve all or any portion of the sentence. This includes any allegations of errors affecting the legality of the findings or sentence; portions of the record of trial and copies of documentary evidence offered or introduced at trial; matters in mitigation which were not available for consideration at the court-martial; and clemency recommendations from any person. I have also advised (him)(her) that the convening authority must consider any written submissions, if any, prior to taking action.

(NAME), (Grade), USAF  
Defense Counsel

**Figure 9.5. Action Memorandum in Summary or non-BCD Special Courts-Martial.**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (JA Office)

SUBJECT: Action: *United States v. (Grade and Name of Accused)*

1. On (date), you referred the case of (rank and name of accused), (accused's organization), to trial by (summary)(special) court-martial. The court convened on (date). 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. In addition, you may consider the record of trial, personnel records of the accused, and such other matters, as you deem appropriate. However, if you consider matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused must be notified and given an opportunity to rebut.

2. Pursuant to Article 60, UCMJ, the accused has submitted the attached matters (Atchs 2, 3, 4 and 5) for your consideration prior to taking final action in this case. You must consider all written matters submitted by the defense and may consider any other matters submitted by the defense prior to taking action on the findings and sentence.

**OR**

2. Pursuant to Article 60, UCMJ, the accused may submit matters for your consideration prior to taking final action in this case. However, (the accused did not submit clemency matters.)(the accused has chosen to waive his right to submit clemency matters (Atch 2).)(the accused has chosen to waive his right to submit clemency matters and has also waived the remaining portion of his time to submit clemency matters (Atch 2).)

3. A proposed Action of the Convening Authority (Atch 1) approving the findings and sentence of the court has been prepared for your signature. Should you desire to take some other action in this case, we will prepare the appropriate document at your direction. If you concur, please sign the Action of the Convening Authority.

(NAME), (Grade), USAF  
Staff Judge Advocate

8 Attachments:

1. (Proposed Action of the Convening Authority)(DD Form 2329 with Proposed Action)
2. Defense Counsel Ltr, dtd \_\_\_\_
3. Accused's Ltr, dtd \_\_\_\_
4. Mr. \_\_\_\_ Ltr, dtd \_\_\_\_
5. AFGCM Citation, dtd \_\_\_\_
6. Report of Result of Trial
7. Personal Data Sheet
8. Record of Trial (2 volumes)

**OR**

5 Attachments:

1. (Proposed Action of the Convening Authority)
2. Waiver of Clemency Matters, dtd \_\_\_\_ (if used)
3. Report of Result of Trial
4. Personal Data Sheet
5. Record of Trial (2 volumes)

1st Ind, (Convening Authority)

(Date)

MEMORANDUM FOR (JA Office)

I considered the attachments before taking action on this case.

(NAME), (Grade), USAF  
Commander

**Figure 9.6. Staff Judge Advocate's Recommendation.**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (JA Office)

SUBJECT: Staff Judge Advocate's Recommendation – *United States v. (Grade and Name of Accused)*

1. On (date of referral), you referred the case of (rank and name 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 plea of guilty) (a stipulation of fact), (a confession), (testimony by the victim), and ( ). 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), and ( ). [Include any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence under RCM 1106(d)(3)(B). Also address any military judge awarded additional credit for illegal pretrial confinement.]
4. [Note: If the defense raised legal errors in matters submitted under RCM 1105, address them pursuant to RCM 1106(d)(4). Also, address requests for deferral of punishment and waiver of required forfeitures. See paragraphs 9.13.5 through 9.13.5.2.]
5. The accused was sentenced to ( ). The maximum imposable sentence for the offense(s) for which the accused was convicted is ( ). There was a pretrial agreement in this case providing that the accused would (plead guilty to all charges and specifications) ( ). In exchange, (confinement would be limited to \_\_\_ (years)(months))(the case would be referred to a special court-martial)( ). The agreement contained no other restrictions on other available forms of punishment. No further action is required on your part regarding the pretrial agreement.
6. I have considered all matters in the record of trial, including all matters presented in the pre-sentencing 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), (Grade), USAF  
Staff Judge Advocate

Attachments:

1. AF Form 1359
2. Personal Data Sheet

**Figure 9.7. Addendum to Staff Judge Advocate's Recommendation when Matters are Submitted.**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (JA Office)

SUBJECT: Addendum to Staff Judge Advocate's Recommendation: *United States v.*  
(*Grade and Name of Accused*)

1. Pursuant to Article 60, UCMJ, [the accused] has submitted the attached matters (Atchs 2, 3, 4 and 5) for your consideration prior to taking final action in this case. Rule for Courts-Martial 1107(b)(3)(A)(iii) provides that you must consider these matters before taking final action in this case. In addition, you may consider the record of trial, personnel records of the accused, and such other matters as you deem appropriate. However, if you consider matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused must be notified and given an opportunity to respond.

2. The defense alleges legal error in that [\_\_\_\_\_]. I considered carefully these allegations of error, and find them to be without merit.

3. I also reviewed the attached clemency matters submitted by the defense. [My earlier recommendation remains unchanged.] [I recommend that you approve the findings and sentence as adjudged.][I recommend \_\_\_\_\_.]

4. A proposed Action of the Convening Authority (Atch 1) [approving the findings and sentence of the court has been prepared for your signature][has been prepared based on my recommendation]. Should you desire to take some other action in this case, we will prepare the appropriate document at your direction. If you concur, please sign the Action of the Convening Authority.

(NAME), (Grade), USAF  
Staff Judge Advocate

## 6 Attachments:

1. Proposed Action of the Convening Authority
2. Defense Counsel Ltr, dtd \_\_\_\_
3. Accused's Ltr, dtd \_\_\_\_
4. Mr. \_\_\_\_ Ltr, dtd \_\_\_\_
5. AFGCM Citation, dtd \_\_\_\_
6. SJAR (w/ \_\_ Atchs), dtd \_\_\_\_

1st Ind., (Convening Authority)

(Date)

MEMORANDUM FOR: (JA Office)

I have considered the attached matters before taking action on this case.

(NAME), (Grade), USAF  
Commander

**Figure 9.8. Addendum to Staff Judge Advocate's Recommendation when Matters are not Submitted.**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (JA Office)

SUBJECT: Addendum to Staff Judge Advocate's Recommendation: *United States. v. (Grade and Name of Accused)*

1. Pursuant to Article 60, UCMJ, the accused may submit matters for your consideration prior to taking final action in this case. However, [the accused did not submit clemency matters.] [the accused has chosen to waive his right to submit clemency matters (Atch 2).] [the accused has chosen to waive his right to submit clemency matters and has also waived the remaining portion of his time to submit clemency matters (Atch 2).]
2. My earlier recommendation remains unchanged. I recommend that you approve the findings and sentence as adjudged.
3. A proposed Action of the Convening Authority (Atch 1) approving the findings and sentence of the court has been prepared for your signature. Should you desire to take some other action in this case, we will prepare the appropriate document at your direction. If you concur, please sign the Action of the Convening Authority.

(NAME), (Grade) USAF  
Staff Judge Advocate

## Attachments:

1. Proposed Action of the Convening Authority
2. Waiver of Clemency Matters, dtd \_\_\_\_\_ (if used)
3. SJAR (w/ \_\_ Atchs), dtd \_\_\_\_\_

1st Ind. (Convening Authority) (Date)

MEMORANDUM FOR: (JA Office)

I have considered the attachments before taking action on this case.

(NAME), (Grade), USAF  
Commander

**Figure 9.9. Sample Convening Authority Actions.****Approving Adjudged Sentence in its Entirety:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved [and will be executed][and, except for the (type of punitive discharge), will be executed].

**Approving Adjudged Sentence in Part:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence as provides for \_\_\_\_\_ (identify the punishment that is approved by type and amount) is approved [and will be executed][and, except for the (type of punitive discharge), will be executed].

**Sentences Including Death or Punitive Discharge:**

If an adjudged sentence includes death, dismissal, or discharge, the convening authority may not order these punishments executed in the initial action. *See* RCM 1113(c). Use the following format in the action: "In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and, except for the (part of the sentence extending to death)(dismissal)(dishonorable discharge)(bad conduct discharge), will be executed."

**Review Required under Article 69(a)**

Include the following in the convening authority's initial action in general court-martial cases requiring review under Article 69(a), UCMJ: "In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and will be executed. The record of trial is forwarded to The Judge Advocate General for examination under Article 69(a), UCMJ, unless appellate review is waived or withdrawn under Article 61, UCMJ."

**Sentences Including Confinement****Designating Place of Confinement:**

If an accused's punishment includes confinement, service of which has not been completed at time of action, use the following language in the convening authority's action to designate place of confinement: "The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as directed by Headquarters Air Force Security Forces Center, Corrections Division."

If no military facilities are reasonably available, the installation commander may authorize the use of civilian facilities to incarcerate inmates IAW AFI 31-205. Use the

following language in the convening authority's action to designate place of confinement: "The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere directed by Headquarters Air Force Security Forces Center, Corrections Division. If no military facility is reasonably available, confinement will be served in a civilian facility as directed by the installation commander."

**Confinement Completely Served Prior to Action:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and (, except for the (type of punitive discharge),) will be executed. The term of confinement having been served, no place of confinement is designated.

**Deferred Confinement. RCM 1101(c):**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and will be executed. The service of the sentence to confinement was deferred on \_\_\_\_\_ until \_\_\_\_\_.

**Credit for Illegal Pretrial Confinement. RCM 1107(f)(4)(F).**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), (the sentence is approved)( and will be executed)(only so much of the sentence as provides for \_\_\_\_\_ (identify the punishment that is approved by type and amount) is approved [and will be executed][and, except for the (type of punitive discharge), will be executed]). The accused will be credited with \_\_\_\_\_ days for illegal pretrial confinement against the sentence to confinement.

**Suspended Confinement:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and will be executed, but the execution of that part of the sentence extending to [confinement] [confinement in excess of \_\_\_\_\_] is suspended for \_\_\_\_\_ (months) (years), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. [The period of confinement having been suspended, no place of confinement is designated][The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as directed by HQ Air Force Security Forces Center, Corrections Division.].  
Also, *see* paragraph 9.23.4 for additional requirements when punishment is suspended.

**Directing Entry into Return to Duty Program**

"The Air Force Corrections System is designated for the purpose of rehabilitation in the Air Force Return to Duty Program, and the confinement will be served therein or elsewhere as directed by Headquarters Air Force Security Forces Center, Corrections Division."

**Directing Excess Leave**

Include the following in the convening authority's action to place an accused with an approved, unsuspended and unexecuted dismissal, dishonorable discharge or bad conduct discharge on excess leave upon completion of the term of confinement: "Unless competent authority otherwise directs, upon completion of the sentence to confinement, (NAME AND REDUCED GRADE, as approved, OF ACCUSED) will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review." *See Section 9J* for additional guidance on excess leave pending appellate review.

**Figure 9.10. Sample Convening Authority Actions involving Forfeitures.****Disapproval of All Adjudged Forfeitures:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence as provides for a bad conduct discharge, confinement for \_\_\_ ([month(s)] [year(s)]), and reduction to the grade of \_\_\_ is approved and, except for the bad conduct discharge, will be executed. [NOTE: No reference to any adjudged forfeitures.]

**Disapproval of a Portion of Adjudged Forfeitures:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence as provides for a bad conduct discharge, confinement for \_\_\_ ([month(s)] [year(s)]), forfeiture of \$ \_\_\_ pay per month for \_\_\_ ([month(s)] [year(s)]), and reduction to the grade of \_\_\_ is approved and, except for the bad conduct discharge, will be executed. [NOTE: The approved forfeitures are less than the adjudged forfeitures in amount, length, or both.]

**Mitigation of All Adjudged Forfeitures:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), so much of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$ \_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is changed to a reprimand. The sentence as changed to a bad conduct discharge, confinement for \_\_\_ ([month(s)] [year(s)]), reduction to the grade of \_\_\_, and a reprimand is approved and, except for the bad conduct discharge, will be executed. [NOTE: The adjudged sentence did not include a reprimand. Also, the language of the reprimand must be included in the convening authority's action.]

**Suspension of Entire Period of Adjudged Forfeitures:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and, except for the bad conduct discharge will be executed, but the execution of that part of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$ \_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is suspended for \_\_\_ ([month(s)] [year(s)]), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action.

**Suspension of Six Months of Adjudged Forfeitures for Six Months:**

In the case of (GRADE) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and, except for the bad conduct discharge will be executed, but the execution of the first six months of that part of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$ \_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is suspended for six months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The collection of the remaining \_\_\_ ([month(s)] [year(s)]) of forfeiture of (total pay and allowances) ([two-thirds] [\$ \_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) will begin at the end of the period of suspension, or sooner if the suspension is vacated.

NOTE: This language is based on the scenario contemplated in *U.S. v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002).

**Deferral of Adjudged and Mandatory Forfeitures:**

Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), Uniform Code of Military Justice, (all) (\$ \_\_\_ pay per month) of the adjudged forfeitures and (all) (\$ \_\_\_ pay per month) of the mandatory forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_ - *insert other date prior to action*]) until ([the date of this action] [\_\_\_ - *specify an earlier date*]).

**Deferral of Adjudged Forfeitures Only:**

Pursuant to Article 57, Section (a)(2), Uniform Code of Military Justice, (all) (\$ \_\_\_ pay per month) of the adjudged forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_ - *insert other date prior to action*]) until ([the date of this action] [\_\_\_ - *specify an earlier date*]).

**Deferral of Mandatory Forfeitures Only:**

Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), Uniform Code of Military Justice, (all) (\$ \_\_\_ pay per month) of the mandatory forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_ - *insert other date prior to action*]) until ([the date of this action] [\_\_\_ - *specify an earlier date*]).

**Waived Forfeitures to Begin at Action or on an Earlier Date:**

Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, (all) (\$ \_\_\_ pay per month) of the mandatory forfeitures are waived for a period of \_\_\_ months [*NOTE: no more than 6 months*] or release from confinement (*if applicable: or expiration of term of service*), whichever is sooner, with the waiver commencing on ([the date of this action] [\_\_\_ - *specify an earlier date if the waiver is retroactive*]). The (total pay and allowances) ([two-thirds] [\$ \_\_\_] pay per month) is directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of ([herself] [himself]) and the accused's \_\_\_ dependent children, \_\_\_\_\_ (list child(ren)'s names)] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_ (list name(s))]).

**Waived Forfeitures Granted on an Earlier Date and Memorialized in the Action:**

Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, (all) (\$ \_\_\_ pay per month) of the mandatory forfeitures were waived for a period of \_\_\_ months [*NOTE: no more than 6 months*] or release from confinement (*if applicable: or expiration of term of service*), whichever is sooner, ([from 14 days after sentence was adjudged] [from \_\_\_ - *insert other date prior to action*]). The (total pay and allowances) ([two-thirds] [\$ \_\_\_] pay per month) was directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of (herself; himself)] [and the accused's \_\_\_ dependent children, \_\_\_\_\_ (list child(ren)'s names)] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_ (list name(s))]).

**Deferred and Waived Forfeitures (Adjudged Forfeitures Not Approved):**

Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), Uniform Code of Military Justice, all of the adjudged forfeitures and all of the mandatory forfeitures were deferred 14 days from the date sentence was adjudged until the date of this action. Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, (all) (\$\_\_\_ pay per month) of the mandatory forfeitures are waived for a period of \_\_\_ months [*NOTE: no more than 6 months*] or release from confinement (*if applicable: or expiration of term of service*), whichever is sooner, with the waiver commencing on the date of this action. The (total pay and allowances) ([two-thirds] [\$\_\_\_] pay per month) are directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of (herself; himself)] [and the accused's \_\_\_ dependent children, \_\_\_\_\_ (list child(ren)'s names)] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_ (list name(s))].

*NOTE:* In all cases involving forfeitures, be sure to include language designating confinement and language directing excess leave as appropriate.

**Figure 9.11. Sample Notification of Adjudged Sentence or Convening Authority Action.**

MEMORANDUM FOR HQ AFPC/DPPPWM  
 HQ AFSFC/SFC  
 DFAS-DE/FJPC  
 (Local Servicing Finance Office)

FROM: (JA Office)

SUBJECT: (Adjudged Sentence)(Convening Authority Action) (SPCM or GCM) –  
*United States v. (Accused's Rank and Name)*

1. Request you update personnel and pay data as the result of sentence on:

- a. (Rank)
- b. (First Name)(Middle Initial)(Last 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: (Grade)(N/A)
- f. DATE ADJUDGED: (Date)

*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)(\$\_\_\_\_\_ per month) pay and allowances were waived from (date) until (date).]

*Use the following paragraphs in 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)(\$\_\_\_\_\_ per 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 \_\_\_\_\_.

(NAME), (Grade), USAF  
 (Duty Title)

**Figure 9.12. Sample Contingent Confinement Execution Order.**

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS (Numbered) AIR FORCE (MAJCOM)  
(location and zip code)

General Court-Martial Order (DATE)  
No. X

In the general court-martial case of (RANK) (NAME), (Social Security Number), United States Air Force, (organization and station), that portion of the sentence promulgated in General Court-Martial Order No. X, this headquarters, dated (date), providing for an additional (period of time) confinement in lieu of the (dollar amount) fine will be executed. The sentence was adjudged by (military judge alone)(officer members)(officer and enlisted members) on (date sentence adjudged).

(NAME)  
(Rank), USAF  
Commander

DISTRIBUTION:

**Figure 9.13. Format for Notification of Required Excess Leave for Airmen Assigned to Overseas Locations and Indorsements.**

(Date)

MEMORANDUM FOR (Grade, Name, SSN, Losing Unit of Accused)

FROM: (Convening Authority or SJA if excess leave is directed in the action)

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.
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 excess leave; or
  - b. Receive a lump sum payment for the accrued leave, as of the day before the required excess leave begins, and serve the entire period of required leave on unpaid excess leave. If you elect this option, you are only entitled to base pay. This entitlement does not extend to allowances or special pay.
3. If you have no accrued leave, the entire period of required leave will be unpaid excess leave.
4. While on required excess 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 excess leave as provided in paragraph 5. You and your dependents are entitled to medical care, use of military exchange facilities and commissaries, and other military welfare benefits while on excess leave. 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. You will be reassigned to an Air Force unit at a base nearest the appellate leave address that you provide. If transportation costs to your excess leave address exceed the transportation costs to your home of record, you will be responsible for the excess cost under the Joint Federal Travel Regulation.
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 excess 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 decision 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, AFLOA/JAJA, 112 Luke Avenue, Room 343, Bolling AFB, DC 20032-8000 (Phone: (202) 767-1562 or toll free 1-800-414-8847). You may also contact your defense counsel, or any defense counsel or staff judge advocate at any Air Force base.

7. You are required to complete the first indorsement to this memorandum. This includes providing an appellate leave address and making your elections regarding accrued leave, if any.

(NAME), (Rank), USAF  
(Commander)(Staff Judge Advocate)

1st Ind (Grade, Name, SSN, and Unit of Accused)

(Date)

MEMORANDUM FOR (Losing Commander)

On this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I received a copy of the above memorandum regarding excess leave. In accordance with paragraph 7 of that memorandum, I provide the following as my appellate leave address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With respect to my elections for accrued ordinary leave, I elect as follows:

\_\_\_ To receive pay and allowances during the period of accrued leave and then continue on unpaid required excess leave.

\_\_\_ To receive payment for the accrued leave, as of the day before the required excess leave begins, and serve the entire period of required leave on unpaid excess leave.

\_\_\_ I do not have accrued leave and the entire period of required leave will be unpaid excess leave.

(NAME), (Grade), USAF  
Accused

2d Ind (Losing Commander)

(Date)

MEMORANDUM FOR (Grade, Name, SSN, and Unit of Accused)

1. The (general/special) court-martial convening authority, through (his/her) staff judge advocate, has directed that you be placed on required excess leave pending completion of appellate review of your recent court-martial conviction. During the period of excess leave, you will be assigned to \_\_\_ Mission Support Squadron at \_\_\_\_\_ AFB, \_\_\_\_\_. This is the base to which you have been reassigned by HQ AFPC based upon the following appellate leave address that you provided in the first indorsement to this letter. Upon completion of out-processing, you shall immediately proceed to the leave address you provided where your accrued leave, if elected, and your required excess leave will commence.

2. You are required to complete the third indorsement below, which includes providing both your current leave address and telephone number. You are also required to promptly report any change in that address by first class mail. You must make arrangements for receiving all mail that is addressed to the leave address you provide. Send any change of address to the Commander of \_\_\_ Mission Support Squadron and to the Staff Judge Advocate, (Insert legal office for either GCMCA or SPCMCA of gaining unit, as appropriate). Their full mailing addresses are as follows:

\_\_\_\_ MSS/CC  
XXXXXXXXXXXXXX  
XXXX AFB, XX 00000

\_\_\_\_\_/JA  
XXXXXXXXXXXXXX  
XXXX AFB, XX 00000

3. \_\_\_\_\_ (Insert name and designation of briefer) briefed you on \_\_\_\_\_ (Insert date of briefing) regarding your status, obligations, and entitlements while on required leave and on the appeal of your case, and (he/she) permitted you to ask any questions you had in this regard.

4. According to the order of the court-martial convening authority, your required excess leave for appellate review begins on \_\_\_\_\_. [Insert date provided by the local MPF. In addition, if accrued leave is taken before required excess leave, indicate the period for the accrued leave.]

(NAME), (Grade), USAF  
(Commander)(Title of Representative)

3rd Ind (Grade and Name of Member)

(Date)

MEMORANDUM FOR (Losing Commander)

On this \_\_\_ day of \_\_\_\_\_, 20 \_\_, I received a copy of the convening authority's letter placing me on excess leave. I have been briefed as noted in paragraph 3 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 and telephone number, for use until I provide a change as required by paragraph 2 of the second indorsement, is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

I also understand that my appellate defense counsel also request 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, the provision of which is optional, is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_

Finally, I understand it is critical that I keep my appellate defense counsel informed of my current address.

(NAME), (Grade), USAF  
Accused

- cc:
- (Gaining MSS/CC)
- (SPCMCA/JA of gaining unit)
- (GCMCA/JA of gaining unit)
- (GCMCA/JA of losing unit)
- AFLOA/JAJM
- AFLOA/JAJA

## Chapter 10

### COURT-MARTIAL ORDERS

**10.1. General.** A Court-Martial Order (CMO) is used to promulgate the result of trial and action by the convening authority (initial action), and any subsequent action the convening authority or higher authorities take on a case after the initial action (supplementary orders), including the final order. Use the guidance in RCM 1114, Appendix 17, and Figures 10.1 through 10.8 to prepare and issue CMOs. See AFMAN 51-203, Records of Trial, para. 10.5, for guidance on convening authority action in SCMs.

**10.2. Separate Orders.** Use a separate CMO to announce the results for each accused tried, whether or not they were tried jointly.

**10.3. Authority to Publish Orders.** This chapter is the sole authority for the publication of CMOs. The appropriate convening authority publishes CMOs, or AFLOA/JAJM may direct publication. Additionally, AFLOA/JAJM publishes final CMOs executing sentences in cases acted on by TJAG, and AFLOA/JAJR publishes final CMOs in cases acted on by SECAF and the President. In the event a convening authority's command is deactivated, responsibility for publication of orders falls to:

10.3.1. The next higher level of command exercising GCMCA;

10.3.2. A re-designated unit, when the initial order was published under its old designation;  
or

10.3.3. A unit assuming the records, personnel, functions, etc., of an inactivated or transferred unit that published the initial order.

**10.4. Authentication (Signature).** The authority issuing the CMO signs it personally, or delegates such authority. Figure 13.1.1. Do not designate a representative below the grade of master sergeant. Include the signature block of the issuing authority and, if applicable, the signature block of the person authenticating pursuant to a delegation. Only the person actually authenticating the CMO signs it. The convening authority personally must sign a supplemental order that comprises an action subsequent to the initial action. RCM 1114(b)(2).

**10.5. Orders Promulgation.** See Figures 10.1 through 10.8 for examples.

10.5.1. Promulgate CMOs as follows:

10.5.1.1. For GCMs, use a General Court-Martial Order. For SPCMs, use a Special Court-Martial Order.

10.5.1.2. Number consecutively, starting with number one for each fiscal year.

10.5.1.3. Above the heading of the first order of a fiscal year, cite the number of the last order published in the previous fiscal year. If no orders were published the preceding year, state there were no orders published in the previous fiscal year.

10.5.1.4. 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.

10.5.1.5. For SCMs, CMOs are required only when the CA takes action after the initial action.

#### 10.5.2. Orders Logs.

10.5.2.1. Have a separate CMO log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log for SPCMs and one log for GCMs. Also, each SPCMCA at a base will each have his/her own log for SPCMs. A CMO log is in addition to the convening orders log.

10.5.2.2. The log should reflect the CMO number assigned to a particular case. Original CMOs are stored with the CMO log.

### **10.6. Format.** Use the following format. See also Figures 10.1 through 10.8:

10.6.1. Head-to-foot on letter size paper.

10.6.2. Margins. Leave a two-inch margin at the top and bottom of all pages, and a one-inch margin on the left and right side of all pages. On the first page of an order include the order number one-half inch from the bottom of the page at the left margin. Number the second and succeeding pages one-half inch from the bottom of the page at the left margin. On the first line of the second and succeeding pages, state the order number, headquarters and date of the CMO; e.g., SPCMO No. 3, HQ 71 FTW, Vance AFB, OK, 6 May 2007.

10.6.3. Heading. 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. See Figures 10.1 through 10.8.

10.6.4. Body. Do not number paragraphs in the body. Center the headings titled "SENTENCE" and "ACTION" and use subparagraphs under each.

10.6.5. Announcement of the Proceedings. State the accused's grade at the time of arraignment, name, social security number, branch of service, and unit. State the location of the arraignment.

10.6.6. Grade, Name. Always reflect the grade and name of an accused in capital letters. The first time the name is used, state the grade or title, first name, middle initial, last name. If the name is used again, use only the grade or title and last name. When referencing the accused after stating a reduction in grade was approved, use the accused's reduced grade (e.g., when directing excess leave in the convening authority's action).

10.6.7. Abbreviations. Abbreviations from a standard dictionary, or AFH 33-337, The Tongue and Quill, may be used if they make the order clearer.

10.6.8. Close. In the close, use the appropriate authority line depending on who authenticates the order, followed by the signature block of the person authenticating. 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 TJAG use "FOR THE JUDGE ADVOCATE GENERAL." For all other units, use "FOR THE COMMANDER." No authority line is required when the convening authority personally signs the CMO. Paralegals in grade E-7 thru E-9 must include duty titles.

### **10.7. Matters Unfit for Publication and Classified Matters.**

10.7.1. Unexpurgated and Expurgated CMOs. When the content of a CMO includes classified or other matters unfit for publication, prepare two versions of the CMO. The version with the content included is called the unexpurgated order. The version with the content replaced is called the expurgated order. Both the unexpurgated and the expurgated orders are the same order, and both carry the same order number and full distribution list. To avoid confusion between the recipients, on both versions mark the addressees of those who are to receive the unexpurgated copies with asterisks next to the number of copies and add, below the distribution list, "Recipients of unexpurgated CMO." Make the following substitutions in the expurgated order:

10.7.1.1. Names of children 16 years and under are always replaced with initials in both expurgated and unexpurgated CMOs (*NOTE*: Therefore, unless there is an independent reason to create an expurgated CMO, create only an unexpurgated CMO using just initials instead of names and mark the appropriate agencies for distribution for the unexpurgated copies);

10.7.1.2. Names of adult sex offense victims are replaced with initials;

10.7.1.3. Obscene language and matters are replaced with asterisks; and

10.7.1.4. Classified information is replaced with asterisks (10.7.2.2.)

#### 10.7.2. Distribution.

10.7.2.1. Unexpurgated Orders. AFLOA/JAJM, AFPC/DPSFCM, 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 receive copies of the unexpurgated CMO.

10.7.2.2. Expurgated Orders. Include the classified information only in the order provided to the command where the accused is held in custody or assigned and one copy of the order accompanying the original ROT forwarded to AFLOA/JAJM.

**10.8. Initial Promulgating Orders.** Initial CMOs promulgate the results of trial and any initial action taken under Article 60, UCMJ. RCM 1114. It is important they accurately reflect the proceedings of the court-martial.

10.8.1. Preparing Orders. Prepare initial CMOs when the convening authority takes action on a case where the court returned any finding of guilty and a sentence.

10.8.1.1. Orders in Cases without a Guilty Finding. Issue a CMO in trials terminated after arraignment but before findings (i.e., all charges dismissed or withdrawn, including upon declaration of a mistrial), and trials resulting in a finding of not guilty of all charges, including not guilty by reason of lack of mental responsibility and acquittals. Include the date of the termination or not guilty finding. Explain the circumstances of the termination. The date of the CMO is the same date it is published. Do not issue a CMO in trials terminated without findings before arraignment.

10.8.1.2. Rehearing or New Trial. Indicate in an initial CMO whether a case is a rehearing or new trial as shown in Figure 10.5.

#### 10.8.2. Form.

10.8.2.1. Date. The date of the CMO is the same date the convening authority took action. If the convening authority did not take action (e.g., in an acquittal), the date of the CMO is the date it is published.

10.8.2.2. Charges, Specifications, Pleas and Findings. List the charges and specifications on which the accused was arraigned. After each charge and specification, abbreviate the plea and finding. Use “G” for guilty and “NG” for not guilty. If no plea was entered, state “None entered.” If an accused’s plea changed during trial, explain the circumstances surrounding the change. See A4.2.2.6. If no finding was entered, state the reason. The disposition of each charge and specification should be clear, including those amended, merged, withdrawn and/or dismissed.

10.8.2.2.1. Summarized Specifications. RCM 1114(c) requires the promulgating order to contain at least a summary of the charges and specifications on which the accused was arraigned. Therefore, because the accused’s personal information is contained in the introductory paragraph of the CMO, it need not be repeated in the specification subparagraph. However, the remainder of the specification on which the accused was arraigned should be verbatim. Consider summarizing lengthy bad check specifications. Ensure any summarized specification includes factors such as value, amount or other such circumstances affecting maximum punishment. See Figures 10.1 through 10.5, 10.8.

10.8.2.2.2. Lesser Included Offense (LIO); Exceptions and Substitutions. The charge should reflect any plea or findings of guilt to an LIO. When an accused pled or was found guilty by exceptions, the language in the specification being excepted should be verbatim. The plea or finding of the specification should accurately reflect the words being excepted and, if applicable, substituted. If found not guilty of the greater offense, but guilty of the LIO, then it should be NG of Art. X, but guilty of Art. Y. See Figures 10.1 and 10.2.

10.8.2.2.3. Amendments. Indicate, in parentheses and after the affected portion of the specification, an amendment to a charge or specification made after arraignment. Figure 10.2.

10.8.2.2.4. Renumbering of Charges. Use care in proofing CMOs involving charges and specifications withdrawn, dismissed or severed that result in renumbering of remaining charges and specifications. Charges and specifications withdrawn before arraignment do not appear in the CMO if the other charges were correctly renumbered. See para. 8.2.2; Figure 10.4.

10.8.2.3. Sentence. State the forum that adjudged the sentence, the date the sentence was adjudged, and the adjudged sentence. When the convening authority orders a reprimand executed, place the language of the reprimand after the action and before the distribution.

10.8.2.4. Action. Reflect the action taken by the convening authority under Article 60. On CMOs, the action may be summarized to the extent it does not repeat the accused’s personal information (which should be in the introductory paragraph). The remainder of the convening authority’s Action should be verbatim. When the convening authority modified an Action before publication or before the accused was notified of the action, the initial CMO reflects only the modified action. On CMOs, the wording of an action

should follow the wording in the Action verbatim including the accused's personal information. If an error occurs, CMOs should not be corrected, but withdrawn and accomplished again.

**10.9. Supplementary Orders.** Promulgate any action taken on a case subsequent to the initial action in a supplementary order. For example, use a supplementary order to suspend or remit a sentence (RCM 1108), vacate an earlier suspension (RCM 1109), terminate deferment (RCM 1101(c)(7)), and take final action.

10.9.1. Form. All supplementary orders contain the following:

10.9.1.1. A cite to the initial CMO and any later CMOs modifying the findings, sentence or action.

10.9.1.2. The date the sentence was adjudged and the trial forum.

10.9.1.3. The ACM or ACMS number assigned to the case.

10.9.2. Convening Authority Signature. The convening authority personally signs any supplementary orders. See RCM 1114(b)(2).

10.9.3. Order Vacating Suspension. To provide necessary data to confinement officers for computation of time to be served in confinement, include in CMOs promulgating the vacation of a suspension of confinement the information in MCM, Appendix 17(d), and the following additional information: the trial forum, the date the sentence was adjudged, the period of any deferment, any modification of confinement, and identifying data of any orders affecting the sentence to confinement.

10.9.4. Article 64 Review. When the general court-martial convening authority is required to take action under RCM 1112(e) in a non-BCD special court-martial, ensure the CMO states the action is "pursuant to the authority of RCM 1112(f)." Ensure the cover and the CMO are typed or stamped "64a Review."

10.9.5. Final Orders. A final order is a supplementary order used after appellate review is complete to promulgate a convening authority's action and/or reflect modifications of findings and sentence. In addition, use a final order after withdrawal of appellate review and when the proceedings are abated upon the death of an accused during appellate review. A final order should reflect the post-trial and appellate history of the case, including actions taken by the convening authority, the appellate courts, SECAF and TJAG. Ensure that the GCMCA orders execute all dishonorable or bad conduct discharges, while SECAF orders execute all dismissals. RCM 1113(c)(1)(B) and (c)(2). In cases involving re-hearings, the final order reflects only modifications of the findings and sentence occurring after publication of the rehearing promulgating order.

10.9.6. International Hold Situations. When the accused is overseas and being retained in a foreign country because of pending foreign criminal proceedings, consult AFJI 51-706, Status of Forces Policies, Procedures and Information, before issuing a CMO. 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. See also AFI 51-703, Foreign Criminal Jurisdiction.

10.9.7. **Supplementary Orders When the Accused May Be Adjudged Two Punitive Discharges.** An accused cannot be discharged twice from the same enlistment. If an accused has an approved punitive discharge from one court-martial and is facing another court-martial which may adjudge a more severe 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 of the second court-martial. If the approved sentence of the second court-martial includes a bad conduct discharge or no punitive discharge, do not delay execution of the first punitive discharge solely to wait for appellate review of the second court-martial. If the accused is discharged using the second punitive discharge, a supplementary order for the first court-martial must address the first discharge (e.g., the bad conduct discharge will not be executed because the accused was previously discharged in GCMO No. 1, this headquarters, dated 1 June 2003).

#### **10.10. Corrected Copies.**

10.10.1. 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, 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. Identify it as a corrected copy in the heading. The order number and date of the corrected copy remains the same as the original order. In the event additional corrections are required, the heading must reflect that the order is the second, third, etc., corrected copy. Incorporate changes from a previous corrected copy by deleting the language lined through and retaining the added language without the underscore. See Figure 10.4.

10.10.2. Do not issue a corrected copy in any case in which 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.

**10.11. Distribution and Number of Copies.** List recipients of the CMO distribution and the number of copies beginning two spaces below the authentication signature element at the left margin. Include the complete mailing address. For the most current distribution list *see* [Figure 10.9](#) (*NOTE: DO NOT* mail additional copies of the CMO to AFLOA/JAJM because the copies inserted in the record of trial are sufficient for what is required.)

**10.12. Retention and Disposition of Original CMOs.** SJAs are responsible for retaining the original of their headquarters' CMOs and retiring the record sets in annual blocks in accordance with Air Force Records Disposition Schedule, Table 51-3.

**10.13. Disposition of Stamped Orders.** When orders are examined and noted as legally sufficient under Article 64(a), UCMJ, permanently place 4 copies with an original signature in the ROT. Make distribution in accordance with paragraphs 11.4.4. and 10.12.

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

GCMO No. 3, 13 September 2006, was the last GCMO of this headquarters published in FY06.

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS NINTH AIR FORCE (ACC)  
SHAW AIR FORCE BASE, SOUTH CAROLINA 29152-5002

General Court-Martial Order  
No. 1

18 October 2006

AIRMAN FIRST CLASS WILLIAM L. STEWART, 111-22-3333, United States Air Force, 20th Supply 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 2006, without authority and with intent to remain away there from permanently, absent himself from his unit, 20th Supply Squadron, located at Shaw Air Force Base, South Carolina, and did remain so absent in desertion until he was apprehended on or about 25 July 2006. Plea: NG. Finding: NG, but G of absence without authority from his unit, from 24 June 2006 to 25 July 2006, in violation of Article 86.

CHARGE II: Article 121. Plea: NG, but G of the LIO of wrongful appropriation. Finding: G.

Specification 1: Did, at Shaw Air Force Base, South Carolina, on or about 30 August 2006, steal a camera of a value of about \$95.00, the property of Airman Joseph L. Smith. Plea: NG, but G of the LIO of wrongful appropriation, excepting the word "steal" and substituting therefore the words "wrongfully appropriate." Finding: G (of the charged offense of larceny).

Specification 2: Did, at Shaw Air Force Base, South Carolina, on or about 30 August 2006, steal a camera lens of a value of about \$124.00, the property of Colonel Thomas M. Jones. Plea: NG, but G of the LIO of wrongful appropriation, excepting the word "steal" and substituting therefore the words "wrongfully appropriate." Finding: G, except the word "steal," substituting therefore the words "wrongfully appropriate."

SENTENCE

Sentence adjudged by officer members on 10 September 2006: 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, 20th Supply 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 2007, 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 Headquarters Air Force Security Forces Center, Corrections Division, may direct. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC STEWART will be required under Article 76a, UCMJ, to take leave pending completion of appellate review.

/s/ Robert T. Myers  
ROBERT T. MYERS, Major General, USAF  
Commander

DISTRIBUTION:  
GCMO No. 1

**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  
No. 10

13 February 2007

STAFF SERGEANT GREGORY BURTON, 111-22-3333, United States Air Force, 358th Fighter 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 2006, with premeditation (amended after arraignment to delete the words, "with premeditation") murder Staff Sergeant Richard Daum by means of stabbing him with a knife. Plea: G. Finding: G.

SENTENCE

Sentence adjudged by military judge on 6 December 2006: Dishonorable discharge, confinement for 25 years, forfeiture of all pay and allowances, and reduction to airman basic.

ACTION

In the case of STAFF SERGEANT GREGORY BURTON, 111-22-3333, United States Air Force, 358th Fighter 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 Headquarters Air Force Security Forces Center, Corrections Division, may direct. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC BURTON will be required under Article 76a, UCMJ, to take leave pending completion of appellate review.

/s/ J. A. Marlow  
J. A. MARLOW  
Major General, USAF  
Commander

FOR THE COMMANDER

ANN D. STOCKS, SMSgt, USAF  
Paralegal Manager

DISTRIBUTION:  
GCMO No. 10

**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  
No. 5

29 December 2006

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: Did, at Misawa AB, Japan, on or about 24 October 2006, unlawfully strike Lisa Green in the face with her fist. 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: Did, at Misawa AB, Japan, on or about 24 October 2006, orally communicate to Joe Smith, certain indecent language. 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: Did, at Misawa AB, Japan, on or about 24 October 2006, willfully destroy the Misawa AB NCO Club front door, military property of a value of less than \$500.00. Plea: NG (G plea not accepted by the military judge; plea of NG directed to be entered). Finding: G.

SENTENCE

Sentenced adjudged by military judge on 12 December 2006: Hard labor without confinement for 30 days, restriction to the limits of Misawa AB for 60 days, forfeiture of \$100.00 pay per month for 8 months, and reduction to airman.

## ACTION

In the case of SENIOR AIRMAN MARY J. LUNDY, 111-22-3333, United States Air Force, 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

JOHNATHAN J. SMITH, Lt Col, USAF  
Staff Judge Advocate

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SPCMO No. 5

**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  
No. 3

10 October 2006

~~TECHNICAL STAFF~~ SERGEANT EDWARD MATTHEWS CROWLEY, 111-22-3333, United States Air Force, 28th Maintenance Squadron, was arraigned at McGuire Air Force Base, New Jersey, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 134 (withdrawn after arraignment).

Specification: Did, in the continental United States, on divers occasions, between on or about 15 June 2005 and 15 July 2006, commit indecent acts 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, in the continental United States, on divers occasions from on or about 17 December 2005 to on or about 10 June 2006, commit the offense of carnal knowledge with LJK. Plea: NG. Finding: G.

ADDITIONAL CHARGE: Article 112a. Plea: NG (withdrawn after defense motion to suppress evidence).

Specification: Did, at or near Ellsworth Air Force Base, South Dakota, on or about 16 March 2006, wrongfully use marijuana. Plea: NG (withdrawn after defense motion to suppress evidence).

## SENTENCE

Sentence adjudged by officer members on 31 August 2006: Dishonorable discharge, confinement for 5 years, and reduction to airman basic.

## ACTION

In the case of STAFF SERGEANT EDWARD MATTHEWS CROWLEY, 111-22-3333, United States Air Force, 28th 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 Headquarters Air Force Security Forces Center, Corrections Division, may direct. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC CROWLEY will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.

/s/ Steven S. McLean  
STEVEN S. MCLEAN  
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  
No. 23

3 June 2007

SENIOR AIRMAN NINA JANE, 111-22-3333, United States Air Force, David Grant USAF Medical Center, formerly assigned to 375th 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 2006. The findings of guilt 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 2007 (ACM030097). 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 Belleville, Illinois, on or about 25 February 2006. Plea: G. Finding: G.

Specification 2: Attempt to wrongfully use a substance she intended and believed to be lysergic acid diethylamide at Belleville, Illinois, on or about 25 February 2006. Plea: G. Finding: G.

CHARGE II: Article 112a. Plea: G. Finding: G.

Specification: Wrongful distribution of 50 grams, more or less, of cocaine at Belleville, Illinois, on or about 14 January 2006. Plea: G. Finding: G.

SENTENCE

Sentence adjudged by military judge, upon a rehearing, on 1 April 2007: 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 JANE DOE, 111-22-3333, United States Air Force, David Grant USAF Medical Center, formerly assigned to 375th Maintenance Squadron, Scott Air Force Base, Illinois, 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 2006 to 23 January 2007, under the sentence adjudged at the former trial in this case, and for 30 days for illegal pretrial confinement as 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 Headquarters Air Force Security Forces Center, Corrections Division may direct. Unless competent authority otherwise directs, upon completion of the sentence to confinement AIRMAN BASIC JANE DOE will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.

/s/James T. Smith  
JAMES T. SMITH, Major General, USAF  
Commander

FOR THE COMMANDER

HOWARD JONES, Colonel, USAF  
Staff Judge Advocate

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

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS NINTH AIR FORCE (ACC)  
SHAW AFB SC 29152

Special Court-Martial Order  
No. 7

2 December 2006

In the special court-martial case of SENIOR AIRMAN WALTER F. DUNE, 111-22-3333, United States Air Force, 18th 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 2005, 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 2005. The sentence was adjudged on 12 September 2005 (ACMS 030049).

/s/ W. E. Smith  
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 85707-4100

(General) (Special) Court-Martial Order  
No. \_\_\_\_\_

12 January 2007

In the (general) (special) court-martial case of AIRMAN FIRST CLASS WARREN M. WEST, 111-22-3333, United States Air Force, 355th 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 by (officer members) (officer and enlisted members) (military judge) on \_\_\_\_\_ (ACM(S) \_\_\_\_\_).

/s/ Bruce M. Strong  
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 THIRD AIR FORCE (USAF)  
RAF MILDENHALL, APO AE 09459

General Court-Martial Order  
No. 5

31 May 2007

MASTER SERGEANT CURTIS MAYS, 111-22-3333, United States Air Force, 52nd Communications 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 2006 to 29 September 2006 with intent to remain away there from permanently in desertion. Plea: G, except the words "and with intent to remain away there from permanently" and "in desertion." Finding: G, except the words "and with intent to remain away there from permanently" and "in desertion."

SENTENCE

Sentence adjudged by officer and enlisted members on 4 November 2006: 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 2007 is withdrawn, and General Court-Martial Order Number 3, Headquarters Third Air Force (USAF), dated 9 March 2007, 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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**Figure 10.9. Court-Martial Order Distribution and Miscellaneous Information.**

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 on FLITE in AFLOA/JAJM's Fields of Practice/Post-trial & Appellate Process/Post-trial Processing/Post-trial Updates file. Place the number of copies to the left of the distribution line. Each addressee should be identified with a complete mailing address. All orders will be distributed to the appropriate addressees, including those announcing acquittal of all charges and specifications; orders promulgating the results of a court-martial terminated before findings; orders disapproving the findings of guilty and the sentence in the action of the convening authority; cases reviewed under Article 64, UCMJ; orders announcing results of trial not identified above; and all supplementary orders.

(Link: [https://aflsa.jag.af.mil/AF/JUSTICE/LYNX/cmo\\_distribution\\_table.doc](https://aflsa.jag.af.mil/AF/JUSTICE/LYNX/cmo_distribution_table.doc))

**Miscellaneous Information:**

ALL court-martial orders must contain a warning statement that the document contains information protected by the Privacy Act. The warning statement "**Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)**" must be on a single line, centered, in 14-point boldface type, and ½ inch from the bottom of each page (use the footer function to include the Privacy Act warning statement).

For court-martial orders prepared for individuals convicted of a "qualifying military offense" which requires DNA processing, the first page of the CMO should include the heading "**DNA processing required. 10 U.S.C. § 1565**" on a single line, centered, in 14-point boldface type, one inch from the top of the first page above the heading.

Orders prepared for individuals convicted of a crime of domestic violence must contain the annotation "**Crime of Domestic Violence. 18 U.S.C. § 922(g)(9)**" on a single line, centered, in 14-point boldface type, one inch from top of the first page above the heading (if the individual is also convicted of an offense also requiring DNA collection, include the DNA processing language first followed by the crime of domestic violence language on the next line).

## Chapter 11

### APPEALS AND REVIEWS, REHEARINGS, RETRIALS, DUBAY HEARINGS AND CLEMENCY

#### *Section 11A— General Information*

**11.1. Request for Appellate Defense Counsel.** Include an AF Form 304, Request for Appellate Defense Counsel, signed by the accused in every ROT forwarded for review by the Air Force Court of Criminal Appeals or forwarded to The Judge Advocate General (TJAG) for examination. AFMAN 51-203, Figure 4.1. The accused's trial defense counsel assists the accused in filling out the form, obtains the accused's signature and submits it to the trial counsel or appropriate SJA as soon as practicable after sentence announcement. The AF Form 304 provides the accused's preferred mailing address (appellate leave address, etc.) for all appellate review correspondence when the accused is not in a confinement facility. An address must be provided even if the accused waives appellate review.

11.1.1. If an accused's death sentence by a court-martial has been approved by the President pursuant to Article 71, UCMJ, and the accused seeks to file a post-conviction habeas corpus petition in Federal civilian court concerning his/her court-martial, the accused may request a military defense counsel from The Judge Advocate General (TJAG). Upon receipt of the accused's request, TJAG will detail military counsel under Article 70(e), UCMJ, to represent the accused in such proceedings and any appeals there from.

**11.2. Withdrawal of Request for Appellate Defense Counsel.** 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 (insert date).

The accused may also decline appellate representation by checking the appropriate box on the AF Form 304. If the accused declines appellate representation, forward only the original ROT to AFLOA/JAJM for appellate review.

**11.3. Waiver or Withdrawal of Appellate Review.** If an accused wishes to waive or withdraw from appellate review, the procedures outlined in RCM 1110 must be followed. The request to waive or withdraw from appellate review must be filed after the convening authority takes action. The waiver or withdrawal of appellate review should be accomplished on 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 DD Form 2331, Waiver/ Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General. MCM, Appendix 19 & 20. Waiver or withdrawal of appellate review bars review by the Air Force Court of Criminal Appeals and by TJAG under Article 69(a). It does not prevent later submission of an Article 69(b) application. An Article 64(a) review is required for special

and general courts-martial where an accused waives appellate review. See Section 11B below for additional information.

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

**11.4. Article 64(a) Review (RCM 1112).** An Article 64(a), UCMJ, review is required in three types of cases: 1) all SPCMs or GCMs in which the accused waived or withdrew from appellate review under RCM 1110; 2) in any SPCM in which the approved sentence does not include a bad conduct discharge; and, 3) in 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. No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty or the accused is found not guilty for all offenses only because of lack of mental responsibility for all offenses.

11.4.1. 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 the first volume of all copies of the ROT and on all copies of the court-martial order. Only the original cover and court-martial order must have an original signature, the others may be mechanically reproduced.

11.4.2. If all judge advocates on the GCM convening authority's staff are disqualified from conducting such a review or the GCM convening authority is disqualified from taking any required action on the case, the MAJCOM SJA will select another GCM convening authority and SJA to perform the review and take any required action. If there is no eligible convening authority in the command, or if the major commander is the convening authority, the MAJCOM SJA may request another MAJCOM commander to act or to designate a commander exercising GCM convening authority within that other MAJCOM to take action on the case. If agreement cannot be reached between MAJCOMs, contact AFLOA/JAJM for assistance in identifying an officer exercising GCM convening authority to act on the case.

**11.4.3. Form and Content of the Review**

11.4.3.1. Reviews of summary courts-martial will contain only those matters required by RCM 1112(d). In those cases in which no corrective action is required by the convening authority, the review will consist of a stamped or typed entry on the cover of volume one of the original ROT, on two copies of the ROT, and on the back of the DD Form 2329, Record of Trial by Summary Court-Martial. The entry shall be entitled, "Article 64(a), UCMJ, Review" and shall consist of the conclusions required in RCM 1112(d)(1), the command of reviewer, the date, signature of the reviewer, and the reviewer's signature block.

11.4.3.2. In those GCM and SPCM cases where no allegations of error have been asserted by the accused and no corrective action is required by the convening authority, the review will consist of a stamped or typed entry on the cover of volume one of the original ROT, on two copies of the ROT, and on the court-martial orders. The entry shall be entitled, "Article 64(a), UCMJ, Review" and shall consist of the conclusions required in RCM 1112(d)(1), the command of the reviewer, the date, signature of the reviewer, and the reviewer's signature block. If the approved sentence includes a bad-conduct or

dishonorable discharge, the general court-martial convening authority personally signs the supplementary order executing the punitive discharge. Figure 10.7.

11.4.3.3. In GCM and SPCM cases where the review addresses allegations of error by the accused, but no corrective action of the convening authority is required; the review will be prepared in writing, dated and signed by the reviewer, will cover the matters required by RCM 1112(d)(1) and (2), and will include a statement that the findings and sentence are correct in law and fact. The review will be attached to the ROT. The cover (DD Form 490) of volume one and all copies of the court-martial order will be annotated with a typed or stamped notation consisting of the date, signature block, the command of the reviewer, and a statement that Article 64(a), UCMJ, has been complied with.

11.4.3.4. When the officer exercising GCM jurisdiction over the accused at the time the court-martial was convened is required to take corrective or further action under Article 64, UCMJ, and RCM 1112(e), the judge advocate's review will be in writing, dated and signed by the reviewer, and will address the matters required in RCM 1112(d)(1), (2), and (3) as well as whether the findings and sentence are correct in law and fact. After the convening authority takes action, the review and action will be included in the ROT. The cover (DD Form 490) of volume one and all copies of the court-martial order will be annotated with a typed or stamped notation consisting of the date, the signature of the reviewer, a statement that Article 64, UCMJ, has been complied with, the reviewer's command, and the reviewer's signature block.

11.4.3.4.1. In cases where the review stated that corrective action was required as a matter of law, and the convening authority refused to take action that was at least as favorable to the accused as that recommended by the reviewer, the ROT, review and action of the convening authority shall be transmitted to TJAG through AFLOA/JAJM for review under Article 69(b), UCMJ. RCM 1112(g) and Appendix 16(33).

11.4.3.4.2. If the officer taking action under Article 64, UCMJ, orders a rehearing, the ROT, action and court-martial order will be sent to the officer who convened the court-martial. That officer will determine whether a rehearing is practicable. See Section 11F. If a rehearing is to be held and the accused has been transferred to another command, the officer who convened the court-martial will make arrangements for the rehearing with the coordination of the officer presently exercising SPCM jurisdiction over the accused.

11.4.3.5. Except cases requiring Article 69, UCMJ, review under RCM 1112(g), Secretarial action under Article 71, UCMJ, or rehearings, cases are final under Article 76, UCMJ, upon completion of the judge advocate's review and any required action by the GCM convening authority. The GCM convening authority's action may execute all unexecuted portions of the sentence except those portions requiring Secretarial approval under Article 71, UCMJ.

11.4.3.5.1. If the GCMCA orders a rehearing, forward the review, ROT, action, and court-martial order to the convening authority that convened the court-martial. This convening authority determines whether a rehearing is practicable.

11.4.4. 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 ROT and four copies of the court-martial order and any supplementary orders to AFLOA/JAJM indicating compliance with Article 64(a) as stated in paragraph 11.4.3. Provide one copy each of the annotated court-martial order indicating compliance with Article 64(a) to each addressee as required by paragraph 10.11, as applicable.

### ***Section 11C— Article 69 Review, UCMJ***

**11.5. Article 69(a) Review, UCMJ (RCM 1201(b)(1)).** The ROT in each GCM that is not otherwise reviewed under Article 66 shall be examined in the Office of The Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under Article 61.

11.5.1. Submission of Matters by the Accused. The accused may submit matters for TJAG's consideration. Any matters must be submitted directly to AFLOA/JAJM on or before the thirtieth (30) day after the date the GCMCA approved the sentence, unless the accused establishes good cause for not filing matters within that time. Submissions must meet the requirements of paragraph 11.6.3.

11.5.2. **Notification of Article 69(a) Examination Results.** AFLOA/JAJM notifies the convening authority's SJA of the examination results. If TJAG does not direct a review by the AFCCA, AFLOA/JAJM forwards a copy of the initial promulgating order to the convening authority's SJA, reflecting the results of the review. AFLOA/JAJM serves one copy of the order upon the accused and obtains a receipt for it. If the defense counsel's name and address is included in matters submitted by the accused, AFLOA/JAJM sends a copy of the results to the defense counsel.

11.5.3. Other Action by TJAG. If TJAG orders a rehearing, the procedures in Section 11F will apply. If TJAG forwards the case for review by AFCCA, the GCMCA's SJA will, upon request, send two copies of the ROT to AFLOA/JAJM.

**11.6. Application for Relief under Article 69(b), UCMJ (RCM 1201(b)(3)).** The Judge Advocate General may vacate or modify the findings or sentence, or both, reassess the sentence, or set aside the findings or sentence and order a rehearing of a court-martial case which has become final in law but has not been reviewed by the Air Force Court of Criminal Appeals (AFCCA) or TJAG. RCM 1201(b). This applies to GCMs, SPCMs, and SCMs including those cases forwarded under RCM 1112(g)(1). The findings or sentence, or both, may be reviewed on any ground specified in RCM 1201(b)(3)(A). Review of a finding of not guilty, only by reason of lack of mental responsibility, under this rule may not extend to the determination of lack of mental responsibility. RCM 1201(b)(3)(A), Discussion.

11.6.1. Prerequisite of Finality of Review. An application may not be filed and will not be reviewed under Article 69(b), UCMJ, unless the convening authority has taken action, and a judge advocate completed the review and any other action required by Article 64, UCMJ.

11.6.2. Submission of Application. The member sends the application directly to AFLOA/JAJM, and it is considered filed when received by that office.

11.6.2.1. If the application concerns a trial by SCM with action taken before 1 Jul 96, the GCMCA's SJA 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 and forwards all the documents to AFLOA/JAJM.

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.

11.6.3.6. The application must be notarized.

***Section 11D— Review by the Air Force Court of Criminal Appeals (AFCCA), the United States Court of Appeals for the Armed Forces (USCAAF) and the United States Supreme Court***

**11.7. Briefs and Affidavits to Support Arguments of Error Filed.** If an assignment of error is advanced concerning matters outside the ROT or allied papers, affidavits or other documents may support the assigned error. These papers should be attached to and forwarded with the assigned error. Briefs submitted in support of assigned errors should be signed by the person preparing them.

**11.8. AFCCA Review (RCM 1203).** AFCCA reviews cases referred to it by TJAG under RCM 1201(a) or (b)(1).

11.8.1. Notification of the AFCCA's Decision. AFCCA's decision is transmitted to the accused directly from AFLOA/JAJM or through the officer exercising GCM convening authority over the accused. The GCMCA's SJA is responsible for delivery of the decision to the accused. (Except for cases where personal service is used, the decision should not be forwarded to the SPCM for delivery to the accused.) The transmittal letter to the GCMCA contains specific instructions for delivery to the accused and must be returned by indorsement to AFLOA/JAJM with the accused's receipt of the AFCCA's decision or proof of transmittal of the decision to the accused by first class restricted delivery, certified mail. These documents become part of the permanent records of the case and must be handled carefully and returned promptly.

11.8.1.1. The accused may petition the USCAAF for review of AFCCA's decision within 60 days from the earlier of:

11.8.1.1.1. The date the accused is personally notified of AFCCA's decision; or

11.8.1.1.2. The date a copy of AFCCA's decision, after being served on appellate defense counsel, is deposited in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or at the last known address listed for the accused in the accused's official service record. Article 67(c), UCMJ.

11.8.2. Action Following Receipt of AFCCA's Decision. AFLOA/JAJM must notify the accused's current GCMCA's SJA when the accused petitions USCAAF for review or if a timely petition of review is not filed. The notice will include appropriate instructions for further processing. A final supplementary court-martial order will not be promulgated, nor will the accused be discharged, until these instructions are received. Delay of final action in a case is sometimes necessary for a number of reasons, including consideration of clemency under Article 74, UCMJ.

**11.9. USCAAF Review (RCM 1204).** USCAAF reviews the record in all cases: in which the sentence, as affirmed by AFCCA, extends to death; reviewed by AFCCA which TJAG orders sent to USCAAF for review; and reviewed by AFCCA, except those referred to it by TJAG under RCM 1201(b)(1), in which, upon petition by the accused and on good cause shown, USCAAF has granted a review.

11.9.1. Petition for Review by the Accused. The Rules of Practice and Procedure, USCAAF, provide the formats for filing, either personally or through counsel, petitions for grant of review under Article 67(b) (3), UCMJ.

11.9.1.1. A petition may be filed at any time after the decision of the Air Force Court of Criminal Appeals has been released, but within 60 days of the date the accused is notified of that decision or an alternate service is made. A petition is considered filed on the date the accused mails or delivers the petition to the court.

11.9.1.2. Upon receipt of a copy of a petition for grant of review filed by an accused not represented by military appellate defense counsel, TJAG will appoint counsel to represent the accused, unless the accused is already represented by civilian counsel and has expressly waived representation by appointed military appellate defense counsel.

11.9.1.3. Normally, the accused makes the decision to petition the court after receipt of AFCCA's ruling and after having received the advice of counsel as to the merits of such a petition. RCM 1204(b).

**11.10. Petition for Supreme Court Review by Writ of Certiorari.** Petitions for Supreme Court review by writ of certiorari may be filed by the accused or the United States in those cases specified in Article 67a(a) and RCM 1205(a). Such petitions will be filed according to the rules of the Supreme Court of the United States.

11.10.1. Military appellate defense counsel may assist the accused in preparing a petition for writ of certiorari and provide representation before the Supreme Court when requested by the accused.

11.10.2. When requested to do so by the Attorney General of the United States, TJAG will appoint appellate government counsel to represent the United States in any cases filed under Article 67a above.

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

**11.11. Petition for New Trial.** Petitions for new trial are prepared and processed under RCM 1210, and are filed with AFLOA/JAJM on behalf of The Judge Advocate General. A petition for new trial may be submitted because of newly discovered evidence or fraud on the court in any kind of court-martial within two years after approval of the sentence by the convening authority.

11.11.1. General Information. The petition must be in writing and contain the matters required by RCM 1210(c). When practicable, the petition should be typewritten and 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 original and two copies of the petition and supporting documentation directly to AFLOA/JAJM. An accused may submit only one petition for new trial for the same reason within the two-year limitation period.

11.11.2. Forwarding Copy of the Petition.

11.11.2.1. If the petitioner's case is pending before the AFCCA, AFLOA/JAJM shall forward these documents to the court: the original petition, two copies of the petition, copies of each supporting document, and any prepared briefs. AFLOA/JAJM shall also forward a copy of the petition and all documents to appellate defense and appellate government counsel. RCM 1210(e); AFCCA Rules of Practice and Procedure, Rule 22.

11.11.2.2. If the petitioner's case is pending before USCAAF, AFLOA/JAJM shall forward these documents to the court: the original petition, seven copies of the petition, copies of each supporting document and any prepared briefs. AFLOA/JAJM shall also forward a copy of the petition and all documents to both appellate defense and appellate government counsel. RCM 1210(e); USCAAF Rules of Practice and Procedure, Rule 29.

11.11.3. TJAG Review of the Petition. If the petitioner's case is not pending before a court, TJAG or the officer(s) designated by TJAG shall review the petition. Upon request by the designated officer(s), TJAG shall appoint appellate defense counsel and appellate government counsel to act in the case. Upon such appointment, the designated officer(s) shall forward one copy of the petition and all documents to each appellate counsel. The designated officer(s) may direct appellate defense and government counsel to provide briefs in the case and upon written request or, if the designated officer(s) deem(s) it appropriate, may order oral arguments to be presented before the officer(s).

11.11.3.1. Process for Filing Briefs Requiring TJAG Review of the Petition.

11.11.3.1.1. Form and Number of Briefs. Briefs are to be typewritten, double spaced on letter size white paper in an original and three copies. Counsel shall be limited to filing one brief per side unless TJAG or the designated officer(s) reviewing the petition otherwise permit(s).

11.11.3.1.2. Time for Filing. The brief on behalf of the petitioner shall be filed with AFLOA/JAJM within 20 days after appellate defense counsel has been appointed by TJAG and a copy of the petition and supporting documents have been provided counsel. Appellate government counsel may file a brief within 20 days the petitioner's brief has been filed. If counsel for the petitioner has filed no brief, appellate government counsel will file a brief within 20 days after expiration of the time allowed for the filing of a brief on behalf of the petitioner. Upon written request,

the time for filing briefs by either counsel may be extended at the discretion of TJAG or the designated officer(s) reviewing the petition.

11.11.3.2. Oral Arguments. If ordered by the designated officer(s), oral arguments shall be heard after written briefs have been filed.

11.11.3.2.1. Notice. The designated officer(s) shall give appellate counsel at least 10 days notice of the time and place of oral arguments.

11.11.3.2.2. Time Limits. No more than 30 minutes on each side shall be allowed for oral arguments unless the time is extended by the designated officer(s).

11.11.3.2.3. Number of Counsel; Opening and Closing. The designated officer(s) may limit the number of counsel making an oral argument. The counsel for the petitioner has the right to make opening and closing arguments.

11.11.3.2.4. Failure to Appear. If appellate counsel fails to appear at the time and place set for oral argument may be regarded as a waiver thereof and the designated officer(s) may proceed on the case as submitted without argument or may continue the case for argument at a later date, giving due notice thereof.

11.11.3.2.5. Presence of Petitioner. The petitioner does not have a right to be present at the time of oral arguments before the designated officer(s).

11.11.3.3. Opinion and Action. A memorandum opinion and an action shall be prepared by the designated officer(s) for consideration by TJAG. After the action has been signed, AFLOA/JAJM, shall cause a copy thereof to be served on petitioner and shall take such action as may be necessary to carry out the orders of TJAG as contained in the action.

### ***Section 11F— Rehearings and Other Remedial Actions***

**11.12. Cases Remanded by the Appellate Courts.** When a decision of the Supreme Court, USCAAF, or AFCCA directs or authorizes further proceedings, such as a rehearing, a limited hearing, or a new action by the convening authority (CA), reasonable efforts must be made to locate the accused and provide the accused with a copy of the decision. Further proceedings in AFCCA cases need not be delayed, however, solely to permit an accused to petition for a grant of review or otherwise appeal the matter. Any special instructions deemed necessary to carry out the mandate of the Court will be transmitted by AFLOA/JAJM with the remanded ROT.

11.12.1. Pursuant to Article 76(a), an accused may only be placed on involuntary appellate leave when the approved sentence includes a punitive discharge. When an appellate court sets aside the action or the sentence, the accused should be taken off of appellate leave. Figure 11.2.

**11.13. Procedure When Rehearing is Authorized (RCM 810).** When an order of a reviewing or convening authority, an order of TJAG, a decision of AFCCA, a mandate issued by USCAAF, or a judgment of the Supreme Court authorizes a rehearing on the findings or sentence, the following procedures apply:

11.13.1. Notification of the Convening Authority and Identification of the Responsible Convening Authority. AFLOA/JAJM, or the Article 64, UCMJ, reviewing officer, as appropriate, sends a transmittal letter, and a copy of the pertinent decision, mandate, or order

to the original convening authority's SJA (or the current CA if the original CA no longer exists). If the accused is no longer within the command of the original convening authority, a courtesy copy will be forwarded to the accused's current CA with jurisdiction to convene the type of court-martial involved.

11.13.1.1. The original court-martial convening authority is the CA who approved the accused's sentence. The original CA is the responsible convening authority if the accused is still under his or her jurisdiction.

11.13.1.2. If the accused is no longer under the jurisdiction of the original CA, the original CA decides whether to remain the responsible CA or transfer his or her responsibilities for the case to the officer presently exercising authority over the accused to convene the type of court-martial involved. If transferred, the current CA becomes the responsible CA.

11.13.1.2.1. If the original CA remains the responsible CA and determines that a rehearing should be held, he or she will request that the accused be returned for the purpose of rehearing or will reach an understanding as to situs with the officer presently exercising court-martial convening authority over the accused or with another officer exercising court martial convening authority.

11.13.1.3. If the original CA no longer exists, the accused's current CA, exercising authority over the accused to convene the type of court-martial involved, is the responsible CA.

11.13.2. Receipt of Decision and Speedy Trial Clock. Receipt of decision by the original CA's (or the current CA if the original CA no longer exists) SJA triggers the speedy trial clock for both rehearings on findings and rehearings on sentence only. In a sentence-only rehearing, an accused is "brought to trial" at the first Article 39a session. U.S. v. Becker, 53 MJ 229 (CAAF 2000); RCM 707(b)(3)(D).

11.13.3. Notification of the Accused and Counsel. When a post-trial review or action directs or authorizes further proceedings, the responsible convening authority's SJA must make reasonable efforts to locate and provide both the accused and trial defense counsel with a copy of the document requiring additional action. Ensure receipts are accomplished.

11.13.4. Action. The responsible CA should ensure action is taken consistent with the post-trial directions from the reviewing or appellate authority. The responsible CA will publish a supplementary court-martial order indicating either:

11.13.4.1. A rehearing is ordered before another court-martial to be designated. See Figure 10.5 for sample language for rehearing on sentence]; or

11.13.4.2. If a rehearing on sentence is impracticable, that the sentence has been set-aside and a sentence of no punishment is approved; or

11.13.4.3. If a rehearing on findings is impracticable, that the findings of guilt and the sentence have been set aside and the charges are dismissed.

11.13.5. Ensure appropriate coordination is made with all counsel, and military judge.

11.13.6. Sentence Reassessment. When partial findings have been approved and a rehearing as to other offenses and the sentence ordered, the convening authority may, if specifically

authorized by either AFCCA or USCAAF, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges, if any. RCM. 1107(e)(1)(B)(iii), Discussion.

**11.14. Referral.** Whether re-referring the matter to a rehearing in full or for a limited purpose ensure that the following actions are accomplished:

11.14.1. The responsible CA directs the rehearing. This may be done 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. See Figure 6.8.

11.14.2. A military judge is detailed. The military judge may be the same as in the original trial or a new one may be detailed.

11.14.3. A new convening order is published with all new members.

11.14.4. A new referral indorsement in same form as on page 2 of the Charge Sheet, DD Form 458, is completed following normal rules of referral.

11.14.4.1. The appropriate instructions concerning the rehearing are incorporated on the referral form.

11.14.4.2. The new referral is attached to the original referral. (See 4.9)

**11.15. Record of Trial and Post-Rehearing Concerns.**

11.15.1. The original ROT and any copies must remain intact, except for documents needed for reintroduction at rehearing, such as the charge sheet and exhibits, if required.

11.15.2. Any documents withdrawn from the original ROT and used at the rehearing should be substituted in the record and all copies with a description of the document, reasons for withdrawal, and new location of the document should be included. 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.

11.15.3. If the accused served confinement resulting from the original trial, the convening authority's new action must reflect that the accused will be credited for the time served.

11.15.4. The promulgating order must indicate the case is a rehearing. See Figure 10.5.

11.15.5. The record of the rehearing is a separate volume from the original ROT. Place the record of rehearing on top of the original ROT. Other volumes are renumbered as appropriate.

11.15.6. A verbatim transcript is required for a rehearing proceeding. Forward the original and two copies of the verbatim rehearing record, along with the original ROT, to AFLOA/JAJM.

**11.16. DuBay Hearing.** A DuBay hearing is a post-trial hearing ordered by an appellate court for the limited purpose of obtaining further evidence on a matter under consideration by the court. While the MCM does not explicitly address this type of limited fact-finding hearing, DuBay procedure is a well-established means to address an ambiguity or omission in the record; or to dispose of a claim of error before necessary witnesses disperse, memories fade, or witnesses became unavailable. *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967). DuBay hearings on various matters may be directed by the CAAF, AFCCA, convening and supervisory

authorities, or the detailed military judge on his or her own motion prior to authentication of the ROT, so long as the subject of the proceeding is "one that can be verified without material prejudice to the substantial rights of the accused." U. S. v. Brickey, 16 M.J. 258 (C.M.A. 1983). The following procedures apply when a DuBay hearing is ordered:

11.16.1. Notification of Convening Authority. AFLOA/JAJM sends a letter of transmittal and a copy of the pertinent mandate or order to the SJA of the convening authority who exercised such authority over the accused at the time of the trial (or the current CA if the original CA no longer exists). If the accused is no longer within the command of the original convening authority, a courtesy copy will be forwarded to the accused's current CA who has the authority to convene the type of court-martial involved.

11.16.1.1. The responsible CA, as identified in 11.13.1, must ensure action is taken consistent with the post-trial directions from the authority directing the DuBay hearing. The responsible CA will publish a supplementary court-martial order reflecting post-trial action on the case.

11.16.1.2. Receipt of Decision and Time Standards. There are no formal time standards for completion of the hearing, however the matter should be expedited as appellate review is pending. Additionally, the appellate court directing the hearing generally specifies a date by which the process must be completed. Any time extension requests require coordination with AFLOA/JAJG through AFLOA/JAJM.

11.16.2. Notification of the Accused and Counsel. When a post-trial review or action directs a DuBay hearing, the responsible convening authority's SJA must make reasonable efforts to locate and provide both the accused and trial defense counsel with a copy of the document requiring additional action. Ensure receipts are accomplished.

11.16.2.1. The accused should be returned to active duty status for the limited purpose of participating in the DuBay hearing. Figure 11.3.

11.16.2.2. Appointment Letter. The SJA prepares a letter for the responsible CA to sign directing the DuBay hearing to take place. Figure 11.4.

11.16.3. Detail of a Military Judge. After appropriate coordination, the SJA drafts a letter for the convening authority requesting a military judge be detailed and directing a hearing date to be scheduled. A military judge is detailed to a DuBay hearing in the same manner as detailed to any court-martial.

11.16.4. DuBay hearings are conducted in accordance with Article 39(a), UCMJ.

11.16.5. Exhibits. Number items admitted as evidence at the hearing numerically, beginning with "Hearing Exhibit 1."

11.16.6. Record of Hearing and Post Hearing Action. Prepare a verbatim record of the hearing, unless otherwise directed by the authority ordering the hearing. Authenticate the transcript of the hearing in the same format as required for ROTs. Return the original ROT and the original DuBay transcript and two copies of the DuBay transcript to AFLOA/JAJM.

**Section 11G— Remission and Suspension Under Article 74, UCMJ**

**11.17. General Information.** After the action is published or the accused has been officially notified of the action, the SECAF has the authority to remit or suspend any part or amount of the unexecuted part of any sentence, except one approved by the President, unless the SECAF delegated such authority in this section.

11.17.1. The term "unexecuted part of a sentence" includes that part which has been approved and ordered executed but which has not been carried out (e.g., punitive discharges or dismissals not ordered into execution, unserved confinement, hard labor without confinement or restriction, and uncollected forfeitures).

**11.18. Authority Reserved to the SECAF.** Only the SECAF may remit or suspend, any part or amount of the unexecuted part of the sentences listed below. This limitation does not apply to the convening authority's powers under RCM 1107; Article 60, UCMJ.

11.18.1. Any sentence of a person convicted by a military tribunal, under SECAF's jurisdiction, resulting from the President's commutation of a sentence of death to a lesser punishment (RCM 1206 (b)(3));

11.18.2. Any sentence the SECAF approved and ordered into execution;

11.18.3. A dismissal, dishonorable discharge, or bad conduct discharge that is imposed for the conviction of an offense when a sentence to death is authorized by the MCM;

11.18.4. Those referred to the SECAF for action by commanders authorized to exercise Article 74, UCMJ. Commanders are encouraged to forward to AFLOA/JAJR for SECAF decision those cases involving issues most appropriate for resolution at the Air Force policy level.

**11.19. Authority of TJAG.** TJAG may exercise SECAF authority under Article 74(a), UCMJ, and remit or suspend in whole or in part any unexecuted part of a sentence, with the exception of those cases specified in 11.17. The Director, USAF Judiciary, may act for TJAG to remit or suspend up to 90 days of an approved sentence to confinement.

**11.20. Authority of the Accused's Commander.** Except in cases listed in 11.17 and 11.18, the commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of an accused's sentence adjudged by a summary court-martial or a SPCM, except for a BCD, regardless of whether the person acting has previously approved the sentence.

11.20.1. A commander exercising only SPCMCA over the command to which the accused is assigned may not remit a BCD, but may suspend a BCD only in the initial action.

11.20.2. A commander exercising GCMCA over the command to which the accused is assigned may remit or suspend any part or amount of the unexecuted part of any sentence except in cases listed in paragraph 11.17.

11.20.3. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFI 31-205, or to the Federal Bureau of Prisons, and the accused has been assigned to HQ AFSFC/SFC, this authority will be exercised only by the Commander, AFDW, the officer exercising GCMCA over Air Force personnel in those institutions.

**11.21. Publication of SECAF Actions under Article 74, UCMJ.** Promulgate actions taken by the SECAF in cases specified in 11.17 in appropriate GCM orders. RCM 1114(b). The Director, Air Force Personnel Council and TJAG are authorized to announce the action taken by SECAF in all other cases.

**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) or
	)	(Matter for Consideration on
v.	)	Examination under Article
	)	69(a), UCMJ)
	)	
(GRADE AND NAME OF	)	(Date)
ACCUSED)	)	

TO: The Judge Advocate General, United States Air Force

The following information is provided under AFI 51-201, paragraph 11.6.3.:

1. The accused's name, service number and present mailing address: (Grade and Name of Accused), (SSN), (Present Mailing Address), and (Base of assignment (if applicable)).
2. Date, place and type of court-martial: (indicated information).
3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise: (indicated information).
4. The accused requests vacation of the court's findings and sentence. The specific ground upon which the accused requests relief is as follows:

(succinct statement of the specific relief requested and the specific grounds for the relief)

NAME, Grade, USAF  
 (Defense Counsel) (Accused)

Subscribed and sworn to before me this 17th day of July, 2007.  
 Judge Advocate or Notary Public

**Figure 11.2. Sample Memorandum When Accused Can No Longer Remain on Involuntary Excess Leave.**

MEMORANDUM FOR (Accused)

FROM: HQ 11 WG/CC  
20 MacDill Blvd, Room 240  
Bolling AFB DC 20332-0100

SUBJECT: Required Excess Leave for (accused)

1. On 15 May 2006, your sentence to a bad-conduct discharge was approved by the convening authority for 11 WG and you were directed to take involuntary leave pursuant to Article 76(a), Uniform Code of Military Justice. On 6 July 2007, the [Air Force Court of Criminal Appeals][United States Court of Appeals for the Armed Forces] set aside the [action of the convening authority][findings of guilt and the sentence][sentence].

[Set aside action of the convening authority]

2. Because the Court set aside the action of the convening authority, you must elect one of the following options:

a. Continue on voluntary appellate leave, in a non-pay status, until a new action of the convening authority is taken in your case; or

b. Be restored to active duty and placed in a casual status at HQ 11 Wing, Bolling AFB.

3. If your sentence, which included a bad-conduct discharge, is approved, your voluntary excess leave, should you elect it, will be cancelled and you will then be required, under Article 76(a), Uniform Code of Military Justice (UCMJ), to take involuntary leave pending completion of appellate review of your conviction by court-martial.

4. While on voluntary excess leave, you will 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. Because 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.

5. It is important that you provide a correct leave address and report any changes in address. Failure to do so 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. Further, you are subject to recall from voluntary excess 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.

Convening Authority signs

[Set aside findings of guilt and sentence][sentence]

2. Because the [Air Force Court of Criminal Appeals][United States Court of Appeals for the Armed Forces] set aside the [findings and sentence][sentence] in your case, you are no longer on required excess leave and will be restored to active duty. You are required to contact the Military Personnel Flight at Bolling AFB on (date). If you have any questions, contact SSgt Mary Jones, 11 MSS/DPM, at 202-111-2222.

Convening authority signs

**Figure 11.3. Sample Convening Authority's Memorandum Directing Limited Hearing.**

(Date)

MEMORANDUM FOR (JA Office)

FROM: (Convening Authority)

SUBJECT: Hearing - *United States v. (Grade and Name of Accused)*

1. On (Date), the (United States Supreme Court)(United States Court of Appeals for the Armed Forces)(Air Force Court of Criminal Appeals)(The Judge Advocate General) set aside the (action) (findings of guilt and the sentence)(sentence)(the decision of the United States Court of Appeals for the Armed Forces)(the decision of the Air Force Court of Criminal Appeals). The (United States Supreme Court)(United States Court of Appeals for the Armed Forces)(Air Force Court of Criminal Appeals)(The Judge Advocate General) decision became final on (date). The record of trial was returned for submission to an appropriate convening authority for a hearing before a military judge as set forth in the decision. (On (date), the case was then transferred from (old convening authority) to (new convening authority) for appropriate action.) As the designated convening authority in this case, I direct a hearing to take place at the (appropriate unit and legal office) at (Air Force base), (state), date and time to be determined.

2. A military judge will be appointed to conduct a hearing in accordance with the (United States Supreme Court's) (United State's Court of Appeals for the Armed Forces') (The Judge Advocate General's) decision.

(NAME)  
(Grade), USAF  
Commander

Attachment:  
(Decision)

**Figure 11.4. Sample Legal Office Notification of DuBay Hearing.**

(Date)

MEMORANDUM FOR USAF JUDICIARY

FROM: (Convening Authority)

SUBJECT: *DuBay* Hearing - *United States v. (Grade and Name of Accused)*

1. As the (general) (special) court-martial convening authority in the case of *United States v. (Name of Accused)*, I request that you convene a limited hearing at (Air Force Base and State) in the above styled case. The hearing should be conducted in accordance with Article 39(a), UCMJ, to receive evidence and make findings on the issues.
2. The scope of the post-trial hearing should be limited to the matters outlined by the (United States Court of Appeals for the Armed Forces)(Air Force Court of Criminal Appeals) in its (date) opinion. You should conduct the hearing as soon as practicable setting out specific findings of fact. The (CAAF)(AFCCA) opinion is attached for guidance in conducting your hearing.
3. The hearing shall be recorded verbatim and attached to the record of trial and be conducted in the manner contemplated by *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967). As the military judge in this case, you should set the date for the hearing and notify the accused and counsel for the government and defense.
4. The following have been detailed as counsel in this case:
  - a. Trial Counsel: (Grade and Name)
  - b. Military Defense Counsel: (Grade and Name)

(NAME)  
(Grade), USAF  
Commander

2 Attachments:

1. Record of Trial w/Atchs, *United States. v. (Name of Accused)*
2. (CAAF)(AFCCA) Opinion

## Chapter 12

### AUTOMATED MILITARY JUSTICE ANALYSIS AND MANAGEMENT SYSTEM (AMJAMS)

#### *Section 12A— General Information*

**12.1. Purpose.** The purpose of AMJAMS is to collect data pertaining to investigations, nonjudicial punishment imposed pursuant to Article 15, UCMJ, trials by court-martial, and related military justice activity. The information collected is required:

- 12.1.1. To conduct statistical studies that measure disciplinary rates and trends and evaluate military justice involvement as it affects the quality of the force and the personnel needs of the service;
- 12.1.2. To provide various management reports to judge advocate personnel at all levels;
- 12.1.3. To provide statistical data to the Department of Defense concerning military justice;
- 12.1.4. To provide raw data to the Defense Incident Based Reporting System (DIBRS); and,
- 12.1.5. To reply to inquiries concerning military justice.

**12.2. Program Uses.** AMJAMS collects detailed information on offenses and processing timelines as well as demographic information on the participants in the judicial and nonjudicial punishment process. The new improved management information from AMJAMS provides effective management tools for use by Headquarters USAF, major commands, general and special court-martial jurisdictions, the judiciary, and the appellate divisions. When used properly, the information will assist in eliminating or highlighting excessive processing delays and in monitoring the current status of military justice actions from the investigation stage through to completion of the appellate process.

**12.3. Policy.** AMJAMS inputs are to be timely, complete, and accurate. Timely collecting, reporting, and processing of military justice information is essential to staff judge advocates at all levels. Inputs are to be completed as soon as possible after a military justice “event” occurs in a case, beginning with the Investigation Module. For the purpose of this Instruction, “events” are defined as data fields in AMJAMS. If the data field is applicable to a case, an input should be made as soon as the data is available. Refer to AMJAMS online Help Topics in the AMJAMS client for detailed instructions on data entry. The data will be accurate at the time of input and updated as the need arises.

#### *Section 12B— Data Entry*

##### **12.4. Responsibilities.**

- 12.4.1. Base and GCM staff judge advocate personnel are primarily responsible for all AMJAMS data entry except appellate data.
  - 12.4.1.1. Paralegals are the primary individuals responsible for data entry. Attorneys are authorized edit rights, only after written approval from their MAJCOM staff judge advocates. This privilege is ONLY authorized on a case-by-case basis.

12.4.1.2. GCM staff judge advocate personnel are primarily responsible for reviewing all AMJAMS inputs for completeness and accuracy except appellate data.

12.4.2. JAJM and appellate court personnel are primarily responsible for data entry in the TJAG and appellate folders.

### *Section 12C—Investigations*

**12.5. Investigations.** New cases should be opened in AMJAMS as investigations immediately upon becoming aware of a potential Article 15, courts-martial, or circumstances reportable as a special interest case.

12.5.1. Special Interest Cases. If the case contains one of the qualifying criteria listed in Section 12E of this Instruction, designate the case as a special interest case by selecting 'YES,' special interest reporting required. If the case is disposed of through an Article 15 and falls within the reporting requirements of Section 12E, report the case to JAJM through AMJAMS until punishment is imposed. If the case is disposed of through court-martial and falls within the reporting requirements of Section 12E, report the case to JAJM through AMJAMS until sentence is announced or other terminating disposition. If the case does not qualify for special interest reporting to JAJM, but does meet MAJCOM or NAF special interest reporting requirements, select 'YES' NAF/MAJCOM reporting required on the NAF/MAJCOM Reporting pane.

12.5.2. Member data. This branch has seven tabs: Member, Race, Pay, Career, Duty Status, Prior Actions, and Commander. All of them are equally important and for the most part, self-explanatory. The information found in these tabs is automatically entered by AMJAMS from a file that is updated by AFPC monthly. These fields can be edited if changes have occurred in personal data since the AFPC update.

12.5.3. Pending Offenses. All offenses and violations being investigated must be entered in this module regardless of jurisdiction. For civilian investigations, input offenses that closely coincide with the civilian code violations.

12.5.4. Text Fields. Three text fields are provided for specific types of data. Information that is or should be entered in a specific field elsewhere in the database should not be entered in any text field.

12.5.4.1. Current Case Status. Enter data describing the current status of the case. Valid data for this field may include information regarding situations that may delay or otherwise affect the processing of the case, i.e. "Commander TDY until \_\_\_\_\_; Accused hospitalized until \_\_\_\_\_; Defense counsel unavailable until \_\_\_\_\_; etc. Enter a "Current as of" date each time this field is updated.

12.5.4.2. Case Notes. Legal offices may enter day-to-day notes in this field that provide useful information in the administrative processing of the case.

12.5.4.3. Narrative Description. Enter enough information in sufficient detail to provide a clear understanding of the facts and circumstances involved in the case (who, what, when, where, how) for each offense investigated. This field should be updated as significant events occur. Also, do not put any information in this field that could compromise an ongoing investigation.

12.5.5. Investigation Personnel. The folder has three tabs – Defense Counsel, Investigation POC, and Base POC. Use the local look-up tables to add these persons under their affiliated tabs. If there is more than one counsel, add them as appropriate. When the investigation is converted to an Article 15 or court-martial, these names will copy down to Article 15 personnel folder or trial personnel folder.

12.5.6. Pretrial Restraint. If pretrial restraint is imposed on the member (military or civilian), add this folder and enter the type of restraint imposed, dates imposed, and date of the pretrial hearing if applicable.

12.5.7. Case Disposition. Cases should be disposed of immediately upon the commander's determination of forum. For cases processed by civilian authorities, the cases will remain in the investigation status until resolution of alleged offenses.

### ***Section 12D--- Defense Incident Based Reporting System***

**12.6. DIBRS.** In 1996 the Department of Defense (DoD) established a comprehensive database called the "Defense Incident-Based Reporting System (DIBRS)" to track criminal and other high interest incidents involving personnel from "cradle to grave." The authority for this system is DoD Directive 7730.47, 15 Oct 96 and its implementing guidance is DoD 7730.47-M, Manual for Defense Incident-Based Reporting System. The system was designed to meet the reporting requirements mandated by Congress in the Uniform Federal Crime Reporting Act of 1988; the Brady Handgun Violence Prevention Act of 1994; and recurring requests for overall DoD law enforcement data.

12.6.1. DIBRS Reporting. Within DIBRS there are eight reporting segments: administrative, offense, property, victim, offender/arrestee, commander's action, results of trial, and corrections. SF and AFOSI are primarily responsible for the segments and, in most cases, will initiate the reporting process when they receive a credible report of a criminal incident. JA is only responsible for the "results of trial" segment. The data for this segment is gathered through the use of AMJAMS and most of it is already entered by a paralegal. There are, however, three additional DIBRS screens in AMJAMS that must now be completed for each court-martial.

12.6.1.1. DIBRS Incident. Enter the offender ID, FBI Location number and Incident number in this section. Data for these three fields are obtained from the lead agency investigating the case.

12.6.1.2. Miscellaneous. Enter the UIC that corresponds with the location of the court-martial and the UIC of the convening authority. Be aware that these codes may differ. Enter the promulgating order number and date of the order. If the investigated offenses resulted in disposition other than trial, indicate the disposition in the trial clearance field. Enter the number of days credited for pretrial confinement, and then enter the number of pretrial confinement days.

12.6.1.3. Notification. Enter the number of victims and witnesses notified before and after trial.

*Section 12E—Pretrial*

**12.7. Pretrial.** All folders and corresponding fields that apply to a particular case must be completed in their entirety. AMJAMS report criteria and logic may be dependent upon any number of fields in AMJAMS and not necessarily those used at base or NAF level. It is imperative for database integrity that the fields within the area of control at base and NAF level be completed if applicable to the case.

12.7.1. Folders. Add folders to the AMJAMS case tree as cases progress through the military justice process. Do not add folders that do not apply (e.g. If the member did not request IMDC, do not add that folder, etc.).

12.7.1.1. Pretrial Information. This folder contains the Case Ready Date. The date is copied to this folder from the Investigation module and can only be edited in the Investigation module.

12.7.1.1.1. Discharge Request. Annotate whether the member requested discharge in lieu of trial or for officers, resignation for the good of the service (RILO). If the member initially does not request discharge, but later changes his option, update the discharge fields using the same discharge folder to reflect the request and the action taken.

12.7.1.1.2. Pretrial Restraint. The restraint folder may be added at any time the need arises. Add every instance of pretrial restraint, reflect all hearing dates, and the date restraint was terminated in this folder. If pretrial restraint does not terminate until the date of sentence or acquittal, the termination date will be entered automatically.

12.7.1.1.3. Charges Preferred. Pending offenses from the Investigation module will be copied to the Charges Preferred folder. If an offense entered in Pending Offenses will not be preferred, delete that offense from Charges Preferred. If an offense will be added that was not in Pending Offenses, add the offense in the Charges Preferred module. Once an offense has been preferred, only AMJAMS Administrators can delete the preferral date and offense. After all applicable data is entered in the 'Charges Preferred' module, print the Charge Sheet (DD Form 458) from AMJAMS.

12.7.1.1.3.1. Accuser. Enter data on the accuser (individual causing charges to be preferred).

12.7.1.1.4. Special Offense Identifiers. Offenses requiring separate, individualized tracking have been assigned special offense identifiers. A list of the special offense identifiers can be found on the AMJAMS web page maintained by AFLOA/JAS. If the case involves offenses falling within the special offense category, please identify the offense by selecting the corresponding special offense identifier. A drop down list of potential identifiers is available for your convenience. Note: More than one special offense identifier may apply to each offense, i.e., 120-A, Rape, could use both "40" sex offender registration and "45" DNA processing required.

12.7.1.1.5. Trial Personnel. Enter data pertaining to all trial participants in their respective categories (i.e., Defense Counsel, Trial Counsel, Court Reporter, etc.). Add as many participants as applicable, with the exception of the military judge. Use this tab first to reflect the military judge assigned to the case. If you need to add

another military judge, add a separate JUDGE item. Do not delete personnel that participated in any part of the case if they are subsequently replaced or removed from the case. Ensure “current” is checked if the person is the current participant. Mark this block even if the participant is the only one in their category.

12.7.1.1.6. Judge. This is available for personnel to enter data on an additional military judge if required. It contains data on the trial judge and comments.

12.7.1.1.7. Article 32 Investigations. (General courts-martial only). If the accused waives the Article 32 hearing, annotate the date waived in this module. Enter the applicable dates of the Article 32 hearing from the date the Investigating Officer is appointed to the date the report was completed.

12.7.1.1.7.1. Investigating Officer. Enter data pertaining to the Investigating Officer appointed by the convening authority on this tab.

12.7.1.1.7.2. Referral Package. Enter the date the referral package was forwarded to the GCM SJA and the date the referral package was received by the GCM SJA. Enter the date the GCM SJA completed the pretrial advice to the general court-martial convening authority.

12.7.1.1.8. Charges Referred. All current charges preferred (unless dropped prior to this event date), should be entered for referral at this time. Input the date the convening authority referred the charges and the date the referred charges were served on the accused. The date of service is a mandatory field.

12.7.1.1.8.1. Convening authority. Enter court-martial convening authority data.

12.7.1.1.8.2. Special Instructions. Any special instructions from the convening authority concerning referral to a court should be reflected in this module (i.e., charges referred as capital, etc.).

12.7.1.1.9. Pretrial Agreement. Add this folder only if the accused submits a pretrial agreement and it is accepted by the Government. Annotate all conditions of the agreement. If the pretrial agreement is subsequently withdrawn, enter the date withdrawn and by whom (Government or Defense).

12.7.1.1.10. Request for Individual Military Defense Counsel. Add this folder only if the accused requests an Individual Military Defense Counsel (IMDC). Please input all applicable information on the request to include the disposition and if approved, the IMDC’s data in the Trial Personnel folder.

12.7.1.1.11. Additional Charges Preferred. If additional charges are preferred, they should be added in this folder. DO NOT attempt to add them to the original referral. Please ensure all fields are completed to include the specification text. Again, fill in accuser data as you would in the original referral.

12.7.1.1.12. SPCMCA Disposition. If the special court-martial convening authority dismisses or changes the forum of the case prior to referral, use this module to reflect the disposition. Contact AFLOA/JAS to change the forum of the case.

12.7.1.1.13. GCMCA Disposition. If the general court-martial convening authority dismisses or changes the forum of the case prior to referral, use this module to reflect the disposition. Contact AFLOA/JAS to change the forum of the case.

12.7.1.1.14. Charges Dropped. If charges are dropped after preferral, but before referral, use this module to clear them from the list. DO NOT delete them from the Charges Preferred module. Annotate the date the charges were dropped.

12.7.1.1.15. Referral Withdrawn. Charges Dropped. If charges are dropped after preferral use this module to clear them from the list. Annotate the date the charges were dropped. If referred charges are withdrawn, add this folder and enter the date that the referral was withdrawn by the convening authority. If the charges are later re-referred, there is no need to re-prefer unless the charges are dropped subsequent to withdrawing the referral.

12.7.1.1.16. Offenses Under Article 15. If member refuses nonjudicial punishment and charges are preferred, list the offenses that were charged under nonjudicial punishment in this module.

12.7.1.1.17. Trial Delay. List all delays during trial in this module. The base office enters delays approved by the convening authority prior to referral. Personnel enter delays approved by the military judge subsequent to referral. Indicate whether the delay days are excluded from the speedy trial rule.

### ***Section 12F— Trial***

**12.8. Trial.** All folders that apply to your case must be added as the event occurs (i.e., Article 39a Session, Trial Information, Adjudged Sentence), in the order that it occurs. Adding folders out of sequence could affect some of the system logic and cause incorrect data to be displayed on the AMJAMS reports.

12.8.1. Article 39a Session. Record the arraignment 39a session convened in courts-martial. If motions occur during the arraignment session, there is no need to add an additional Article 39a. Add additional Article 39a sessions for motions as they occur.

12.8.1.1. Prior to Pleas. Motions to dismiss one or more offenses submitted prior to pleas should be reflected in this tab. If a motion is granted, annotate the event and reflect the date of the dismissal. Add the charges dismissed to this module by clicking the “View Dropped Charges” button and selecting the dismissed offenses from the list.

12.8.1.2. Subsequent to Pleas. Motions submitted subsequent to pleas to dismiss or for a finding of not guilty for one or more offenses, or for a mistrial should be reflected on this tab. Charges withdrawn, dropped, or dismissed subsequent to pleas must be listed on the promulgating order. Therefore, you must completely annotate any of the above applicable actions on this tab. Enter the date the military judge granted the motion. Add the charges dismissed to this module by clicking the “View Dropped Charges” button and selecting the dismissed offenses from the list. If the military judge declares a mistrial in the case after pleas, annotate the date in this section.

12.8.2. Trial Information. Indicate whether the case is a single trial or joint trial, if any conditional pleas have been filed, and whether the accused elected to be tried by military

judge alone, or a panel with enlisted members. No selection here indicates that a panel composed of officers only tried the accused.

### 12.8.3. Adjudged Sentence.

12.8.3.1. Pleas and Findings. Enter pleas and findings here. If the accused entered a plea to a lesser included offense, check the “Show plea – LIO” at the bottom of the screen and enter the offense code, level of involvement, and completed or attempted for the offense to which they pled. If the accused pled guilty by reason of insanity (NG-Ins), indicate the plea to the applicable offense. Enter all adjudged findings in this section. If the accused was found guilty of a lesser included offense, enter the offense code, level of involvement, and completed or attempted for the offense to which they were found guilty. Any charges dismissed or withdrawn subsequent to pleas will automatically be included in this section with the applicable result.

12.8.3.2. Adjudged sentence. Enter the sentenced adjudged by the court in this section.

**12.9. Article 62 Appeals.** Add this tab if the government appeals any ruling by the military judge during trial. Record the date of the appeal, the issues raised by the government and the date the appeal was forwarded to AFLOA/JAG.

**12.10. Writs.** Writs will be added to the case if applicable, by the division filing the Writ. Enter all corresponding data (date filed, type, relief requested, etc.)

### *Section 12G— Post Trial*

**12.11. Post Trial.** All AMJAMS entries must be complete and timely through the entire court-martial process prior to forwarding the ROT to JAJM.

12.11.1. ROT Authentication. The ROT complete date is the date the court reporter completes the transcription of the ROT. The base office enters the date ROT complete and the number of pages in the transcript. If the court reporter authenticates the ROT, the Date ROT authenticated is entered and the rest of the fields are left blank.

12.11.1.1. Post Trial Action. Enter applicable data in all fields on this tab including whether or not the sentence was mitigated or modified by the convening authority.

12.11.1.2. Suspension. If the convening authority suspends any portion of the punishment, enter the suspension data and when the suspension ends in this section.

12.11.1.3. Approved Findings. Enter the findings approved by the convening authority in this section. If the approved findings include lesser included offenses, enter the offense code, level of involvement, and completed or attempted for the offense approved by the convening authority in this section.

12.11.1.4. Approved Sentence. If the adjudged sentence is approved by the convening authority it is automatically copied to this section and no other entry is necessary. If the convening authority mitigated or modified any portion of the sentence, the mitigated or modified portion of the sentence will be entered here.

12.11.1.5. Rehearings. If the convening authority orders a rehearing on findings and/or sentence, add the Rehearing module and enter the applicable data.

12.11.1.6. DuBay Hearing. If the convening authority orders a DuBay hearing, add this folder and enter all the applicable data.

12.11.2. Post Trial Progress. If the accused waives appellate review or appellate counsel, enter the selection in this section. Enter the date the ROT was reviewed for accuracy and completeness. Enter the date the AMJAMS inputs on the case were reviewed for accuracy and completeness. Enter the date the ROT was forwarded to JAJM for appellate review and/or filing.

12.11.3. Article 64 Review. Enter the date the ROT was forwarded to the GCM SJA for the supervisory review (Article 64a, UCMJ). NAF personnel will enter the date received by the GCM SJA, the date of the review and indicate if the court-martial was found legally sufficient.

12.11.4. 14-Day Letters. Enter the date notification was sent to the Finance and Personnel Office of cases with adjudged forfeitures or reductions.

12.11.5. Article 64b Review. Enter the date the ROT was forwarded to the court-martial convening authority for an Article 64b review. NAF personnel will enter the date of the GCMCA action, order number, and indicate if the convening authority mitigated or modified the adjudged sentence.

12.11.6. Excess Leave. When the accused is required to take excess leave, enter the last known leave address in this section. The recipient (base, NAF, or appellate divisions), of updated leave address information is responsible for updating the leave folder in AMJAMS.

### ***Section 12H— Appellate Processing***

**12.12. Appellate Inputs.** JAJM is the disposition authority for all records of trial. The record of trial is assigned an ACM number upon receipt of the completed ROT by JAJM. The ACM number is displayed in the case window of AMJAMS.

**12.13. Appellate Process.** The approved sentence determines the level of appellate review. Each appellate office will input data into AMJAMS as it applies to their responsibility for the case. Base offices may check the status of appellate review for their respective cases at any time during the appellate process.

### **12.14. Appellate Review.**

12.14.1. ROT Information. This folder contains the ACM number assigned to the ROT, date the record was forwarded to the Air Force Court of Criminal Appeals (AFCCA), number of volumes, audio, and video tapes. The current convening authority and current physical location of the record of trial is also maintained in this folder. The Appellate Records division is responsible for entries in this folder.

12.14.2. Subsequent ROT Information. If the ROT is returned to the convening authority, this folder will be used to show the record's return for completion of the appellate process. The Appellate Records division is responsible for entries in this folder.

12.14.3. Appellate Personnel. This folder contains all appellate personnel assigned or participating in the appellate process of a case. Identify personnel by the participating role (Appellate Defense Counsel, Appellate Government Co-Counsel, Appellate Judge, etc.), and

annotate whether the person is the current POC. All appellate divisions can access this folder.

12.14.4. Article 69a. If the record of trial is subject to Article 69a review, add this folder and annotate the date of review and indicate whether relief was granted to the accused. The Appellate Records division is responsible for entries in this folder.

12.14.5. Article 69b. If the record of trial is subject to Article 69b review, add this folder and annotate the date of review and indicate whether relief was granted to the accused. The Appellate Records division is responsible for entries in this folder.

12.14.6. Article 73. If the member requests a new trial, this folder should be added to show the processing of the request and the determination by the appropriate appellate court or TJAG. The Appellate Records division is responsible for adding this folder. Each appellate division is responsible for entries on briefs and enlargements.

12.14.7. Rehearings. If the case is sent back for a rehearing from the appellate courts, the appellate records personnel will add a Rehearing folder.

12.14.8. Rehearing on Sentence. If the rehearing is ordered on sentence alone, base personnel should add the Trial and Post Trial Folder only and enter all applicable data in the fields as they pertain to the rehearing including participating trial personnel.

12.14.9. Rehearing on Findings and Sentence. If the rehearing is ordered on findings and sentence, base personnel should add Pretrial, Trial, and Post Trial folders. Previously preferred charges that will carry forward to the rehearing can be copied from the original referral using the original referral date. A new referral folder should be added to reflect the new referral data.

12.14.10. DuBay Hearings. If a DuBay Hearing is ordered, add the DuBay folder and Summary and any other applicable folders at the point in the court-martial proceeding when the hearing takes place.

12.14.11. Writs. Writs will be added to the case if applicable, by the division filing the Writ. Enter all corresponding data (date filed, type, relief requested, etc.)

12.14.12. Air Force Court of Criminal Appeals. This folder is added by appellate personnel.

12.14.13. United States Court of Appeals for the Armed Forces. This folder is added by appellate personnel.

12.14.14. United States Supreme Court. This folder is added by appellate personnel.

12.14.15. The Judge Advocate General. This folder is added by appellate personnel.

12.14.16. Clemency. This folder is added by appellate personnel.

### ***Section 12I— Time Management of Case Processing***

**12.15. In General.** SJAs must give managerial attention to all time standards prescribed by the MCM, statutes, case law, and regulations.

12.15.1. 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 the case to ensure limited investigative resources are focused on gathering relevant evidence in a timely manner.

12.15.2. Time Management. Expeditious processing of courts-martial is essential to minimize disruptions in the Air Force mission, the lives of victims, witnesses, and the accused, and to minimize Air Force costs. The impartial and timely administration of military justice helps sustain good order and discipline. SJAs and chiefs of military justice, at all levels of command, 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 are established to assist in expediting the administration of justice.

12.15.2.1. Convene 80% of all courts-martial (arraignment) on a Negotiated Trial Date within 45 days after the accused is served (RCM 602).

12.15.2.2. Complete 80% of all general courts-martial (Preferral Date - CA Action Date) within 160 days.

12.15.2.3. Complete 80% of all special courts-martial (Preferral Date - CA Action Date) within 75 days.

12.15.2.4. Complete 80% of all summary courts-martial (Preferral Date - CA Action) within 30 days.

12.15.2.5. Forward all court-martial ROTs to AFLOA/JAJM within 14 days of CA Action.

12.15.2.6. Complete 80% of all Article 66, UCMJ, and appellate reviews within 270 days (Date AFLOA/JAJM receives the ROT - AFCCA Decision Date).

12.15.3. Staff judge advocates are expected to ensure expeditious processing of cases by closely monitoring reports and making improvements in areas where the military justice process lags unnecessarily.

### ***Section 12J— Reports***

**12.16. Management Reports.** AMJAMS reports are generated and run on a monthly basis. There are two ways to access the reports – through AMJAMS – or go directly through the WEB. If you are in the AMJAMS program, select “Reports” and “AMJAMS Reports on the WEB.” This will automatically open up your WEB browser to the AMJAMS reports page. It does not matter how you get to the Website, just be aware that in order to get into it you will need to login using your AMJAMS user identification and password.

**12.17. Article 6 Processing Slides.** These Article 6 slides can be accessed through the World Wide Web (WWW) and are created in Microsoft PowerPoint. Also, the slides can be retrieved for all levels, from the base level to the Air Force level. You may access them through AMJAMS or go directly through the WWW. If you are in the AMJAMS program, select “Reports” and “Article 6 slides.” This will automatically open up your WEB browser to the AMJAMS reports page. It does not matter how you get to the Website, just be aware that in order to get into it you will need to login using your AMJAMS user identification and password.

## Chapter 13

### MISCELLANEOUS MILITARY JUSTICE MATTERS

#### *Section 13A— Staff Judge Advocate*

**13.1. Staff Judge Advocate-Title.** Unless otherwise specified by TJAG, the senior officer of TJAG's Corps 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.

13.1.1. Convening authorities may delegate military justice administrative duties to the Staff Judge Advocate (SJA) or any other attorney assigned to the servicing SJA's office. Figure 13.1 is a sample delegation letter. In addition to the duties listed in Figure 13.1, 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 13B— Explanation of the UCMJ (Article 137)*

#### **13.2. Required Explanation of Specified UCMJ Articles.**

13.2.1. In General. Brief personnel on the UCMJ, as required by Article 137.

13.2.2. SJA Responsibilities:

13.2.2.1. 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.

13.2.2.2. The SJA for 37 TRW must ensure trainees receive the required briefing from regular instructors at the Air Force Military Training Center within 14 days of entry on active duty.

13.2.2.3. 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 36-2201, vol. 1, Training Development, Delivery, and Evaluation, Chapter 4.

13.2.3. 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.

13.2.4. Frequency, Content and Duration. The SJA determines the frequency, content and duration of training sessions to meet the following requirements:

13.2.4.1. Complete the initial explanation within 14 calendar days of entry on active duty;

13.2.4.2. Complete the 6-month explanation within 30 calendar days of the last day of the month in which the individual completed six months of active duty; and

13.2.4.3. Complete the reenlistment explanation within 30 days of an individual's reenlistment.

13.2.4.4. 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.

13.2.5. Explain the following topics:

13.2.5.1. Types of punitive and administrative discharges;

13.2.5.2. Bases for characterizing service;

13.2.5.3. Articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-139, UCMJ;

13.2.5.4. The benefits, disadvantages, and possible future effects of each type of service characterization;

13.2.5.5. The denial of certain benefits to most persons who fail to complete at least two years of an original enlistment (38 U.S.C. § 5303A); and

13.2.5.6. A detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces.

### ***Section 13C—Direct Communications and Reports***

#### **13.3. AFLOA/JAJM Requests for Information.**

13.3.1. In General. AFLOA/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 case handling, nor view them as a mandate for particular action. AFLOA/JAJM may communicate directly with any organizational level. When providing information, send informational copies of replies to intermediate levels of command and through MAJCOM level to AFLOA/JAJM to ensure all are informed.

13.3.2. All Responses. Respond to AFLOA/JAJM via e-mail directly to the requestor or to AFLOA/[JAJMworkflow@pentagon.af.mil](mailto:JAJMworkflow@pentagon.af.mil), or data facsimile, DSN 754-8755, commercial (202) 404-8755 (confirm receipt, DSN 297-1539). In all responses include:

13.3.2.1. A detailed response to specific inquiries;

13.3.2.2. Narrative of the activity, including dates, resulting in the action in question; and

13.3.2.3. Any other unique or significant aspects of the case.

13.3.3. Responses Involving Courts-Martial. In addition to paragraph 13.3.2, provide the following information, as appropriate:

- 13.3.3.1. Dates and nature of pretrial restraint and associated proceedings;
- 13.3.3.2. Type of court-martial and summary of charges and specifications;
- 13.3.3.3. Date and source of preferral as well as referral and trial date;
- 13.3.3.4. Information about the Article 32 investigation, including by whom directed, identity of accused's counsel, a listing of Government witnesses, any defense witnesses that appeared, a brief synopsis of all witness testimony, and the investigating officer's recommendations;
- 13.3.3.5. Summary of the evidence, including whether the accused testified;
- 13.3.3.6. Pleas, findings, sentence, and court composition;
- 13.3.3.7. Prior disciplinary record considered;
- 13.3.3.8. Date and action of the convening authority;
- 13.3.3.9. Date and disposition of Article 64, UCMJ, review;
- 13.3.3.10. Date ROT is expected to be sent to AFLOA/JAJM;
- 13.3.3.11. Information concerning post-trial confinement; and
- 13.3.3.12. Information concerning accused's excess leave.

13.3.4. Responses Involving Article 15 Actions. In addition to matters in 13.3.2, 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 Proceedings); and discharge action contemplated, if any.

13.3.5. Responses Regarding Civilian Charges. In addition to matters in 13.3.2, provide the following as appropriate:

- 13.3.5.1. Jurisdiction involved (if in a foreign jurisdiction, indicate whether a waiver of jurisdiction has been requested).
- 13.3.5.2. Charges;
- 13.3.5.3. Place and dates of pretrial confinement;
- 13.3.5.4. Name of individual's defense counsel, if any;
- 13.3.5.5. Summary of the evidence;
- 13.3.5.6. Maximum authorized punishment;
- 13.3.5.7. Pleas, findings, and sentence;
- 13.3.5.8. Appeals filed; and
- 13.3.5.9. Administrative or disciplinary action taken or contemplated by military authorities.

**13.4. 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. AFI 90-401, Air Force Relations with Congress, paragraphs 4.3 and 4.4 provide additional guidance.

***Section 13D— Extrajudicial Statements to the Public Relating to Criminal Proceedings and Release of Court-Martial Records.***

**13.5. General.** Information may not be disseminated if there is a substantial likelihood that release will prejudice a criminal proceeding. The determination of whether a release is permissible includes an assessment of the type of information to be released and its source, the type of proceeding, and the stage of the proceeding.

13.5.1. 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, implementing directives, security requirements, judicial orders protecting information and applicable laws, such as the Privacy Act, the Freedom of Information Act, the Victim and Witness Protection Act,

13.5.2. Air Force representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody.

13.5.3. This section does not apply to the release of information by military or civilian defense counsel. However, defense counsel, both military and civilian, must 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.

**13.6. Extrajudicial Statements.** Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication. The question of whether a statement is extrajudicial will depend upon the circumstances. SJAs should consult with their MAJCOM SJAs when there is a question about the nature of a statement proposed for release.

13.6.1. 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.

13.6.1.1. The release of extrajudicial statements is a command responsibility. The installation 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.

13.6.1.2. 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.

13.6.2. 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:

13.6.2.1. The existence or contents of any confession, admission or statement by the accused or the accused's refusal or failure to make a statement;

13.6.2.2. Observations about the accused's character and reputation;

13.6.2.3. Opinions regarding the accused's guilt or innocence;

13.6.2.4. Opinions regarding the merits of the case or the merits of the evidence;

13.6.2.5. References to the performance of any examinations, tests or investigative procedures (e.g., fingerprints, polygraph examinations, and ballistics or laboratory tests), the accused's failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

13.6.2.6. Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

13.6.2.7. The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

13.6.2.8. 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,

13.6.2.9. Information trial counsel knows or has reason to know would be inadmissible as evidence in a trial.

13.6.3. Extrajudicial Statements That May Be Made Under Some Circumstances Regardless of the Stage of the Proceedings. Subject to the limitations in 13.5.1 and 13.5.2, the following extrajudicial statements may be made when deemed necessary regardless of the stage of the proceeding:

13.6.3.1. General information to educate or inform the public concerning military law and the military justice system;

13.6.3.2. If the accused is a fugitive, information necessary to aid in apprehending the accused or to warn the public of possible dangers;

13.6.3.3. Requests for assistance in obtaining evidence and information necessary to obtain evidence;

13.6.3.4. Facts and circumstances of an accused's apprehension, including the time and place of apprehension;

13.6.3.5. The identities of investigating and apprehending agencies, and the length of the investigation, only if release of this information will not impede an ongoing or future investigation, and the release is coordinated with the affected agencies;

13.6.3.6. Information contained in a public record, without further comment; and

13.6.3.7. 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 SJA (or equivalent) 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 AFLOA/JAJM by the most expeditious means appropriate for the sensitivity of the information.

13.6.4. Extrajudicial Statements That Generally May Be Made Only After Preferral of Charges. Subject to the limitations in paragraphs 13.5.1 and 13.5.2, the following information may be provided after preferral of charges:

13.6.4.1. The accused's name, unit and assignment;

13.6.4.2. The substance or text of charges and specifications, provided there is a statement included explaining that the charges are merely accusations 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.

13.6.4.3. The scheduling or result of any stage in the judicial process;

13.6.4.4. Date and place of trial and other proceedings, or anticipated dates, if known;

13.6.4.5. Identity and qualifications of appointed counsel;

13.6.4.6. Identities of convening and reviewing authorities;

13.6.4.7. A statement, without comment, that the accused has no prior criminal or disciplinary record or that the accused denies the charges; and

13.6.4.8. 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.

13.6.4.9. 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 member's or the military judge's privacy interests.

**13.7. 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 AFLOA/JAJM or higher authority withholds authority, the disclosure authority is the SJA for the convening authority responsible for the criminal proceeding. File a copy of letters releasing documents or records with the allied papers and immediately notify AFLOA/JAJM of any release. However, once a completed record is forwarded, AFLOA/JAJM is the disclosure authority for all records and associated documents. This subsection does not apply to documents or records that originate outside the military justice system of records (e.g., OSI reports). The disclosure authority for those documents and records is the OPR for those records under the provisions of the, AFI 33-332, Privacy Act Program, and/or the DODR 5400.7-AFSUP, DoD Freedom of Information Act Program.

13.7.1. Release of Court-Martial Record of Trial. RCM 1103(b)(2) defines a court-martial record of trial. 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 and 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.

13.7.2. Release of Other Military Justice Documents or Records. All other documents or records, including documents which will 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 Act and Freedom of Information Act. However, due regard will be given to the potentially heightened privacy interests of an 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 and 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.

13.7.3. 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. 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 13E— Special Interest Reports (SIRs)*

**13.8. Reporting 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 grade. Similarly, an accused's grade itself may generate requests for information, or necessitate HQ USAF knowledge of an alleged offense. 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.

13.8.1. Officer, Cadet, CMSgt and SMSgt Cases. Regardless of offense, report all investigations into allegations involving officers, cadets, CMSgts, and SMSgts.

13.8.2. Serious Crimes. Regardless of grade, report cases involving the following crimes, including attempts, conspiracies, and solicitations to commit these crimes:

13.8.2.1. homicide;

13.8.2.2. rape and forcible sodomy;

13.8.2.3. 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;

13.8.2.4. environmental crimes, including civilian felony prosecution;

13.8.2.5. sexual assault in a deployed environment;

13.8.2.6. fraternization and unprofessional relationships; and

13.8.2.7. anthrax or smallpox refusals.

13.8.3. Cases with Media Interest. Report any other case with potential community reaction, or potential or actual media coverage.

13.8.4. Report Format. Use the Automated Military Justice Analysis and Management System (AMJAMS) to generate reports. Ensure the initial report includes a detailed summary of the case by filling in all AMJAMS data fields. Include a thorough description of offenses, dates, UCMJ articles allegedly violated, the number of specifications under each offense, sufficient detail to provide senior leadership with a clear understanding of the facts and circumstances involved, whether media attention is anticipated, and any other unusual or significant features of the case. Identify incomplete facts in the report and follow-up as soon as possible.

13.8.4.1. Ensure sensitive investigative information is not included in the SIR without concurrence of the AFOSI Detachment Commander or other investigating agency. See paragraph [13.28](#) for examples of sensitive investigative information.

13.8.5. When to Report. Submit reports:

13.8.5.1. Immediately after learning of an incident in any of the above-mentioned categories;

13.8.5.2. When a significant event in a reported case occurs after initial reporting. Significant events include disposition of investigation, preferral of charges, trial, results of trial, date Article 15 offered, date Article 15 punishment imposed, and media interest;

13.8.5.3. DELETED.

13.8.6. When updating SIRs in accordance with triggering events listed in the previous paragraph, use the following format for the email subject line as appropriate: (FOUO) NEW SIR: CASE ID # - RANK SURNAME – BASE; (FOUO) UPATED SIR: CASE ID # - RANK SURNAME – BASE.

13.8.7. AMJAMS Process. All special interest reporting should be accomplished via AMJAMS using the reports located on the AMJAMS reports page. Reporting special interest cases is a base responsibility. Updates should be made after every significant event until final disposition (e.g., Article 15, administrative action, preferral, Article 32, referral).

13.8.7.1. SAF and NAF/MAJCOM SIR buttons are located in the Special Interest Folder of AMJAMS. Click the “SI reporting required” button for all cases listed in the paragraphs 13.8.1 to 13.8.3. The “NAF/MAJCOM SIR” button is selected when a NAF/MAJCOM requires additional reporting not required by this AFI and the information is for use by each individual NAF and MAJCOM. If the case is disposed of via nonjudicial punishment, deselect the “SAF SI” box in AMJAMS. Deselect the “SAF SI” box after sentence is announced in courts-martial.

13.8.7.2. Transmitting SIRs to AFLOA/JAJM. In addition to the requirement in paragraph 13.8.5, updates are made on AMJAMS by going to the AMJAMS Reports page on the web and selecting SAF Report. Next, put in the date range and run the report. Select “[File/Send to/Page by Email]” to send the report to AFLOA/JAJM.

### *Section 13F— Reporting Referral of Additional Charges in Cases Pending Review*

**13.9. 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 must notify AFLOA/JAJM of the facts relating to the new charges.

### *Section 13G— Reporting Foreign National USAF Member Cases*

**13.10. Foreign National USAF Member.** A foreign national USAF member is a member of the USAF who is a national of a foreign country and who is not a citizen or national of the United States. For purposes of this section, any USAF member who claims to be a foreign national shall be considered so.

13.10.1. Notification. Notify HQ USAF/JAO when a foreign national USAF member is:

13.10.1.1. Apprehended under circumstances likely to result in confinement or trial by court-martial and states that he/she is a foreign national;

13.10.1.2. Ordered into arrest or confinement;

13.10.1.3. Held for trial with or without any form of restraint; or

13.10.1.4. Pending court-martial charges which have been referred for trial.

13.10.2. The notification shall include:

13.10.2.1. The name, grade, SSN, organization and station of the foreign national USAF member;

13.10.2.2. Any evidence, including information from the member's military record, which is inconsistent with a claim of foreign nationality;

13.10.2.3. 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;

13.10.2.4. The name of the military and/or civilian defense counsel, if any; and

13.10.2.5. The exact location of the foreign national USAF member (e.g., Andrews AFB confinement facility).

13.10.3. Whenever charges against a foreign national USAF member are referred for trial, the SJA of the SPCMCA shall have the member's military records examined to ascertain the member's nationality even if that member has not entered a claim of foreign nationality.

13.10.4. Notification is not required:

13.10.4.1. When disciplinary action under Article 15, UCMJ, or administrative action is taken; or

13.10.4.2. If the foreign national USAF member is apprehended or confined in anticipation that only such actions will be taken.

13.10.5. The section does not apply when a foreign national is charged with a crime, arrested, confined or detained in custody by the civil authorities of the United States, or any political subdivision, possession or territory thereof, or by the authorities of any foreign government. AFJI 51-707, Consular Protection of Foreign National Subject to the Uniform Code of Military Justice.

### ***Section 13H— Time Management Of Case Processing***

#### **13.11. Time For Processing Cases.**

13.11.1. In General. SJAs must give managerial attention to all time standards prescribed by the MCM, statutes, case law and regulations.

13.11.2. 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.

13.11.3. Time Management. Expedious processing of courts-martial is essential to minimize disruptions in the Air Force mission, the lives of victims, witnesses, and the accused, and to minimize Air Force costs. The impartial and timely administration of military justice helps sustain good order and discipline. SJAs and chiefs of military justice, at all levels of command, 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 are established to assist in expediting the administration of justice.

13.11.3.1. Prefer charges in 80% of all courts-martial within 30 days of the date the AFOSI Report of Investigation is published. (*NOTE: Charges may always be preferred prior to the publication of the Report of Investigation.*)

13.11.3.2. Convene 80% of all courts-martial (arraignment) on a Negotiated Trial Date within 45 days after the accused is served (RCM 602).

13.11.3.3. Complete 80% of all general courts-martial (Preferral Date - CA Action Date) within 160 days.

13.11.3.4. Complete 80% of all special courts-martial (Preferral Date - CA Action Date) within 75 days.

13.11.3.5. Complete 80% of all summary courts-martial (Preferral Date - CA Action Date) within 30 days.

13.11.3.6. Forward all court-martial ROTs to AFLOA/JAJM within 14 days of CA action.

13.11.3.7. Complete 80% of all Article 66, UCMJ, appellate reviews within 270 days (Date AFLOA/JAJM receives the ROT - Air Force Court of Criminal Appeals Decision Date).

13.11.3.8. In addition to the requirements outlined in paragraph 13.11.3.1 for AFOSI investigations, Staff Judge Advocates are expected to ensure expeditious processing of all cases by closely monitoring the investigative activities of all agencies until preferral of charges.

### ***Section 13I— Specific Search, Seizure, and Apprehension Matters***

**13.12. 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.

### **13.13. U. S. Mail and Government Information Systems.**

13.13.1. **U. S. Mail.** Refer to DoD 4525.6-M, *Department of Defense Postal Manual*, paragraph C10.7, for procedures for the inspection, search, and seizure of mail in the custody of the military postal service. The U.S. 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.

13.13.2. **Government Information Systems.** Government information systems are subject to monitoring, interception, search, and seizure for all authorized purposes in accordance with the DoD Consent Banner placed on government computer systems.

13.13.2.1. The DoD Consent Banner does not extend to include the content of privileged communications or work product related to personal representation or services by attorneys, psychotherapists, or clergy, to include their assistants. Users should annotate their privileged communications in emails and documents to ensure such information is kept confidential and not inappropriately accessed or read during authorized search, seizure, interception, or monitoring activities. Investigators should consult with the appropriate legal office or AFOSI/JA prior to and during such activities to ensure privileged communications are appropriately protected and remain confidential.

13.13.2.2. The presence of the DoD Consent Banner on a government information system, standing alone, may not necessarily negate a user's reasonable expectation of privacy regarding that system. Whether a reasonable expectation of privacy exists will depend upon the state of the law and the facts and circumstances in each case. Because this area of the law continues to remain unsettled, consider obtaining search authorization for cases involving alleged criminal activity. *U.S. v. Larson*, 66 M.J. 212 (C.A.A.F. 2008); *U.S. v. Long*, 64 M.J. 57 (C.A.A.F. 2006).

**13.14. Military Defense Counsel .** If a search authorization is to be issued against an ADC or SDC, or his/her house or office, precautions must be taken to protect the confidentiality of attorney-client materials to the maximum extent possible. Staff judge advocates will inform the commander, Air Force Legal Operations Agency (AFLOA/CC), or the Director, USAF Judiciary (AFLOA/JAJ), before such search authorizations are executed or as soon as practicable if exigent circumstances exist. *United States v. Calhoun*, 49 M.J. 485 (1998). If a search authorization is not required due to exigent circumstances IAW MRE 315(g), notify AFLOA/CC or AFLOA/JAJ of the search as soon as practicable. See TJAG Policy Memorandum: Military Justice - 2.

### ***Section 13J—Appointment of Judges to the Air Force Court of Criminal Appeals***

**13.15. Appointing Judges to AFCCA.** Pursuant to Article 66, UCMJ, TJAG appoints judge advocates to the AFCCA. The appointment may be documented using an AF Form 516, Certificate for Appointment of Appellate Judge.

### ***Section 13K—Crimes Against Children and Sexually Violent Offender Registration under Federal Law***

**13.16. General Provision.** If the member has been convicted of a sexually violent offense or certain offenses against a minor, the Air Force is required to provide notice to state and local officials prior to the member's release from confinement, and the member may be required to register as a sex offender under state law. *See the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (1994); Pub. L. 105-119, Title I, § 115(a)(8)(C)(i), 111 Stat. 2466 (1997); Megan's Law (1996); the Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and Megan's Law (1998); Pam Lyncher Sex Offender Tracking and Identification Act (1996); Jacob Wetterling Improvements Act (1997); Protection of Children from Sexual Predators Act (1998); and, Adam Walsh Child Protection and Safety Act (2006).* The Acts are available at the United States Department of Justice (DOJ) website <http://www.ojp.usdoj.gov/smart/legislation.htm>.

**13.17. Compliance With Federal/State Laws.** The Security Forces (SF) corrections officer, or designee at the facility in which the prisoner is detained ensures compliance with federal/state

laws. See AFI 31-205, The Air Force Corrections System. 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/Acknowledgement of Convicted Sex Offender Registration Requirements. It also includes the corrections officer notifying the member about his or her registration responsibilities and obtaining the member's acknowledgment of these responsibilities.

**13.18. Base-level SJA Responsibilities.** If a member is convicted of an offense that triggers the notification requirement, indicate on the AF Form 1359, *Report of Result of Trial*, that compliance with this section is required. Use the language "SEX OFFENDER NOTIFICATION REQUIRED" in the SENTENCE block of AF Form 1359. A determination that a member committed a qualifying offense has important consequences. **Figure 13.4** is a list of offenses which trigger sex offender notification requirements. It should be noted, however, that sex offender registration requirements vary by state and may be triggered by offenses not listed in **Figure 13.4**. Therefore, a member convicted of an offense that does not trigger sex offender notification requirements may nonetheless be required to register as a sex offender under state law. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Further questions about whether an offense triggers notification requirements may be directed to AFLOA/JAJM.

13.18.1. No Post-trial Confinement. When compliance with Section 13K is required, but confinement is not part of the adjudged punishment (or sufficient pretrial or illegal pretrial confinement credit completely offsets the term of confinement imposed at trial), the SJA will notify the appropriate corrections officer (or the Security Forces commander, if there is no corrections officer), in writing, within 24 hours of the member's conviction. For purposes of this section, conviction includes announcement of the sentence. The corrections officer, or the Security Forces commander, as appropriate, will ensure that the notifications required in paragraph 13.16 and AFI 31-205 are made.

### *Section 13L— Compliance with DNA Collection under Federal Law*

**13.19. General Provision.** An accused convicted by a general or special court-martial of a "qualifying military offense" are subject to the mandatory collection of a DNA sample pursuant to Section 5 of the DNA Analysis Backlog Elimination Act of 2000. 10 U.S.C. § 1565.

**13.20. Base Level SJA Responsibilities.** If an accused is convicted of an offense that triggers the mandatory DNA collection requirement, indicate on the AF Form 1359, *Report of Result of Trial*, that compliance with this section is required. Use the language "DNA PROCESSING REQUIRED" in the SENTENCE block of AF Form 1359. Base-level SJAs will brief their commanders about the new DNA processing requirements. The SJA uses Figure 13.3 (Notification of DNA Processing Responsibilities) when notifying and briefing immediate commanders about their responsibilities on individual cases. SJAs must ensure promulgating orders prepared for individuals convicted of a "qualifying military offense" contain the annotation "DNA Processing Required. 10 U.S.C. § 1565." in 14-point boldface type on the first page of the order. The annotation must be one line, centered, and one inch from the top of the page. In a general court-martial, the SJA to the general court-martial convening authority may send the "Notification of DNA Processing Responsibilities" to the immediate commander through a subordinate SJA. For additional guidance addressing a "qualifying military offense,"

as well as substantive and procedural requirements under the Act, See 10 U.S.C. § 1565; Figure 13.2 (DNA Processing Required Qualifying Military Offenses Under 10 U.S.C. § 1565); and Figure 13.3 (Notification of DNA Processing Responsibilities).

13.20.1. DELETED.

13.20.1.1. DELETED.

13.20.1.2. DELETED.

13.20.1.3. DELETED.

13.20.1.4. DELETED.

13.20.2. Commander Notification. The SJA for the convening authority taking initial action on a general or special court-martial that includes a conviction of a “qualifying military offense” ensures the accused’s immediate commander is notified and briefed about DNA processing responsibilities if:

13.20.2.1. The accused receives a sentence that did not include confinement;

13.20.2.2. The accused is no longer in confinement when the convening authority takes initial action on the sentence; or

13.20.2.3. The SJA receives notice from a DoD Correctional Facility that the accused was released from confinement before correctional personnel could collect a DNA sample.

13.20.3. DNA Processing Responsibilities. The immediate commander, upon notification from the SJA of the need for DNA processing of an accused with a conviction of a “qualifying military offense,” should:

13.20.3.1. Ensure a U.S. Army Criminal Investigation Laboratory (USACIL) collection kit is promptly obtained from HQ AFSFC/SFC, 1517 Billy Mitchell Boulevard, Lackland AFB, TX 78236-0119 [DSN 945-5622 or (210) 925-5622] or the nearest Air Force Correctional Facility designated by HQ AFSFC/SFC to maintain such kits.

13.20.3.2. Ensure a DNA sample is obtained using the DNA collection kit and instructions contained therein. The commander will utilize local Security Forces (SF) corrections personnel and local medical personnel, to the maximum extent possible, to process the collection of the DNA sample. This includes requesting local SF personnel assistance in completing items 1, 2, 3, 4, 5, 6, and 8 on the USACIL collection card (which includes fingerprinting the accused and witnessing the drawing of blood) and mailing the sample to USACIL. This also includes using local medical personnel to collect the blood sample and complete any pertinent items on the USACIL collection card.

13.20.3.3. Ensure the required DNA sample is collected and mailed to USACIL before the accused is permitted to begin excess appellate leave or before the accused is administratively discharged from the Air Force. If an accused departs on excess appellate leave before the DNA sample is collected, the commander shall notify the accused of this requirement and request a voluntary return by the accused, at no expense to the government, and provide a sample while remaining in excess appellate leave status. If the accused is no longer in the immediate area, the commander may arrange for the DNA

processing at a military installation closer to the accused's appellate leave address. If the accused does not or is unable to voluntarily return at his or her own expense to comply with DNA processing mandated by law, the commander shall recall the member to duty for the purpose of obtaining the required DNA sample. Consult AFI 36-3003, Military Leave Program, paragraph 4.11.3, and the Joint Federal Travel Regulation (JFTR), paragraph U7220, for funding issues. If the accused is no longer in the immediate area when recalled, the commander may consider arranging for the accused to report for duty and provide a DNA sample at a military installation near his or her appellate leave address to minimize government expense.

13.20.3.4. If an accused does not comply with a recall to duty from appellate leave status or otherwise refuses to cooperate in providing a DNA sample, contact the SJA for guidance. [Note: When these situations arise, the SJA should notify and consult with AFLOA/JAJM, Policy and Precedent Branch.]

13.20.3.5. Notify the SJA and HQ AFSFC/SFC of the date the DNA sample was sent to USACIL. If a DNA sample cannot be obtained, the reason must be provided.

13.20.4. Members Subject to Collection. DNA samples shall not be collected from members who are no longer subject to military jurisdiction. Accordingly, execution of a punitive or administrative discharge should be deferred until DNA processing has been completed.

***Section 13M— Compliance with the Domestic Violence Amendment to the Gun Control Act of 1968 (known as “The Lautenberg Amendment”)***

**13.21. General Provision.** The Lautenberg Amendment makes it a felony for any person to sell or otherwise dispose of firearms or ammunition to any person whom he or she knows or has reasonable cause to believe has been convicted of a “misdemeanor crime of domestic violence.” Additionally, persons convicted of such crimes are also prohibited from: (1) shipping or transporting in interstate commerce or foreign commerce, (2) possessing in or affecting commerce, any firearm or ammunition, or (3) receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. A “crime of domestic violence” is an offense that has as its factual basis one of the following: (1) the use or attempted use of physical force, or (2) the threatened use of a deadly weapon. One of the factors must be coupled with a crime committed by a current or former spouse, parent or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or, by a person similarly situated to a spouse, parent or guardian of the victims. Qualifying convictions include “a crime of domestic violence” tried by general or special court-martial which otherwise meets the elements of a crime of domestic violence even though not classified as a misdemeanor or felony. 18 U.S.C. § 922(d) and (g).

**13.22. Base Level SJA Responsibilities.** If an accused is convicted at a special or general court-martial of an offense constituting “a crime of domestic violence,” indicate this on the AF Form 1359. Place the language “CRIME OF DOMESTIC VIOLENCE” in the SENTENCE block of the AF Form 1359. SJAs must also ensure promulgating orders prepared for individuals convicted of a qualifying offense contain the annotation “Crime of Domestic Violence. 18 U.S.C. § 922(g)(9).” The annotation must be one line, centered, in 14-point boldface type, and one inch from the top of the page. SJAs are responsible for informing commanders of the impact

of the conviction on the accused's ability to handle firearms or ammunition as part of their official duties; briefing commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition; and advising members of their commands to lawfully dispose of their privately owned firearms and ammunition. For additional guidance addressing qualifying offenses, as well as substantive and procedural requirements under the Act, See 18 U.S.C. §§ 921 and 922.

**Figure 13.1. Delegation of Military Justice Administrative Duties.**

(date)

MEMORANDUM FOR (JA Office)

FROM: (Convening Authority)

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.

(NAME), (Grade), USAF  
Convening Authority

**Figure 13.2. DNA Processing Required Qualifying Military Offenses Under 10 U.S.C. § 1565.**

The findings of guilty by a general court-martial (10 U.S.C. § 818) or special court-martial (10 U.S.C. § 819) after the court-martial convening authority has taken action under 10 U.S.C. § 860, for any offense under the Uniform Code of Military Justice punishable by a sentence of confinement for more than one year (regardless of the sentence imposed or choice of forum), and any other UCMJ offense listed below:

Offense	UCMJ Article	Title 10 Section	NIBRS* Code	DIBRS** Code
Prostitution Involving a Minor	134	934	40A	134-B6
Arson	136	926	200	136A-B2
Solicitation of Another To Commit a Qualifying Offense	134	934	90Z	134-UZ***

\* National Incident-Based Reporting System

\*\* Defense Incident-Based Reporting System [DODD 7730.47]

\*\*\* For this offense, the offense code will be the code of the offense solicited and "S=Solicit" will be reflected in Data Element 18 of the offense information field.

The following offenses do not have a related DIBRS code:

Attempt to Commit a Qualifying Offense- Article 80, UCMJ (10 U.S.C. § 880)

Conspiracy to Commit a Qualifying Offense- Article 81, UCMJ (10 U.S.C. § 881)

Conviction for any conduct which involves any form of sexual abuse, and any conduct of a sexual nature that involves a minor, when charged as an assimilative offense under Article 134, UCMJ.

Conviction for any conduct which involves any form of sexual abuse, and any conduct of a sexual nature that involves a minor, when charged as conduct unbecoming an officer and a gentleman in violation of Article 133, UCMJ, or conduct that is prejudicial to good order and discipline or is service discrediting, under Article 134, UCMJ.

Conviction for conduct described in 18 United States Code §§ 2421, 2422, 2423, or 2425 when charged as Article 133 or 134, UCMJ, offenses.

Conviction for conduct described in 18 United States Code §§ 2251, 2251A, or 2252 when charged as Article 133 or 134, UCMJ, offenses.

Peonage or Slavery: Conviction for conduct described in 18 United States Code chapter 77 when charged as Article 133 or 134, UCMJ, offenses.

**Figure 13.3. Notification of DNA Processing Responsibilities.**

(Date)

MEMORANDUM FOR (ACCUSED'S UNIT CC) **[Note: If another SJA is involved in accordance with paragraph 13.19.2, add SJA as addressee]**

FROM: (JA Office)

SUBJECT: Notification of DNA Processing Responsibilities

1. In accordance with Section 5 of the DNA Analysis Backlog Elimination Act of 2000, 10 U.S.C. § 1565, a DNA sample must be collected from each member of the armed forces who has been convicted of certain "qualifying military offenses." (Rank/Full Name of Member), a member of your unit, was convicted of (identify offense, *e.g.*, rape), which is a "qualifying military offense." Normally, correctional personnel accomplish DNA processing while the member is serving a sentence of confinement. Because (the member in this case did not receive confinement as part of the sentence)(a DNA sample was not obtained by correctional personnel prior to this member's release from confinement), it becomes a command responsibility to ensure compliance with the law.

2. As this member's immediate commander, you should:

**a. Obtain a DNA collection kit from [The Air Force Correctional Facility at \_\_\_\_\_ AFB, a facility designated by AFSFC/SFC to maintain such kits, by calling HQ AFSFC/SFC, DSN 945-5622 or (210) 925-5622.]**

b. Ensure a DNA sample is obtained using the DNA collection kit and instructions contained therein. Utilize local Security Forces (SF) corrections personnel and local medical personnel, to the maximum extent possible, to process the collection of the DNA sample. This includes requesting local SF personnel assistance in completing pertinent items on the U.S. Army Criminal Investigative Laboratory (USACIL) collection card (which includes fingerprinting the member and witnessing the drawing of blood) and mailing the sample to the USACIL. This also includes using local medical personnel to collect the blood sample and complete pertinent portions of the USACIL collection card.

c. Ensure the required DNA sample is collected and mailed to USACIL before the member is permitted to begin excess appellate leave or before the member is administratively discharged from the Air Force. If a member went on excess appellate leave before the DNA sample was collected, you should notify the member of this requirement and request that the member voluntarily return, at no expense to the government, and provide a sample while remaining in excess appellate leave status. If the member is no longer in the immediate area, you may arrange for the DNA processing at a military installation closer to the member's appellate leave address. If the member does not or is unable to voluntarily return at his or her own expense to comply with DNA processing mandated by law, you should recall the member to duty for the purpose of obtaining the required DNA sample. For funding issues, consult AFI 36-3003, *Military Leave Program*, paragraph 4.11.3, and the Joint Federal Travel Regulation, paragraph U7220. If the member is no longer in the immediate area, you may consider arranging for the member to report for duty and provide a DNA sample at a military installation near his or her appellate leave address to minimize government expense. If a member does not comply with a recall to duty from appellate leave status or otherwise refuses to cooperate in providing a DNA sample, contact my office for guidance.

d. Notify my office of the date the DNA sample for the above member was sent to USACIL by completing the indorsement below. If a DNA sample cannot be obtained, state the reason in the indorsement (i.e., member discharged from active duty on \_\_\_).

e. If more than 90 days is required to obtain the sample, please advise.

3. If you have any questions regarding the foregoing, contact (Grade and Name) at (XXX) XXX-XXXX (Commercial) or DSN XXX-XXXX.

**(NAME), (Grade), USAF  
Staff Judge Advocate**

1st Ind (Convening Authority)

MEMORANDUM FOR (JA Office)

In accordance with the above notification, (a DNA sample was obtained from (Grade)(Name of Accused) and sent to USACIL for processing on (Date)) (a DNA sample could not be obtained from (Grade)(Name of Accused) for the following reason: \_\_\_\_\_.)

NAME, Grade, USAF  
Commander

**Figure 13.4. Listing of Offenses Requiring Sex Offender Reporting in accordance with OUSD(P&R) Memorandum dated 16 November 2009.**

**LIST OF OFFENSES REQUIRING SEX OFFENDER REPORTING**

This Figure revises the guidance found in Department of Defense Instruction (DoDI) 1325.7, *Administration of Military Correctional Facilities and Clemency and Parole*, 17 July 2001. The guidance in this Figure should now be followed to the exclusion of the guidance currently found in Enclosure 27 of DoDI 1325.7. When the DoDI is next revised, the current Enclosure 27 will be modified to reflect this new guidance.

Those who are convicted of any of the offenses listed below must register with the appropriate authorities in the jurisdiction (State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, and Indian Tribes) in which they will reside, work, or attend school upon leaving confinement, or upon conviction if not confined. Generally, this registration must take place within three days of release from confinement or within three days of conviction if not confined.

Appropriate DoD officials must inform those persons so convicted of their duty to register and must inform the appropriate officials in the offenders' stated jurisdiction of residence as soon as possible after conviction (if not confined) and prior to the prisoner's release (if confined). Any failure of the appropriate DoD officials to notify offenders required to be notified of their duty to register will not relieve those offenders of their duty to register.

Furthermore, those convicted of offenses listed below or convicted of offenses similar to those offenses listed below, should be advised that the individual jurisdictions in which the offender might live, work, or attend school may require registration for offenses not listed below. Each registration jurisdiction sets its own sex offender policy and laws. Effective immediately, reporting (and notice to convicted persons) is required based on a conviction of any offense listed below, without regard to the date of the offense or the date of the conviction for anyone currently incarcerated or under supervision (parole or mandatory supervised release).

The offenses "Defined before 1 October 2007" are also included to facilitate identification of those prisoners who were convicted of offenses occurring before 1 October 2007; however, as noted above, reporting could still be required if the offense for which convicted occurred before 1 October 2007, but contained elements that would require reporting if the offense had occurred on or after 1 October 2007.

**Offenses Defined before 1 October 2007**

<b>UCMJ Article</b>	<b>DIBRS Code</b>	<b>Offense</b>
120	120A	Rape
120	120B1/2	Carnal Knowledge
125	125A	Forcible Sodomy
125	125B1/2	Sodomy of a Minor
133	133D	Conduct Unbecoming an Officer (involving any sexually

		violent offense or criminal offense of a sexual nature against a minor or kidnapping of a minor)
134	134-B6	Prostitution Involving a Minor
134	134-C1	Indecent Assault
134	134-C4	Assault with Intent to Commit Rape
134	134-C6	Assault with Intent to Commit Sodomy
134	134-R1	Indecent Act with a Minor
134	134-S1	Kidnapping of a Minor (by a person not the parent)
134	134-Z	Pornography Involving a Minor
134	134-Z	Conduct Prejudicial to Good Order and Discipline (involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnapping of a minor)
134	134-Y2	Assimilative Crime Conviction (of a sexually violent offense or a criminal offense of a sexual nature against a minor or kidnapping of a minor)
80		Attempt (to commit any of the foregoing)
81		Conspiracy (to commit any of the foregoing)
82	082-A	Solicitation (to commit any of the foregoing)

#### Offenses Defined on or after 1 October 2007

UCMJ Article	DIBRS Code	Offense
120(a)(1)	120-A1	Rape. Using Force
120(a)(2)	120-A2	Rape. Causing Grievous Bodily Harm
120(a)(3)	120-A3	Rape. Threatening Death, Grievous Bodily Harm, Kidnapping
120(a)(4)	120-A4	Rape. Rendering Unconscious
120(a)(5)	120-A5	Rape. Administering Drug, Intoxicant, Or Similar Substance
120(b)(1)	120-B3	Rape Of Child. Under 12 Years Old
120(b)(2)	120-B4	Rape Of Child. 12 - Under 16 Years Old
120(b)(2)	120-B5	Rape Of Child. 12 - Under 16 Years Old. Causing Grievous Bodily Harm
120(b)(2)	120-B6	Rape Of Child. 12 - Under 16 Years Old. Threatening Death, Grievous Bodily Harm, Kidnapping
120(b)(2)	120-B7	Rape Of Child. 12 - Under 16 Years Old. Rendering Unconscious
120(b)(2)	120-B8	Rape Of Child. 12 - Under 16 Years Old. Administering Drug, Intoxicant, Or Similar Substance. On / After 1 Oct 07.
120(c)(1)(A)	120-C1	Aggravated Sexual Assault. Threatening Or Placing In Fear (Other Than Fear Of Death, Grievous Bodily Harm, Kidnapping)
120(c)(1)(B)	120-C2	Aggravated Sexual Assault. Causing Bodily Harm
120(c)(2)	120-C3	Aggravated Sexual Assault. When Victim Is Substantially Incapacitated / Unable To Appraise Act, Decline Participation, Or Communicate Unwillingness
120(d)	120-D1	Aggravated Sexual Assault Of A Child. 12 - Under 16 Years Old
120(e)	120-E1	Aggravated Sexual Contact. Using Force

120(e)	120-E2	Aggravated Sexual Contact. Causing Grievous Bodily Harm
120(e)	120-E3	Aggravated Sexual Contact. Threatening Death, Grievous Bodily Harm, Kidnapping
120(e)	120-E4	Aggravated Sexual Contact. Rendering Unconscious
120(e)	120-E5	Aggravated Sexual Contact. Administering Drug, Intoxicant Or Similar Substance
120(f)	120-F1	Aggravated Sexual Abuse Of A Child
120(g)	120-G1	Aggravated Sexual Contact With A Child. Under 12 Years Old
120(g)	120-G2	Aggravated Sexual Contact With A Child. 12 - Under 16 Years Old. Using Force
120(g)	120-G3	Aggravated Sexual Contact With A Child. 12 - Under 16 Years Old. Causing Grievous Bodily Harm
120(g)	120-G4	Aggravated Sexual Contact With A Child. 12 - Under 16 Years Old. Threatening Death, Grievous Bodily Harm, Kidnapping
120(g)	120-G5	Aggravated Sexual Contact With A Child. 12 - Under 16 Years Old. Rendering Unconscious
120(g)	120-G6	Aggravated Sexual Contact With A Child. 12 - Under 16 Years Old. Administering Drug, Intoxicant, Or Similar Substance
120(h)	120-H1	Abusive Sexual Contact
120(h)	120-H2	Abusive Sexual Contact. Causing Bodily Harm
120(h)	120-H3	Abusive Sexual Contact. When Victim Is Substantially Incapacitated / Unable To Appraise Act, Decline Participation, Or Communicate Unwillingness
120(i)	120-I1	Abusive Sexual Contact With A Child. 12 - Under 16 Years Old
120(j)	120-J1	Indecent Liberty With A Child
120(k)	120-K1	Indecent Acts
120(l)	120-L1	Forcible Pandering
120(m)	120-M1	Wrongful Sexual Contact
125	125A	Forcible Sodomy
125	125B1/2	Sodomy of a Minor
133	133D	Conduct Unbecoming an Officer that describes conduct set out in any provision of this Appendix
134	134-B6	Prostitution Involving a Minor
134	134-C4	Assault with Intent to Commit Rape
134	134-C6	Assault with Intent to Commit Sodomy
134	134-S1	Kidnapping of a Minor (by a person not the parent)
134	134-Z	Pornography Involving a Minor
134	134-Z	Conduct Prejudicial to Good Order and Discipline or Service Discrediting that (1) has an element involving the sexual contact with another, (2) involves kidnapping of a minor (except by a parent of the minor), (3) involves false imprisonment of a minor (except by a parent of the minor), (4) involves solicitation of a minor to engage in sexual conduct, (5) involves use of a minor in a sexual performance, (6) involves video voyeurism of a minor as

		described in section 1801 of title 18, United States Code; (7) involves possession, production, or distribution of child pornography, (8) involves criminal sexual conduct involving a minor, or the use of the internet to facilitate or attempt such conduct, or (9) any conduct that by its nature is a sex offense against a minor.
134	134-Y2	An Assimilative Crime Conviction that (1) has an element involving the sexual contact with another, (2) involves kidnapping of a minor (except by a parent of the minor), (3) involves false imprisonment of a minor (except by a parent of the minor), (4) involves solicitation of a minor to engage in sexual conduct, (5) involves use of a minor in a sexual performance, (6) involves video voyeurism of a minor as described in section 1801 of title 18, United States Code; (7) involves possession, production, or distribution of child pornography, (8) involves criminal sexual conduct involving a minor, or the use of the internet to facilitate or attempt such conduct, (9) any conduct that by its nature is a sex offense against a minor, or (10) any assimilation of sections 1152, 1153, or 1591; or chapters 109A, 110 (but not 2257, 2257A, or 2258), or 117 of title 18, United States Code.
80		Attempt (to commit any of the foregoing)
81		Conspiracy (to commit any of the foregoing)
82	082-A	Solicitation (to commit any of the foregoing)

Notwithstanding the foregoing listed offenses, an offense involving consensual sexual conduct between adults is not reportable, unless the adult victim was under the custodial authority of the offender at the time of the offense.

Notwithstanding the foregoing listed offenses, an offense involving consensual sexual conduct is not a reportable offense if the victim was at least 13 years old and the offender was not more than 4 years older than the victim (as determined by dates of birth).

### ***Section 13N—Facilitating the Investigation to Disposition Process***

**13.23. General Provision.** An effective military justice process starts with a timely, thorough, and accurate investigation. JA and investigative personnel, particularly AFOSI, must develop a collaborative relationship focused on integrating investigative efforts and the legal process. The goal is thorough, case-ready Reports of Investigation (ROIs), robust litigation preparation, and timely resolution of military justice cases. Although the remainder of this Section applies primarily to AFOSI and JA procedures, SJAs will establish local procedures to implement these goals for all investigations.

**13.24. Initial Process.** An effective team approach starts at the beginning of the military justice process. In matters involving alleged violations of the UCMJ or where the Military Extraterritorial Jurisdiction Act (MEJA) may apply, the AFOSI detachment will notify the local JA when substantive criminal investigations are initiated. At a minimum, the SJA will designate an attorney to provide initial counsel to the AFOSI case agent on the new investigation.

**13.25. Investigative Support Team.** The SJA will designate an investigative support team as early as practicable in the investigative process. The investigative support team will be composed of judge advocate(s), as well as civilian attorney(s) and paralegal(s) when appropriate,

who will work with the AFOSI case agent(s) during the investigation to provide legal support. Members of the investigative support team are not investigators and they must be careful not to depart from their role. The team should properly safeguard all attorney work-product material. *Hickman v. Taylor*, 329 U.S. 495 (1947); *United States v. Romano*, 46 M.J. 269 (C.A.A.F. 1997); *United States v. Vanderwier*, 25 M.J. 263, (C.M.A. 1987).

**13.26. Investigative Plan Development.** The attorney designated by the SJA and/or the investigative support team will receive a briefing on the initial investigative steps. The designated attorney or the investigative support team will continue the collaborative process during the development of the Investigative Plan and work with the AFOSI case agent in identifying potential criminal offenses for investigation, comparing the evidence in the case with the elements of proof for a given offense. JA will coordinate with the AFOSI case agent on subject interviews.

### **13.27. Case Development.**

13.27.1. The investigative support team and AFOSI case agents will continue their collaborative efforts as the investigation proceeds. As appropriate, designated investigative support team members or JA staff members will attend AFOSI case review meetings. Likewise, AFOSI personnel are encouraged to attend relevant JA military justice meetings.

13.27.2. The investigative support team will review and update the initial proof analysis crafted by trial counsel to address the elements, evidence, anticipated objections, and potential defenses for each specification as appropriate, but at least on a monthly basis, for JA use. JA will discuss the results of the analysis with AFOSI. A final proof analysis will be completed contemporaneously with the publication of the ROI. This will also assist in pre-trial preparation efforts.

13.27.3. In accordance with AFI 51-1001, the SJA will initiate the coordination process as early as possible for MEJA cases.

**13.28. Disclosure and Reporting of Sensitive Case Information.** As a case develops, both the SJA and AFOSI are required to provide case information and status to higher commands through their respective reporting channels. To avoid compromising an on-going investigation, the SJA will not allow disclosure of sensitive investigative information without the AFOSI Detachment Commander's concurrence. Some examples of sensitive investigative information would include AFOSI investigative techniques, case leads, and confidential source information. Once a case proceeds to trial, the rules of discovery will control the release of any sensitive investigative information.

**13.29. Lessons Learned.** Within 30 days of the conclusion of trial, the SJA and available members of the trial team will conduct a "hot wash" with AFOSI to review case lessons learned. Other legal office personnel may attend at the SJA's and AFOSI detachment commander's discretion.

## ***Section 130—Prescribed and Adopted Forms***

### **13.30. Prescribed Forms.**

AF Form 304, Request for Appellate Defense Counsel

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 Result of Trial  
AF Form 3226, Authority to Apprehend in Private Dwelling

**13.31. Adopted Forms:**

AF Form 366, Record of Proceedings of Vacation of Suspended Nonjudicial Punishment  
AF Form 3070, Record of Nonjudicial Punishment Proceedings  
AF IMT 847, Recommendation for Change of Publication  
DD Form 453, Subpoena  
DD Form 453-1, Travel Order  
DD Form 454, Warrant of Attachment  
DD Form 455, Report of Proceedings to Vacate Suspension of a General Court-Martial Sentence or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge Under Article 72, UCMJ, and R.C.M. 1109  
DD Form 456, Interrogatories and Depositions  
DD Form 457, Investigating Officer's Report  
DD Form 458, Charge Sheet  
DD Form 490, Record of Trial  
DD Form 493, Extract of Military Records of Previous Convictions  
DD Form 553, Deserter/Absentee Wanted by the Armed Forces  
DD Form 1351, Travel Voucher  
DD Form 1351-2, Travel Voucher or Subvoucher  
DD Form 1610, Request and Authorization for TDY Travel of DoD Personnel  
DD Form 1722, Request for Trial Before Military Judge Alone  
DD Form 2701, Initial Information for Victims and Witnesses of Crime  
DD Form 2702, Court-Martial Information for Victims and Witnesses of Crime  
DD Form 2703, Post-Trial Information for Victims and Witnesses of Crime  
DD Form 2704, Victim/Witness Certification and Election Concerning Inmate Status  
DD Form 2705, Victim and Witness Notification of Inmate Status  
DD Form 2706, Annual Report on Victim and Witness Assistance  
DD Form 2707, Confinement Order

DD Form 2329, Record of Trial by Summary Court-Martial

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

DD Form 2791, Notice or Release/Acknowledgement of Convicted Sex Offender Registration Requirements

SF Form 1034, Public Voucher for Purchases and Services Other than Personal

SF Form 1164, Claim for Reimbursement for Expenditures on Official Business

\*JACK L. RIVES  
Lieutenant General, USAF  
The Judge Advocate General

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

- AFPD 51-10, Making Military Personnel, Employees and Dependents Available to Civilian Authorities, 19 October 2006
- AFI 31-201, Security Police Standards and Procedures, 4 December 2001
- AFI 31-205, The Air Force Corrections System, 1 April 2004
- AFI 31-401, Information Security Program Management, 1 November 2005
- AFI 31-501, Personnel Security Program Management, 27 Jan 2005
- AFI 33-328, Administrative Orders, 16 January 2007
- AFI 33-332, Privacy Act Program, 29 January 2004
- AFI 36-2102, Base Level Relocations Procedures, 18 September 2006
- AFI 36-2110, Assignments, 20 April 2005
- AFI 36-2201, Training, Development, Delivery and Evaluation, 1 October 2002
- AFI 36-3003, Military Leave Program, 20 October 2005
- AFI 36-3009, Family Support Center [Airman & Family Readiness Center], 1 February 1997
- AFI 36-3024, Transitional Compensation for Abused Dependents, 15 September 2003
- AFI 36-3105, Red Cross Activities Within the Air Force, 2 May 1994
- AFI 36-3109, Air Force Aid Society, 5 March 2004
- AFI 36-3207, Separating Commissioned Officers, 9 July 2004
- AFI 36-3208, Administrative Separation of Airman, 9 July 2004
- AFI 38-101, Air Force Organizations, 24 July 1998
- AFI 40-301, Family Advocacy, 19 January 2005
- AFI 41-101, Obtaining Alternative Medical and Dental Care, 1 April 1996
- AFI 41-115, Authorized Health Care and Health Care Benefits in the Military Health Service, 28 December 2001
- AFI 44-109, Mental Health, Confidentiality & Military Law, 1 March 2000
- AFI 44-120, Drug Abuse Testing Program, 1 July 2000
- AFI 51-103, Designation of Judge Advocates, 7 December 2004
- AFI 51-202, Nonjudicial Punishment, 2 November 2003
- AFI 51-504, Legal Assistance, Notary & Preventive Law Programs, 27 October 2003
- AFI 51-703, Foreign Criminal Jurisdiction, 6 May 1994

AFI 51-1001, Delivery of Personnel to United States Civilian Authorities for Trial, 20 October 2006

AFI 52-101, Planning and Organizing, 10 May 2005

AFI 65-601, Vol. I, Budget Guidance & Procedures, 3 March 2005

AFJI 51-706, Status of Forces Policies, Procedures and Information, 15 December 1989

AFJI 51-707, Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice, 5 November 1968

AFMAN 51-203, Records of Trial, 1 October 1999

AFH 33-337, The Tongue & Quill, 1 August 2004

DOD Directive 1010.1, Military Personnel Drug Abuse Testing Program, 9 December 1994

DOD Directive 1030.1, Victim and Witness Assistance, 13 April 2004

DOD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program, and Department of the Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault, 6 October 2005

DOD Directive 7730.47, Manual for Defense Incident-Based Reporting System, 15 October 1996

DOD Instruction 1030.2, Victim and Witness Assistance Procedures, 4 June 2004

DOD Instruction 5525.07, Implementation of the MOU Between Department of Justice and Department of Defense Relating to the Investigation and Prosecution of Certain Crimes, 18 June 2007

DOD Regulation 7000.14-R, DoD Financial Management Regulation, March 2001

DOD Regulation 5400.7-AFSUP, DoD Freedom of Information Act Program, September 1998  
Joint Federal Travel Regulations, Vol. II, 1 August 2007

### *Abbreviations and Acronyms*

**ACM**— AFLOA/JAJM General Court-Martial Reference Number

**ACMR**— Army Court of Military Review

**ACMS**— AFLOA/JAJM Special Court-Martial Reference Number

**ADC**— Area Defense Counsel

**AF**— Automatic Forfeitures

**AFCCA**— Air Force Court of Criminal Appeals

**AFCMR**— Air Force Court of Military Review

**AFDW**— Air Force District of Washington

**AFELM**— Air Force Element

**AFI**— Air Force Instruction

**AFIT**— Air Force Institute of Technology

**AFLOA**— Air Force Legal Operations Agency  
**AFMAN**— Air Force Manual  
**AFOSI**— Air Force Office of Special Investigations  
**AFPC**— Air Force Personnel Center  
**AFPD**— Air Force Policy Directive  
**A&FRC**— Airman and Family Readiness Center  
**AFRC**— Air Force Reserve Command  
**AMJAMS**— Automated Military Justice Analysis and Management System  
**ANG**— Air National Guard  
**AOR**— Area of Operations  
**ARC**— Air Reserve Component  
**AWOL**— Absent Without Leave  
**BCD**— Bad Conduct Discharge  
**CC**— Commander  
**CFR**— Code of Federal Regulations  
**CMO**— Court Martial Order  
**CMR**— Court Martial Reporter  
**COMA**— Court of Military Appeals  
**CONUS**— Continental United States  
**CSDC**— Chief Senior Defense Counsel  
**CSTC**— Chief Senior Trial Counsel  
**CWF**— Central Witness Funding  
**DAF**— Department of the Air Force  
**DFAS**— Defense Finance & Accounting Services  
**DJAG**— The Deputy Judge Advocate General  
**DoD**— Department of Defense  
**DoDD**— Department of Defense Directive  
**DoDI**— Department of Defense Instruction  
**DOJ**— Department of Justice  
**DRU**— Direct Reporting Unit  
**DTS**— Defense Travel System  
**ETS**— Expiration of Term of Service

**FAX**— Data Facsimile  
**FLITE**— Federal Legal Information Through Electronics  
**FOA**— Field Operating Agency  
**FOIA**— Freedom of Information Act  
**GCM**— General Court-Martial  
**GCMCA**— General Court-Martial Convening Authority  
**HC**— Installation Chaplain  
**HQ AFSFC**— Headquarters Air Force Security Forces Center  
**IAW**— In accordance with  
**IMDC**— Individual Military Defense Counsel  
**IO**— Investigating Officer  
**ITO**— Invitational Travel Order  
**JAC**— Civil Law and Litigation Directorate  
**JAJ**— Judiciary Directorate  
**JAJA**— Appellate Defense Division  
**JAJD**— Trial Defense Division  
**JAJG**— Government Trial and Appellate Counsel Division  
**JAJM**— Military Justice Division  
**JAJR**— Clemency, Corrections and Officer Review Division  
**JAS**— Legal Information Services  
**JAT**— Air Force Trial Judiciary  
**JFTR**— Joint Federal Travel Regulations  
**LIO**— Lesser Included Offense  
**LLM**— Master of Laws  
**LPSP**— Limited Privilege Suicide Prevention Program  
**LRO**— Local Responsible Official  
**MAJCOM**— Major Command  
**MCM**— Manual For Courts-Martial  
**MEJA**— Military Extraterritorial Jurisdiction Act  
**MF**— Mandatory Forfeitures  
**MJ**— Military Judge  
**MRE**— Military Rules of Evidence

**NCOIC**— Non-Commissioned Officer in Charge  
**NJP**— Nonjudicial Punishment  
**PA**— Public Affairs  
**PCR**— Pretrial Confinement Review  
**PCRO**— Pretrial Confinement Review Officer  
**PDS**— Personal Data Sheet  
**PIF**— Personnel Information File  
**PTA**— Pretrial Agreement  
**RCF**— Regional Confinement Facility  
**RCM**— Rules for Courts-Martial  
**RILO**— Officer Resignation for the Good of the Service  
**RO**— Responsible Official  
**ROI**— Report of Investigation  
**ROT**— Record of Trial  
**RTDP**— Return to Duty Program  
**SAPR**— Sexual Assault Prevention and Response Program  
**SARC**— Sexual Assault Response Coordinator  
**SCM**— Summary Court-Martial  
**SCMCA**— Summary Court-Martial Convening Authority  
**SDC**— Senior Defense Counsel  
**SECAF**— Secretary of the Air Force  
**SF**— Security Forces  
**SG**— Medical Facility Commander  
**SIR**— Special Interest Report  
**SJA**— Staff Judge Advocate  
**SJAR**— Staff Judge Advocate Recommendation  
**SPCM**— Special Court-Martial  
**SPCMCA**— Special Court-Martial Convening Authority  
**SSN**— Social Security Number  
**STC**— Senior Trial Counsel  
**TC**— Trial Counsel  
**TDY**— Temporary Duty

**TJAG**— The Judge Advocate General

**TR**— Transportation Request

**UCMJ**— Uniform Code of Military Justice

**USC**— United States Code

**USCAAF**— United States Court of Appeals for the Armed Forces

**USSS**— United States Secret Service

**VA**— Victim Advocate

**VWAP**— Victim and Witness Assistance Program

**WFMS**— Witness Funding Management System