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This document has been produced under the Secretary of the Air Force's 11 August 2017 guidance to make all directive publications current by 1 September 2018. Although published, it will be reviewed again prior to 1 September 2019, to ensure it is clear, concise and consistent in accordance with the Secretary's Directive Publication Reduction Initiative.

This instruction implements the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial, and Air Force Policy Directive 51-2, Administration of Military Justice. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the UCMJ, Manual for Courts-Martial, including the Rules for Courts Martial and Military Rules of Evidence, and applicable Department of Defense (DoD) Directives. It applies to individuals at all levels, including Regular Air Force and Air Force Reserve Component. It applies to members of the Air National Guard when in Title 10 status, and members of the Air National Guard subject to recall for UCMJ proceedings. The authorities to waive wing/unit level requirements in this publication are identified with a Tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. Refer to AFI 33-360, Publications and Forms Management, Table 1.1, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through command channels to the appropriate waiver authority, or alternatively, to the publication’s Office of Primary Responsibility for non-tiered compliance items. Commands may supplement this instruction only with the prior, written approval of Air Force Legal Operations Agency, Military Justice Division (AFLOA/JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820.
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SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. The Air Force Guidance Memorandum to this instruction, published 3 August 2016, has been incorporated in its entirety. Additionally, all figures previously imbedded in the body of the instruction are now provided as attachments. Other major changes include: modifies the procedures to recall Air Force Reserve Command members to active duty for courts-martial; identifies the order of priority for the location at which Air National Guard members will be tried; downgrades waiver authority for the involuntary recall of Air Force Reserve Command members; explains official-use records releases to Special Victims’ Counsel; assigns the Air Force Trial Judiciary (AF/JAT) as the manager for the Air Force court reporter program; moves the Victim and Witness Assistance Program from Chapter 7 to Chapter 11; provides travel funds for an escort to accompany certain active duty sexual assault victims consistent with the Joint Travel Regulations; imposes commander and Staff Judge Advocate responsibilities to victims; mandates Annual Sexual Assault Prevention and Response Program First Responder Training for Legal Personnel; provides guidance for pretrial agreements involving mandatory minimum sentences; expands guidance for the content and form of the Report of Result of Trial memorandum; adds requirement for a Staff Judge Advocate Recommendation in Special Courts-Martial where the victim is entitled to submit a statement on clemency pursuant to Rule for Courts Martial 1105A; mandates use of JAJM courts-martial checklists; modifies the metrics and milestones for general, special, and summary courts-martial; requires base-level Staff Judge Advocates to notify commanders when deoxyribonucleic acid (DNA) samples must be collected, and makes commanders responsible for coordinating with Security Forces to ensure the collection is accomplished; and implements the Special Victim Investigation and Prosecution Capability.

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Chapter 1

OVERVIEW, ROLES AND RESPONSIBILITIES, COMMAND INFLUENCE, AND STANDARDS OF CONDUCT

1.1. Overview. The military justice system promotes justice; assists in maintaining good order and discipline; promotes military efficiency and effectiveness; and thereby strengthens the national security of the United States. This instruction implements requirements for the administration of military justice in the Air Force. The primary sources of direction and guidance on military justice are the UCMJ, 10 United State Code § 801 et seq., and the Manual for Courts-Martial, including the Rules for Courts Martial and Military Rules of Evidence. Compliance is mandatory with the UCMJ as federal law, and with the Manual for Courts-Martial, including the Rules for Courts-Martial and Military Rules of Evidence, as an Executive Order. (T-0).

1.2. Roles and Responsibilities.


1.2.3. Air Force Judiciary (AFLOA/JAJ). Exercises supervisory responsibility for the Military Justice Division (AFLOA/JAJM), Government Trial and Appellate Counsel Division (AFLOA/JAJG), Trial Defense Division (AFLOA/JAJD), Appellate Defense Division (AFLOA/JAJA), and Clemency, Corrections, and Officer Review Division (AFLOA/JAJR). See AFMAN 51-204, United States Air Force Judiciary and Air Force Trial Judiciary.

1.2.4. Military Justice Division (AFLOA/JAJM). Provides counsel, guidance, and support to Headquarters Air Force, court-martial convening authorities, and staff judge advocates on the administration of military justice. Functions as a component of the Office of The Judge Advocate General (AF/JA) for matters pursuant to the UCMJ, as determined by The Judge Advocate General, operating in close coordination with the Air Force Legal Operations Agency Commander (AFLOA/CC) and AFLOA/JAJ. Is Office of Primary Responsibility for this instruction and other regulations establishing procedures to administer military justice in the Air Force.

1.2.5. Court-Martial Convening Authority. Exercises court-martial convening authority and powers of a Court-Martial Convening Authority set out in the UCMJ and Manual for Courts-
Martial. Other than the President of the United States, the Secretary of Defense, and the Secretary of the Air Force, is a commander or commanding officer. In this regulation, the term Court-Martial Convening Authority may be used to refer to an individual authorized to convene courts-martial or to the authority to convene courts-martial.


1.2.7. Staff Judge Advocate. Performs the duties of the Staff Judge Advocate set out in the UCMJ and Manual for Courts-Martial. Advises the Court-Martial Convening Authority or commander on military justice matters. Supervises the administration of military justice for the command.

1.3. Command Influence (Article 37, UCMJ; Rule for Courts-Martial 104). The military justice system must promote the independence of command authority and operate free of unlawful command influence. To ensure a fair and just outcome in every case, Court-Martial Convening Authorities, commanders, Staff Judge Advocates, and all personnel involved in the military justice process should be sensitive to actual or apparent unlawful command influence and circumstances that might lead to it. They should be vigilant and vigorous in their efforts to prevent it and to respond to it, with particular concern for its effects on subordinate commanders, court-martial panel members, and witnesses. The Staff Judge Advocate periodically discusses lawful and unlawful command influence with commanders and other persons subject to the UCMJ and acts decisively when apprised of facts or circumstances that might give rise to unlawful command influence. (T 1).


1.4.1. General Application. The promulgated standards and rules apply to all military and civilian lawyers, paralegals, and non-lawyer assistants in The Judge Advocate General’s Corps, including Air Reserve Component members. The standards and rules also apply to foreign-national lawyers, paralegals, and non-lawyer assistants employed outside the United States by the Department of the Air Force, to the extent the standards and rules are not inconsistent with applicable domestic law and professional standards.

1.4.2. Application to All Practitioners in Air Force Military Justice Proceedings. The standards and rules apply to all members of The Judge Advocate General’s Corps and lawyers, paralegals, and non-lawyer assistants who practice in Air Force courts-martial or other proceedings governed by the UCMJ or Manual for Courts-Martial or who assist others in such practice. This includes, but is not limited to, civilian defense and victim’s counsel and their associates, paralegals, and non-lawyer assistants who have no connection to the Air Force other than as participants or representatives in such proceedings. Military defense or victim’s counsel at trial and military appellate defense or victim’s counsel on appeal provide copies of or access to the standards and rules to civilian defense or victim’s counsel of record. In any case in which military defense or victim’s counsel is excused or not detailed,
trial counsel ensure that civilian defense or victim’s counsel has been provided the standards and rules.
Chapter 2

COURT-MARTIAL CONVENING AUTHORITY AND UNIFORM CODE OF MILITARY JUSTICE JURISDICTION

Section 2A—Court-Martial Convening Authority (Articles 22, 23, and 24, UCMJ; Rule for Courts-Martial 504)

2.1. General Court-Martial Convening Authority. The following Air Force commanders may exercise general court-martial convening authority:

2.1.1. Commanders of organizations identified by Article 22(a)(7), UCMJ, who have been authorized by the Secretary of the Air Force to convene general courts-martial or who have received the express authorization of The Judge Advocate General to convene general courts-martial under Article 22(a)(7), UCMJ.

2.1.2. Commanders of organizations not identified by Article 22(a)(7), UCMJ, who are authorized and designated to convene general courts-martial by the Secretary of the Air Force under Article 22(a)(8) or who are empowered by the President under Article 22(a)(9), UCMJ.

2.1.3. Requests for authorization to exercise general court-martial convening authority are forwarded through functional channels with commanders’ indorsements to AFLOA/JAJM.

2.2. Special Court-Martial Convening Authority. The following Air Force commanders may exercise special court-martial convening authority:

2.2.1. Commanders authorized to convene a general court-martial under paragraph 2.1. See Article 23(a)(1), UCMJ.

2.2.2. Commanders of organizations identified by Article 23(a), UCMJ, who have been authorized to exercise special court-martial convening authority by the Secretary of the Air Force.

2.2.3. Commanders of organizations identified by Article 23(a)(4), UCMJ, who are not authorized by the Secretary of the Air Force to exercise special court-martial convening authority, but who are authorized by the superior commander of an Air Force major command to convene a special court-martial. Prior to exercise of special court-martial convening authority by a commander pursuant to this paragraph, the Staff Judge Advocate of the authorizing major command sends a copy of the authorization to AFLOA/JAJM.

2.2.4. Commanders who are not authorized by the Secretary of the Air Force to exercise special court-martial convening authority, but who are authorized by the superior commander of an Air Force component of a unified or specified combatant command.

2.2.4.1. The commander of an Air Force component of a unified or specified combatant command may only authorize subordinate commanders to exercise special court-martial convening authority 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 superior component commander’s command.
2.2.4.2. Prior to the exercise of special court-martial convening authority by a commander pursuant to this paragraph, the Staff Judge Advocate of the authorizing Air Force component commander sends a copy of the authorization to AFLOA/JAJM.

2.2.5. A request for authorization to exercise special court-martial convening authority or a superior commander’s authorization to exercise special court-martial convening authority is forwarded through functional channels with commanders’ indorsements to AFLOA/JAJM to process the Secretary of the Air Force’s authorization or acknowledgement.

2.3. Summary Court-Martial Convening Authority. Any person who may convene a general court-martial or special court-martial may convene a summary court-martial under Article 24(a)(1), UCMJ. Also, the commanding officer of a detached squadron or other Air Force detachment may convene a summary court-martial under Article 24(a)(3), UCMJ, but only with the express authorization of the superior general court-martial convening authority for the detached squadron or other detachment consistent with Rule for Courts-Martial 504(b)(2)(B). Prior to the exercise of summary court-martial convening authority by a commander pursuant to this paragraph, the Staff Judge Advocate of the authorizing general court-martial convening authority sends a copy of the authorization to AFLOA/JAJM.

Section 2B—UCMJ Jurisdiction (Articles 2 and 3, UCMJ; Rules for Courts-Martial 201, 202, 203, and 204)

2.4. Exercise of UCMJ Jurisdiction. This section details the exercise of UCMJ jurisdiction and general, special, and summary courts-martial convening authority in the Air Force. No other order, document, or implementing agreement is required unless otherwise stipulated below. This section applies to Regular Air Force members, Air Reserve Component members when subject to the UCMJ in accordance with 10 U.S.C. § 802, and Airmen on temporary duty with, or otherwise attached to, the relevant organization. In this regulation, the term Regular Air Force members may be used interchangeably with “active duty” to refer to Airmen in an active, federal status under Title 10. “Air Reserve Component” refers to the Air Force Reserve and Air National Guard.

2.5. Airmen in Air Force Tenant, Air Force Reserve, and Air National Guard Organizations.

2.5.1. All members of an Air Force tenant unit or Air Force Element, whether designated as a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. On bases, to include joint bases, where a unit of another military service has been designated as the host unit, the Regular Air Force unit that has the preponderance of military justice capabilities will be considered the “host command” for the purposes of this paragraph. Requests for exceptions to this paragraph are coordinated with AFLOA/JAJM in advance of any exercise of jurisdiction pursuant to this paragraph. (T 1).

2.5.2. All members of an Air Force Reserve unit are attached to the host command of the nearest Regular Air Force wing and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See Rule for Courts-Martial 204(a). Additional guidance on court-martial jurisdiction over Air Force Reserve members is provided at paragraph 2.14.
2.5.3. Air National Guard members who commit UCMJ offenses while in federal status or on Title 10 orders will ordinarily be tried by the Regular Air Force unit to which they are assigned or attached, if applicable. Air National Guard members not assigned or attached to a Regular Air Force unit will be attached to the host command of the nearest Regular Air Force wing and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See Rule for Courts-Martial 204(a). Additional guidance on court-martial jurisdiction over Air National Guard members is provided at paragraph 2.14.

2.5.4. Members of a tenant unit, Air Force Element, or Air Force Reserve or Air National Guard unit include personnel on temporary duty with or otherwise attached to such unit. AFI 90-1001, Responsibilities for Total Force Integration, may also be applicable.

2.5.5. Jurisdiction pursuant to paragraph 2.5. is concurrent jurisdiction to be shared between the command chain of the relevant tenant, Air Force Element, Air Force Reserve, or Title 10 Air National Guard unit and the relevant Regular Air Force unit or host command. Air National Guard units in Title 32 status lack UCMJ jurisdiction over members for conduct while in Title 10 status. Attachment for the exercise of court-martial convening authority does not serve to divest any commander from the exercise of such authority over a member of an Air Force tenant unit or Air Force Element or a member of the Air Force Reserve or Air National Guard. Instead, the exercise of such authority by the Regular Air Force host command is preferred to resolve the matter expeditiously, preserve resources, and retain command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the Air Force. When it is necessary or desirable to deviate from this jurisdiction arrangement, it must be documented in a support agreement or similar document signed at the general court-martial convening authority level or a superior level of command with a copy provided to AFLOA/JAJM. (T 2).

2.6. Jurisdiction of the Air Force District of Washington. The Commander, Air Force District of Washington, as General Court-Martial Convening Authority, and the Commander, 11th Wing, as Special Court-Martial Convening Authority, are authorized to exercise court-martial convening authority over Air Force members whose organization is not subordinate to an Air Force major command and who are not stationed on a military installation with an Air Force commander authorized to exercise general court-martial convening authority or special court-martial convening authority. Such organizations include, but are not limited to, Air Force field operating agencies (see paragraph 2.7. for a discussion of jurisdiction of personnel assigned to the Air Force Legal Operations Agency); Air Force direct reporting units; and Air Force Elements of DoD activities, DoD field agencies, and other departments and agencies of the United States Government. See Air Force Policy Directive 51-6, Command and Administrative Proceedings.

2.6.1. Personnel stationed or otherwise performing duty at Fort Meade, Maryland, but not assigned, attached, or detailed to the 70th Information, Surveillance, and Reconnaissance Wing or its subordinate units are attached to the Air Force District of Washington and its subordinate units for the exercise of court-martial convening authority.

2.6.2. Inmates, parolees, and members on appellate leave assigned to the Air Force Security Forces Center, Confinement and Corrections Directorate, are attached to the Air Force District of Washington and its subordinate commands for court-martial convening authority.

2.6.3. See paragraph 2.11. for convening authority over general officers.
2.7. **Airmen in the Air Force Legal Operations Agency and Military Judges.** Members assigned to the Air Force Legal Operations Agency as senior trial counsel, senior defense counsel, and senior special victims’ counsel; area defense counsel and defense paralegals; and special victims’ counsel and special victims’ paralegals, are assigned and attached to Air Force Legal Operations Agency for the exercise of court-martial convening authority. All other personnel assigned to the Air Force Legal Operations Agency are attached to Air Force District of Washington and its subordinate units for the exercise of court-martial convening authority. Military judges assigned to AF/JAT, regardless of base of assignment, and AF/JAH are attached to Air Force District of Washington for exercise of court-martial convening authority. See Air Force Policy Directive 51-6.

2.8. **Airmen in Headquarters Air Force, Joint Staff, or Office of the Secretary of Defense.** Air Force members assigned or attached to Headquarters Air Force, including the Air Staff and the Office of the Secretary of the Air Force; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; and the DoD, including the Office of the Secretary of Defense, are attached to Air Force District of Washington and subordinate units for the exercise of court-martial convening authority. See Air Force Policy Directive 51-6.


2.10. **Airmen in Joint Commands and Non-Air Force Organizations.** Pursuant to Rule for Courts-Martial 201(e), a commander of a unified or specified combatant command may convene courts-martial over any armed forces member. Also, a convening authority of one armed force may convene a court-martial to try a member of another armed force. Even considering these provisions for reciprocal jurisdiction, a joint or non-Air Force commander normally allows the appropriate Air Force commander to exercise court-martial convening authority over an Air Force member. See AFI 38 101, Air Force Organization.

2.10.1. Airmen in a joint command fall under the Air Force component commander for disciplinary purposes. Airmen assigned or attached to an air expeditionary unit fall under the air expeditionary unit chain of command for disciplinary purposes. While attached to a joint command or air expeditionary unit, Airmen normally remain assigned to a home station Air Force unit, and the home station chain of command maintains concurrent jurisdiction.

2.10.2. Air Force convening authorities exercise court-martial jurisdiction over members of other armed forces only when warranted by Rule for Courts-Martial 201(e)(3). Prior to exercise of such authority, the convening authority’s Staff Judge Advocate coordinates with AFLOA/JAJM. (T 1).

2.11. **General Officers.** Only a commander of an Air Force major command or a superior convening authority may exercise court-martial convening authority over an Air Force general officer. This limitation does not apply to the exercise of court-martial convening authority by the commanding officer of a unified or specified command. The Secretary of the Air Force has court-martial convening authority over the Chief of Staff of the Air Force, commanders of Air Force major commands, Commander, Air Force District of Washington, and Air Force generals and lieutenant generals not assigned to a major command or combatant command.
2.12. United States Air Force Academy Cadets. United States Air Force Academy cadets are considered Regular Air Force personnel under 10 U.S.C. § 8075, and are subject to the UCMJ. See Article 2(a)(2), UCMJ. For purposes of courts-martial jurisdiction and limitations on punishments, cadets are treated as officers. See Rule for Courts-Martial 1003(c)(2)(A). However, cadets do not serve as members on a court-martial.

2.13. Completion of Military Service.

2.13.1. Generally, jurisdiction to try a member of the military by court-martial ceases upon discharge or other separation, provided the discharge is a complete termination of military status and relieves the member of any further military service, including service in the Individual Ready Reserve. Court-martial jurisdiction extends to those Regular Air Force members whose enlistments have expired but are awaiting discharge. See Article 2(a)(1) and Article 3(a), UCMJ. Action with a view to trial should be taken as soon as practicable to preserve jurisdiction. Jurisdiction may attach by apprehension, imposition of restraint, or preferral of charges. Once attached, jurisdiction continues for purposes of trial, sentence, and punishment. See Rule for Courts-Martial 202(c).

2.13.2. 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 the Secretary of the Air Force. See United States v. Hart, 66 M.J. 273 (C.A.A.F. 2008). In any individual case, an exception to this general rule may apply, such as regaining military jurisdiction for members upon reentry into military service. See Rule for Courts-Martial 202(a), Discussion (2)(B)(iii), and Rule for Courts-Martial 204(d). An Airman separated or discharged prior to the expiration of a term of service on active duty remains subject to UCMJ jurisdiction and may be recalled if the Airman retains military status in a reserve component. If the matter results in trial by court-martial, the record of trial includes evidence that establishes jurisdiction over the accused.


2.14.1. Air National Guard members in Federal status and Air Force Reserve members, including retired members of the Air National Guard or Air Force Reserve, are subject to UCMJ jurisdiction for offenses committed while in Federal status, on active duty, or Air Force Reserve on inactive duty training. Air Force Reserve members performing continuous duty in an inactive duty training status are subject to UCMJ jurisdiction from the commencement to the conclusion of such duty. Air National Guard members are subject to UCMJ jurisdiction only for offenses committed while on Title 10 orders.

2.14.2. General and Special Courts-Martial. In any case in which the accused is a member of the Air Force Reserves or Air National Guard, trial counsel must introduce sufficient evidence to establish in-personam jurisdiction over the accused at the time of the offense. See United States v. McDonagh, 14 M.J. 415, 422, 424 (C.M.A. 1983); United States v. Laws, 11 M.J. 475, 476 77 (C.M.A. 1981).

2.14.2.1. Air Force Reserve. Once jurisdiction attaches in accordance with Rule for Courts-Martial 202(c), a Reserve member may be held on active duty pending disposition of offenses or may be released to reserve status and recalled as necessary for preferral and referral of charges, preliminary hearing, trial by general or special court-martial, and adjudged confinement or other restriction on liberty. Prior to holding the member on or
recalling the member to active duty, the servicing Staff Judge Advocate consults with AFLOA/JAJM and the member’s Reserve chain of command. (T 1). If the member is no longer in Federal status, on active duty, or in inactive duty training status when the offense is discovered, the member may be involuntarily ordered to active duty for preferral and referral of charges, preliminary hearing, trial by general or special court-martial, and adjudged confinement or other restriction on liberty. See Rule for Courts-Martial 204(b).

2.14.2.2. Air National Guard. Jurisdiction attaches when Air National Guard members are on Title 10 orders. However, because Air National Guard Title 10 orders cannot ordinarily be administratively extended for investigations into UCMJ violations, the supporting Regular Air Force legal office contacts the legal office supporting the Air National Guard Readiness Center (NGB/JA) to discuss timing of actions to exercise jurisdiction and options for maintaining jurisdiction.

2.14.2.2.1. For purposes of administrative control, Guard members in Title 10 status are assigned to the 201st Mission Support Squadron, a numbered unit subordinate to the Air National Guard Readiness Center and created to maintain administrative control over Air National Guard members. Ordinarily, members in Title 10 status will be tried by the Regular Air Force unit where they are performing duty or receiving training, otherwise referred to as the supported command. The supported command must first consult with the Air National Guard Readiness Center.

2.14.2.2.2. If the Air National Guard member is attached to a major command but not performing duty or receiving training at a Regular Air Force unit, court-martial proceedings are ordinarily convened as follows:

2.14.2.2.2.1. The Regular Air Force unit with operational control over the Guard member has primary UCMJ jurisdiction and will exercise court-martial convening authority.

2.14.2.2.2.2. If the unit with operational control is incapable of exercising court-martial convening authority, the Regular Air Force unit nearest to the Guard member’s place of duty exercises court-martial convening authority.

2.14.2.2.2.3. If neither the Regular Air Force unit with operational control nor the nearest Regular Air Force unit is capable of exercising court-martial convening authority, any Court-Martial Convening Authority may act with the consent of the 201 MSS/CC, pursuant to Rule for Courts-Martial 601.

2.14.3. Summary Courts-Martial. An Air Force Reserve or Air National Guard member may be tried by summary court-martial during the member’s period of active duty or normal period of Air Force Reserve inactive-duty training. All punishments remaining unserved at the end of a period of active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of inactive-duty training or active duty. See Article 2(d)(4), UCMJ; Rule for Courts-Martial 204(b)(2).

2.14.3.1.1. Air Force Reserve members may only be held on active duty or involuntarily recalled to active duty for trial by summary court-martial if approved by a General Court-Martial Convening Authority. See paragraphs 2.14.6. and 2.14.8.
2.14.3.1.2. Recall of an Air National Guard member to active duty for trial by summary court-martial generally requires Secretary of the Air Force approval.

2.14.4. Nonjudicial Punishment. A recall authority may approve the involuntary recall of Air National Guard or Air Force Reserve members for nonjudicial punishment in accordance with paragraphs 2.14.7. through 2.14.9. Recalls of Air National Guard member for nonjudicial punishment requires consultation with The Adjutant General, anticipated charges, and evidence sufficient to support a probable cause determination. No other documentation is required unless requested by the recall authority. Further guidance on nonjudicial punishment is available in AFI 51-202, Nonjudicial Punishment.

2.14.5. Limitations on Punishment. Without Secretary of the Air Force approval of the order to active duty, an Air Reserve Component member recalled to active duty for trial by court-martial may not be sentenced to confinement or required to serve a punishment consisting of any restriction on liberty during the recall period of duty. Article 2(d)(5), UCMJ. A punishment of restriction to specified limits may be served only during normal periods of inactive duty training or active duty.

2.14.6. Secretarial Approval of Air Reserve Component Member Recall for Court-Martial. Forward requests for Secretary of the Air Force approval of a request to recall a member of the Air National Guard or Air Force Reserves for court-martial via functional channels to AFLOA/JAJM. (T-1). Generally, a request is made prior to preferral of charges. Regardless of when a request is made, the Secretary of the Air Force must approve the recall prior to referral of charges in order to preserve confinement as a punishment option. Requests forwarded to AFLOA/JAJM for processing include, at a minimum, the following:


2.14.6.2. The preferred or anticipated charges and specifications. If charges have been preferred, include a copy of the charge sheet and personal data sheet.

2.14.6.3. A summary of the evidence relating to each offense. Include copies of any reports of investigation, witness statements, or documentary evidence.

2.14.6.4. A description and copies of any records of the member’s prior court-martial convictions and nonjudicial punishments, if any.

2.14.6.5. Whether the member refused an offer of nonjudicial punishment for any of the charged offenses at issue in the case.

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

2.14.6.7. Documentation of consultation with the member’s Air Reserve Component chain of command. Note: For Air National Guard members, the state Adjutant General must be informed and consulted. Consultation requires the Adjutant General or chain of command be provided with the general nature of the charges, copies of reports of investigation, and other evidence in the government’s possession used to support a finding of probable cause.

2.14.7. Release from Active Duty. At the conclusion of nonjudicial punishment proceedings or final adjournment of the court-martial, the reserve component member
ordered to active duty for the purpose of conducting disciplinary proceedings should be
released from active duty within one working day, unless the order to active duty was
approved by the Secretary of the Air Force and confinement was adjudged. The court-
martial convening authority who convenes the court shall fund the active duty orders of the
reserve component member being court-martialed, including the duration of confinement.

2.14.7.1. Air Force Reserve. Any other unserved punishments, including a restriction on
liberty, may be served during subsequent periods of inactive duty training or active duty. See Article 2(d)(5), UCMJ; Rules for Courts-Martial 204(b) and 1003(c)(3).

2.14.7.2. Air National Guard. Any other unserved punishments, including a restriction on
liberty, may be served during subsequent periods of Title 10 service.

2.14.8. Recall of an Air Force Reserve Member. Subject to the consultation requirement
of paragraph 2.14.2., the following individuals may recall a Reserve member to active duty:

2.14.8.1. A General Court-Martial Convening Authority for the Regular Air Force unit to
which the member is attached for training purposes;

2.14.8.2. A General Court-Martial Convening Authority for the Regular Air Force unit in
which the member performed Federal service, active duty, or inactive duty training when
the offense occurred;

2.14.8.3. A General Court-Martial Convening Authority for the Regular Air Force host
unit, as designated in the applicable host-tenant support agreement, if the member is
assigned to an Air Reserve Component unit for training purposes or was attached to such
a unit when the offense occurred;

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

2.14.8.5. A General Court-Martial Convening Authority for the Regular Air Force host
command described in paragraph 2.5.2. See Article 2(d), UCMJ.

2.14.9. Recall of an Air National Guard Member.

2.14.9.1. Recall Authority. If an Air National Guard member reverts to Title 32 status
before UCMJ action commences, the member must be recalled to active duty under 10
U.S.C. § 802(d). Subject to the consultation requirement of paragraph 2.14.2., the
following individuals would ordinarily recall an Air National Guard member to Title 10
active duty:

2.14.9.1.1. A General Court-Martial Convening Authority for the Regular Air Force
unit to which the member was attached for duty (supported commander);

2.14.9.1.2. A General Court-Martial Convening Authority for the Regular Air Force
unit to which the member was attached for training;

2.14.9.1.3. A General Court-Martial Convening Authority for the host command of
the nearest Regular Air Force wing and its appropriate subordinate and higher
commands as described in paragraph 2.5.3.; or

2.14.9.1.4. Any General Court-Martial Convening Authority pursuant to an
agreement with or a request by 201 MSS/CC.

2.14.9.2.1. The General Court-Martial Convening Authority evaluates recall decisions using the probable cause standard;

2.14.9.2.2. Court-martial recalls require Secretary of the Air Force approval and processing in accordance with paragraph 2.14.5. to preserve the option of confinement.

2.14.9.2.3. The General Court-Martial Convening Authority signs the order recalling the member to Title 10 status for UCMJ action;

2.14.9.2.4. AF/A1M provides the man days for the orders under 10 U.S.C. § 802(d);

2.14.9.2.5. The member’s home station creates the pay order(s);

2.14.9.2.6. The General Court-Martial Convening Authority who recalls the member to active duty funds travel-related entitlements in accordance with the Joint Travel Regulations. See Joint Travel Regulations Chapter 7, Part K.

2.15. Retired Personnel.

2.15.1. Retired active duty personnel who are entitled to receive pay (Article 2(a)(4), UCMJ); retired members of a reserve component receiving hospitalization from an armed force (Article 2(a)(5), UCMJ); and retired reserve component members not receiving pay (see Morgan v. Mahoney, Misc. Dkt. No. 99-03, 1999 CCA LEXIS 173 (A.F.C.C.A. 15 Mar. 1999)) are ordinarily not tried by court-martial for acts or omissions committed while on active duty or inactive duty training or in Federal status, unless their conduct clearly links them with the military or is adverse to a significant military interest of the United States.

2.15.2. Determining which convening authority is in the best position to take action on a case involving a retired member depends on the facts and circumstances of the case. At a minimum, the command seeking the member’s recall should consider the location of the alleged offense, whether the alleged offense occurred outside the United States, the current location of the retired member, and the current location of the victim, if any.

2.15.3. Secretary of the Air Force approval to recall a retired member to active duty is required prior to preferral of charges. The supporting legal office of the command seeking the member’s recall forwards the request for Secretary of the Air Force approval via functional channels to AFLOA/IAJM. The request should include coordination with the General Court-Martial Convening Authority and the additional information described in paragraph 2.14.4. If there is an immediate issue regarding the statute of limitations (Article 43, UCMJ) and the time prescribed by the relevant statute of limitations is about to expire, the Staff Judge Advocate coordinates immediate preferral of charges and a request for Secretary of the Air Force approval of the retiree’s recall as soon as possible.

2.16. Department of Defense Civilian Employees, Department of Defense Contractor Personnel, and Other Persons.

2.16.1. Jurisdiction Under Article 2(a)(10), UCMJ. Only the Secretary of Defense possesses the authority to exercise court-martial convening authority over persons subject to Article 2(a)(10), UCMJ, with respect to offenses committed within the United States (to include the commonwealths and territories); persons who were not at all times during the alleged
misconduct located outside the United States; and persons who are, at the time court-martial charges are preferred or notice of nonjudicial punishment proceedings is given, located within the United States. See General Counsel of the DoD Memorandum, dated 20 January 2012, Policy and Procedures Applicable to Department of Defense and United States Coast Guard Civilian Personnel Subject to UCMJ Jurisdiction in Time of Declared War or a Contingency Operation (Attachment 2).

2.16.1.1. Only the Secretary of Defense, geographic combatant commanders, and commanders assigned or attached to geographic combatant commands who also possess general court-martial convening authority, may exercise court-martial convening authority over persons subject to Article 2(a)(10), UCMJ, with respect to offenses committed outside the United States. A geographic combatant commander may withhold court-martial convening authority within the command.

2.16.1.2. Authority to prefer court-martial charges is withheld until the notification requirements outlined in paragraph 2.16.4. are met. Law enforcement, criminal investigations, and other procedures that precede the preferral of court-martial charges should continue, as applicable, during the notification process.

2.16.1.3. Authority to prefer court-martial charges is withheld if the Department of Justice provides notice that it intends to pursue federal criminal prosecution for what is substantially the same offense or a related offense. Such withholding of authority remains in effect while Department of Justice is pursuing its federal prosecution of the case until such prosecution is completed or terminated prior to its completion.

2.16.2. 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 jurisdiction under the Military Extraterritorial Jurisdiction Act, 18 U.S.C. § 3261 et seq., until law enforcement officials assume investigative responsibility. Such investigations shall be conducted in accordance with practices established with host nation authorities, international law, and international agreements, as applicable. All criminal allegations are coordinated with the appropriate military criminal investigative organization, such as the Air Force Office of Special Investigations. Additionally, if the crime committed falls within the investigative jurisdiction of a military law enforcement agency, commanders contact the appropriate agency to determine if a criminal investigation will be initiated. See AFI 71-101, Vol. 1, Criminal Investigations Program, paragraph 1.5. and Attachment 2.

2.16.2.1. Apprehension and Arrest. Military law enforcement officials are authorized to apprehend persons subject to trial by court-martial and to arrest and temporarily detain persons subject to Military Extraterritorial Jurisdiction Act jurisdiction when there is probable cause to believe that an offense has been committed and that the person committed it, subject to the requirements of Rules for Courts-Martial 304 and 305. See Rule for Courts-Martial 302. Although all commissioned, warrant, petty, and noncommissioned officers on active duty or inactive duty training may apprehend persons subject to trial by court-martial, the apprehension of civilians should be done by law enforcement officials only, absent exigent circumstances. 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 United States authorities
is appropriate, such action is done in accordance with established procedures, international law, and international agreements, as applicable.

2.16.2.2. Pretrial Restraint and Confinement. Absent exigent circumstances, personnel subject to UCMJ jurisdiction pursuant to Article 2(a)(10), UCMJ, are not placed in pretrial restraint or confinement without prior consultation of the ordering commander and the Staff Judge Advocate of the appropriate geographic combatant commander. Commanders may order the pretrial restraint or confinement of civilians subject to Rules for Courts-Martial 304(b) and 305(c).

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

2.16.3.1. Legal Considerations. Article 2(a)(10), UCMJ, applies to individuals serving with or accompanying an armed force 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. Ali, 71 M.J. 256 (C.A.A.F. 2013); 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 United States citizens and foreign nationals, although international agreements may impact jurisdiction over foreign nationals, particularly citizens of the host nation. Before initiating UCMJ action against any civilian, the chain of command should establish whether UCMJ jurisdiction applies.

2.16.3.2. Policy Considerations. Even if an individual is subject to the UCMJ as a matter of law, the exercise of UCMJ jurisdiction as a matter of policy is based on the need to promote justice, maintain good order and discipline, promote military efficiency and effectiveness, and thereby strengthen national security. Generally, circumstances should call for the exercise of UCMJ jurisdiction to meet the needs and interests of justice, such as when federal criminal jurisdiction otherwise does not apply, when 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 discredits the armed forces and therefore has an adverse effect on military operations).

2.16.4. Notification. Before initiating any UCMJ action against a civilian, the commander intending to take the action complies with the following notification procedures, which may be done through the supporting Staff Judge Advocate:

2.16.4.1. In all cases intended to be pursued under Article 2(a)(10), UCMJ, 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. (T 0). This includes forwarding all reasonably available information regarding the investigation, the subject’s last known residence in the United States, and the rationale in support of UCMJ disposition. Potential Article 2(a)(10), UCMJ, cases also trigger special interest reporting requirements to AFLOA/JAJM.

2.16.4.2. Non-General Court-Martial Convening Authority Notification Requirements. Commanders who are not General Court-Martial Convening Authorities shall, before
initiating any UCMJ disposition under Rules for Courts-Martial 306–308 or 401–406, forward all available information regarding the alleged misconduct potentially subject to UCMJ jurisdiction to the first General Court-Martial Convening Authority in the chain of command that is attached or assigned to a geographic combatant command.

2.16.4.3. General Court-Martial Convening Authority Notification Requirements. General Court-Martial Convening Authorities assigned or attached to a geographic combatant command shall notify in writing (including by e-mail or facsimile) their respective geographic combatant commander of their intended UCMJ disposition over persons subject to Article 2(a)(10), UCMJ.

2.16.4.4. Geographic Combatant Commander Notification Requirements. Before any commander prefers court-martial charges or takes action based on Article 2(a)(10), UCMJ, and regardless of whether the suspected offense may also be an offense under federal criminal laws, the geographic combatant commander shall first provide notice of the case in writing (including by e-mail or facsimile) in accordance with the procedures established in DoD Instruction 5525.11 and Attachment 2 through DoD channels so that the Department of Justice may be afforded the opportunity to pursue federal criminal prosecution.

2.16.4.5. Department of Justice/DoD Notification Requirements. After the DoD’s formal notification to the Department of Justice, the Department of Justice notifies the DoD whether it intends to exercise jurisdiction over the case. If the Department of Justice elects to exercise jurisdiction, authority to convene a court-martial or take UCMJ action is withheld. If the Department of Justice does not exercise jurisdiction or terminates prosecution, or if permission to proceed is granted by the Secretary of Defense or his designee, UCMJ action may be initiated. See paragraph 2.17.1.


2.16.5.1. Military Defense Counsel. An accused under Article 2(a)(10), UCMJ, 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.

2.16.5.2. 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), UCMJ. 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), UCMJ, does not have the right to request enlisted court members.

2.16.6. Punishment. Subject to the limitations of the UCMJ and Manual for Courts-Martial, 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.

2.17. Jurisdiction Involving Federal Agencies.
2.17.1. Department of Justice. DoD Instruction 5525.07, Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes, sets forth DoD and Department of Justice responsibilities for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction. As with state (non-Federal) nonexclusive jurisdiction, the determination of whether civilian federal or military authorities will exercise jurisdiction is made through consultation or prior agreement between appropriate Air Force and civilian authorities. Convening Authorities and Staff Judge Advocates foster relationships with local civilian authorities with a view toward maximizing Air Force jurisdiction. Further guidance on UCMJ jurisdiction over DoD civilian employees is discussed in paragraph 2.16.

2.17.2. United States Secret Service. The United States Secret Service 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, coordinates with representatives of Department of Justice and the Secret Service to determine which department will exercise jurisdiction in any case involving an Air Force subject and Secret Service investigative responsibility.

2.17.3. Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. § 3261 et seq.). Pursuant to the Military Extraterritorial Jurisdictions Act of 2000, military members subject to the UCMJ as well as civilians employed by or accompanying the armed forces outside the United States may be subject to United States civilian federal jurisdiction for offenses committed while overseas. The Court-Martial Convening Authority with jurisdiction reports any potential cases involving the Military Extraterritorial Act through command channels, and the supporting Staff Judge Advocate reports the same through functional channels to AFLOA/JAJM. AFLOA/JAJM coordinates potential Military Extraterritorial Act cases with the DoD Office of General Counsel and Department of Justice.


2.17.3.2. Further information on UCMJ jurisdiction over DoD civilian employees is discussed in paragraph 2.16.

2.17.4. A member pending trial or who has been tried by a Federal court may not be tried by court-martial or subjected to nonjudicial punishment proceedings for the same act or omission. Unlike exercise of jurisdiction by a state or foreign authority, exercise of jurisdiction by Federal civilian authorities prevents exercise of jurisdiction by military authorities for the same act or omission. See Rule for Courts-Martial 907(b)(2)(C).

2.18. Jurisdiction Involving State or Foreign Prosecution Interest (Rule for Courts-Martial 201(d)).

2.18.1. Courts-martial have exclusive jurisdiction of purely military offenses. However, when a member is subject to both the UCMJ and state (non-Federal) or foreign jurisdiction for substantially the same act or omission, the determination of which sovereign shall exercise jurisdiction should be made through consultation or prior agreement between appropriate authorities. Convening Authorities and Staff Judge Advocates should foster
relationships with local civilian authorities with a view toward maximizing Air Force jurisdiction.

2.18.1.1. A member who is pending trial or has been tried by a state or foreign court, regardless of whether the member was convicted or acquitted of the offense, should not ordinarily be tried by court-martial or subjected to nonjudicial punishment for the same act or omission, except upon the Secretary of the Air Force approval (see paragraph 2.18.3). This policy is based on comity between the Federal Government and state and foreign governments and is not intended to confer additional rights upon the accused. See United States v. Kohut, 44 M.J. 245, 247 (C.A.A.F. 1996) (quoting Manual of the Judge Advocate General of the Navy § 0124, JAGINST 5800.7C (Change 1, 1992)).

2.18.1.1.1. This limitation does not apply to vacation proceedings under Rule for Courts-Martial 1109 and Manual for Courts-Martial, Part V, paragraph 6a(4).

2.18.1.2. If the state or foreign proceedings end without jeopardy attaching or if the Air Force receives clear indication that the state or foreign proceedings will not continue pending military authorities taking UCMJ action, the principle of comity is satisfied and the Air Force may proceed with court-martial or nonjudicial punishment.

2.18.2. When a member is subject to both the UCMJ and state or foreign jurisdiction, 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 Staff Judge Advocate) contact appropriate civilian authorities; notify them of the Air Force desire to exercise jurisdiction; and, if civilian authorities have primary jurisdiction, request a waiver of jurisdiction to the Air Force (additional procedures for seeking jurisdiction from foreign authorities are discussed in paragraph 2.18.2.3). If state or foreign authorities decline or waive the right to exercise jurisdiction, the Air Force may proceed with action, up to and including court-martial or nonjudicial punishment.

2.18.2.1. Generally, Air Force requests for waivers of jurisdiction from state or foreign authorities should be in writing with written responses requested. Any written request and response should be maintained with the case file and documented in the Automated Military Justice Analysis and Management System.

2.18.2.2. Cases Involving Sexual Assault. For cases that involve a victim of an offense under Articles 120, 120a, 120b, 120c, or 125, UCMJ, or an attempt thereof under Article 80, UCMJ, Air Force authorities, prior to seeking jurisdiction from state authorities, must solicit the preference of the victim as to whether the offense should be prosecuted by court-martial or in a civilian court. See Figure A3.1. The victim may be heard through victim’s counsel, if any. The victim’s preference, although not binding, is considered by Air Force authorities when deciding whether to refer the case for trial by court-martial. If the victim expresses a preference for civilian jurisdiction, the civilian authority with jurisdiction over the offense is informed of the victim’s preference. The victim is notified if the Air Force learns of a decision by the civilian authority whether or not to prosecute. See Rule for Courts-Martial 306(e); National Defense Authorization Act for Fiscal Year 2015 (Fiscal Year 15 National Defense Authorization Act), § 534.

2.18.2.3. Foreign Criminal Jurisdiction. The procedures to determine whether United States military authorities or civilian foreign (host nation) authorities will exercise
criminal jurisdiction over military members present in foreign countries vary from country to country. The Status of Forces Agreement, or a similar agreement, should address procedures for dealing with nonexclusive or concurrent jurisdiction offenses. Comply with AFI 51-703, Foreign Criminal Jurisdiction, and AFI 51-706, Status of Forces Policies, Procedures, and Information, in these cases.

2.18.3. Secretarial Approval. If a state or foreign authority’s exercise of jurisdiction will not satisfy or has not satisfied the requirements of good order and discipline, it may be appropriate to seek permission from the Secretary of the Air Force to exercise UCMJ authority. Only the Secretary of the Air Force 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 whether the member was convicted or acquitted of the offense. Secretary of the Air Force approval will be granted in only the most unusual cases when justice and good order and discipline can be satisfied in no other way. A request may be submitted only after the member has been tried in a state or foreign court. Submit the request with full justification and commanders’ indorsements through functional channels to AFLOA/JAJM.

2.18.3.1. 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 yet been brought (e.g., upon arrest of the member or a representation by civilian authorities that they intend to pursue the case).

2.18.3.2. A member is deemed “tried” by a state or foreign court if 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. See 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.

2.18.3.3. A member is not deemed “tried” in situations in which jeopardy attached in state or foreign proceedings, and the civilian authorities released jurisdiction to the Air Force prior to resolution of the case when state or foreign law would have authorized further prosecutorial action, such as a mistrial.

2.18.3.4. A member is not deemed “tried” if the prosecution is deferred, held in abeyance, or otherwise diverted from normal channels pending completion of conditions as an alternative to prosecution, without an initial determination of guilt. If deferral, abeyance, or diversion is conditional and the member remains subject to prosecution if a condition is violated, UCMJ action should not be taken until after the deferral, abeyance, or diversion is completed.
Chapter 3

PRETRIAL MATTERS, INITIAL DISPOSITION AND PREFERRAL OF CHARGES

Section 3A—Search, Seizure, and Apprehension

3.1. Authorization for Search, Seizure, and Apprehension. Air Force commanders, military judges, and military magistrates may authorize searches, seizures, and apprehensions based upon probable cause. Air Force Form 1176, Authority to Search and Seize, is used to document authorization for a search of a person, location, or property and seizure of property pursuant to Military Rule of Evidence 315(d). The Air Force Form 3226, Authority to Apprehend in Private Dwelling, is used to document authorization to apprehend someone in a private dwelling pursuant to Rule for Courts-Martial 302(e)(2)(C) and Military Rule of Evidence 315(d). When required by circumstances, oral or verbal authorization may be given but should be followed by written documentation.

3.2. United States Mail and Government Information Systems.

3.2.1. United States Mail. DoD 4525.6-M, Department of Defense Postal Manual, paragraph C10.7, establishes procedures for the inspection, search, and seizure of mail in the custody of the military postal service. The United States Postal Service operates post offices on installations in the United States and opening of mail is allowed only pursuant to a valid search warrant executed by a federal magistrate or judge.

3.2.2. 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 information systems.

3.2.2.1. 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 e-mails 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.

3.2.2.2. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. See Military Rule of Evidence 314(d). Furthermore, the presence of the DoD Consent Banner and the existence of the subject’s user agreement is evidence of implied and explicit consent to monitoring on government information systems. See United States v. Larson, 66 M.J. 212, 216 (C.A.A.F. 2008); see also United States v. Milian-Rodriguez, 759 F.2d 1558, 1563–64 (11th Cir. 1985). Implied consent exists when circumstances indicate a party to a communication was “in fact aware” of monitoring and nevertheless proceeded to use the system. See United States v. Workman, 80 F.3d 688 (2d Cir. 1996). Government employees may waive some of their Fourth Amendment rights pursuant to the conditions of employment. See, e.g., United States v. Simons, 206 F.3d 392, 398 (4th Cir. 2000) (government employee had no reasonable expectation of privacy in computer in light of
computer use policy); American Postal Workers Union, Columbus Area Local American Federation of Labor and Congress of Industrial Organizations v. United States Postal Service, 871 F.2d 556, 559–61 (6th Cir. 1989) (postal employees retained no reasonable expectation of privacy in government lockers after signing waivers). Only if the totality of the facts and circumstances indicate that the subject has a reasonable expectation of privacy, usually because the government property was issued for exclusive personal use, is obtaining a search authorization warranted.

3.3. Military Defense Counsel. If a location or property of military defense counsel is going to be inspected or searched, precautions should be taken to protect client confidentiality, privileged communications, and of attorney work product to the maximum extent possible. Such a search should be pursued only when there is no other feasible alternative.

3.3.1. The base-level Staff Judge Advocate informs the Commander, AFLOA (AFLOA/CC), or the Director, United States Air Force Judiciary (AFLOA/JAJ), before such a search is executed pursuant to authorization under Military Rule of Evidence 315(d) or as soon as possible if exigent circumstances exist pursuant to Military Rule of Evidence 315(g). (T 1).

3.3.2. The purpose of this notification is to provide information, not to seek assistance in obtaining or authorizing a search of defense counsel property. If a search is authorized, it should be conducted so as to minimize disruption to the operation of the defense counsel’s office and should occur at a time when defense clients are unlikely to be present.

3.3.3. If this situation arises, review United States v. Calhoun, 49 M.J. 485 (1998), where a base Staff Judge Advocate contacted AFLOA/CC and discussed searching an Area Defense Counsel office. In upholding the case, the court found that AFLOA/CC’s role was limited to being informed of the search and discussing it with the Staff Judge Advocate, not in seeking or authorizing it. The court further found the Air Force took extraordinary precautions to ensure that only independent personnel would be involved in the search and subsequent review of materials seized. These precautions included: (1) having an investigator from another base, assisted by a reserve judge advocate, conduct the search; (2) ordering the searchers not to disclose the matter with anyone else and to seal any evidence recovered; and (3) having a reserve military judge review papers seized to determine what material was responsive to the warrant and how to handle other seized material.

3.4. Military Magistrates (Military Rule of Evidence 315).

3.4.1. Appointment of Military Magistrate (Military Rule of Evidence 315(d)(2)). The commander of the lowest organizational level having command over an Air Force installation who holds special court-martial convening authority or general court-martial convening authority, or the installation commander of an Air Force Reserve Command base or station, may appoint a maximum of four officers to serve as military magistrates for that installation. For certain installations comprised of multiple geographically separated locations, such as some joint bases, a maximum of four officers may be appointed as magistrates for each geographically separated location. If unique circumstances exist that warrant the appointment of more than four magistrates for any one location, the installation-level Staff Judge Advocate should request permission from AFLOA/JAJM to appoint additional magistrates through functional legal channels.
3.4.1.1. A commander appoints military magistrates in writing by name, not position, and specifies the installation over which the magistrates may exercise search authority.

3.4.1.2. The Staff Judge Advocate for the appointing commander ensures the military magistrates are briefed on their duties at the time of their appointment and whenever necessary thereafter.

3.4.2. Qualifications. A military magistrate should be an officer with judicial temperament 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 General Court-Martial Convening Authority exercising jurisdiction over the installation. Chaplains, legal office personnel, and Air Force Office of Special Investigations and Security Forces members may not serve as military magistrates. A convening authority should not be appointed as a military magistrate, but a convening authority who is a commander with control over the place where the property or person to be searched is situated or found may authorize a search under Military Rule of Evidence 315(d)(1). Officers appointed as military magistrates for Air Force Reserve Command installations must be serving a period of inactive duty training or active duty to perform magistrate duties.

3.4.3. Authority. A military magistrate’s authority to issue search and seizure authorizations is found in Military Rule of Evidence 315(d)(2). Such authorizations to search and seize are based upon probable cause. If more than one magistrate is appointed for an installation or location, each exercises concurrent authority with the others and with the installation commander. The commander need not be unavailable for a magistrate to exercise this authority.

3.4.4. Non-Air Force Military Installations. The Air Force commander who holds special court-martial convening authority or general court-martial convening authority at a military installation where the installation commander is not an Air Force commander, may appoint a military magistrate for matters involving Air Force personnel on the installation. Based on probable cause, a military magistrate appointed under this paragraph may authorize search and seizure (and apprehension) 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. Military Rule of Evidence 315(d)(1); Rule for Courts-Martial 302(e)(2). This military magistrate exercises concurrent search and seizure authority with the commander who appointed him or her. Nothing in this paragraph is intended to negate or diminish the authority of a non-Air Force commander or any magistrate (Air Force or otherwise) appointed by the non-Air Force installation commander to authorize searches consistent with Military Rule of Evidence 315.

3.4.4.1. Pentagon Reservation. The Commander, Air Force District of Washington is a General Court-Martial Convening Authority and may authorize searches involving Air Force controlled or occupied spaces of the Pentagon Reservation or Air Force personnel located, assigned or attached therein, pursuant to Military Rule of Evidence 315(d)(1). The Commander, Air Force District of Washington may appoint a maximum of two officers with judicial temperament to serve as military magistrates for the Pentagon Reservation. See Military Rule of Evidence 315(d)(2). The authority to appoint magistrates may not be further delegated.
3.4.4.2. Generally, authorized searches within the Pentagon Reservation are coordinated with Washington Headquarters Services and the Pentagon Force Protection Agency prior to execution. The failure to coordinate with the Washington Headquarters Services and Pentagon Force Protection Agency does not create any right or benefit for any Air Force member.

Section 3B—Pretrial Confinement and Restraint

3.5. Pretrial Confinement (Rule for Courts-Martial 305). An authorized person determines if there is probable cause to order pretrial confinement. Once the member is placed in pretrial confinement, additional steps occur to determine if it is appropriate to continue pretrial confinement: a 24-hour notice to the confinee’s commander (if a person other than the confinee’s commander ordered 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 a Summary Court-Martial do not warrant pretrial confinement. NOTE: Imposition of pretrial confinement or restraint will trigger the speedy trial clock under Rule for Courts-Martial 707.

3.5.1. 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 Rule for Courts-Martial 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 Rule for Courts-Martial 305(d), Discussion.

3.5.2. Requirements Upon Entry into Confinement.

3.5.2.1. Rights Advisement. Confinement personnel advise pretrial confinees of their rights in accordance with Rule for Courts-Martial 305(e). See Air Force Form 444, Advisement of Rights for Pretrial Confinement.

3.5.2.2. Victim Notification. In cases involving a victim as defined by Article 6b, UCMJ, the Staff Judge Advocate must ensure said victim is notified of a confinee’s pretrial confinement.

3.5.3. The 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. Rule for Courts-Martial 305(i)(1); Gerstein v. Pugh, 420 U.S. 103, 124–25 (1975); County of Riverside v. McLaughlin, 500 U.S. 44, 45 (S. Ct. 1991). A template is provided at Figure A3.4. 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.

3.5.3.1. Include in the record of trial 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, a 48-hour probable cause determination is still required.

3.5.3.2. 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, 298 (C.M.A. 1993); *United States v. Lynch*, 13 M.J. 394, 397 (C.M.A. 1982).

3.5.3.3. The 72-Hour Commander’s Decision and Memorandum in paragraph 3.5.4. will satisfy the 48-hour probable cause determination if the 72-Hour Commander’s Decision and Memorandum is completed within 48 hours of the imposition of confinement.

3.5.3.4. The Pretrial Confinement Review Officer’s 7-day review in paragraph 3.5.5 may satisfy the 48-hour probable cause determination requirement if the Pretrial Confinement Review Officer’s decision memorandum is completed within 48 hours of the imposition of confinement.

3.5.4. The 72-Hour Commander’s Decision and Memorandum.

3.5.4.1. The commander shall decide whether to continue pretrial confinement not later than 72 hours after a military member is ordered 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 Rule for Courts-Martial 305(h)(2)(B) and should consider the factors in the Discussion to that section. When deciding to continue pretrial confinement, the commander must prepare a written memorandum in accordance with Rule for Courts-Martial 305(h)(2)(C). The memorandum is then forwarded to the Pretrial Confinement Review Officer, through the Staff Judge Advocate and Special Court-Martial Convening Authority. If court-martial results, the commander’s memorandum is included in the record of trial. Figure A3.5. provides a template.

3.5.4.2. 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. Rule for Courts-Martial 305(h)(2)(A).

3.5.5. Pretrial Confinement Review (Rule for Courts-Martial 305(i)(2)). Within 7 calendar days of the imposition of pretrial confinement under military control, the Pretrial Confinement Review Officer reviews the probable cause determination and makes a decision about the necessity for continued pretrial confinement. *United States v. McCants*, 39 M.J. 91, 93 (C.M.A. 1994) (quoting Rule for Courts-Martial 305(i)(1)). The day placed in confinement counts as day one and the date of review counts as one day.

3.5.5.1. Appointment of Pretrial Confinement Review Officer (Rule for Courts-Martial 305(i)(2)). The Special Court-Martial Convening Authority appoints, by letter, a reasonable number of mature officers to serve as Pretrial Confinement Review Officers. Chaplains, legal office personnel, Air Force Office of Special Investigations and Security Forces members, and Court-Martial Convening Authorities may not serve as a Pretrial Confinement Review Officer. Military magistrates may also be appointed as Pretrial Confinement Review Officers. When the situation warrants, a Pretrial Confinement Review Officer from another military service may be appointed. Similarly, an otherwise
qualified Air Force member may serve as a Pretrial Confinement Review Officer for another military service. Except in unusual circumstances, a magistrate should not serve as the Pretrial Confinement Review Officer if the magistrate otherwise acted upon the same case in any capacity. Staff Judge Advocates must ensure Pretrial Confinement Review Officers are briefed on their duties when appointed, and updated as appropriate thereafter.

3.5.5.2. The Pretrial Confinement Review Officer reviews the 72-hour commander’s decision to continue pretrial confinement, and considers any matters submitted by the pretrial confinee. The Pretrial Confinement Review Officer’s determination may satisfy the 48-hour probable cause determination requirement if the Pretrial Confinement Review Officer’s decision memorandum is completed within 48 hours of the imposition of confinement. In such cases, the Pretrial Confinement Review Officer’s memorandum must specifically state when the probable cause determination was made.

3.5.5.3. Hearing. The Pretrial Confinement Review Officer conducts a hearing at which the pretrial confinee and defense counsel, if practicable, are allowed to appear and make a statement before the Pretrial Confinement Review Officer. Defense counsel may also represent their client at the hearing via telephone or video teleconference technology. A government representative, usually a judge advocate, may also make a statement, if practicable. Although the pretrial confinement review is not an adversarial proceeding, the Pretrial Confinement Review Officer may exercise discretion by allowing the pretrial confinee, defense counsel or government representative to present evidence and cross-examine witnesses. For cases involving a named victim, as defined in Article 6b, UCMJ, the Pretrial Confinement Review Officer, with the assistance of the Staff Judge Advocate or government representative, ensures the victim has the opportunity to make a statement either personally or through counsel. The Pretrial Confinement Review Officer completes a written summary of the relevant testimony of any witnesses, including information elicited by defense counsel. The only rules of evidence that apply are Military Rules of Evidence 302 and 305 as well as Section V of the Military Rules of Evidence concerning privileges.

3.5.5.3.1. Provided custody classification does not dictate a distinctive uniform, a pretrial confinee is allowed to wear an Air Force duty uniform for the hearing rather than civilian confinement attire. See AFI 31-105, Air Force Corrections System, paragraph 3.5.2.

3.5.5.3.2. The pretrial confinee, defense counsel, or both may present evidence related to confinement conditions in apparent violation of Article 12 or Article 13, UCMJ. If such evidence is presented, the Pretrial Confinement Review Officer summarizes the evidence in the Pretrial Confinement Review Officer memorandum and informs the Staff Judge Advocate. The Staff Judge Advocate reviews the evidence pertaining to allegedly illegal confinement conditions and works with the member’s commander and the local Security Forces Commander or other confinement officials to remedy the situation as necessary.

3.5.5.4. Upon completion of the hearing, the Pretrial Confinement Review Officer approves continued confinement or orders immediate release. The Pretrial Confinement Review Officer finds the requirements of Rule for Courts-Martial 305(h)(2)(B) have been
proven by a preponderance of the evidence to continue pretrial confinement. If the requirements of Rule for Courts-Martial 305(h)(2)(B) have not been proven, the Pretrial Confinement Review Officer orders immediate release of the pretrial confinee. The Pretrial Confinement Review Officer may not impose conditions on release but may recommend the commander impose a less severe form of pretrial restraint. If the Pretrial Confinement Review Officer orders release, a commander may impose any alternative lesser form of pretrial restraint authorized by Rule for Courts-Martial 304(a)(1) through (3).

3.5.5.5. Within 24 hours of making the pretrial confinement decision, the Pretrial Confinement Review Officer must complete a memorandum of the Pretrial Confinement Review Officer’s conclusions and the findings on which they are based. A copy of all documents and summaries of all oral statements considered by the Pretrial Confinement Review Officer are attached to the memorandum. The memorandum with attachments is provided to the Special Court-Martial Convening Authority, the Special Court-Martial Convening Authority’s Staff Judge Advocate, the confinement officer, the pretrial confinee, and the pretrial confinee’s defense counsel. Figure A3.6 provides a sample format for the Pretrial Confinement Review Officer’s memorandum.

3.5.6. Victim Notification of Release from Pretrial Confinement. Where an accused is released from pretrial confinement, the Staff Judge Advocate ensure any victims are notified of said release.


3.5.8. Suicide Prevention. Preventing an accused from committing suicide is not valid as the sole basis for ordering the accused into or continuing pretrial confinement or pretrial restraint. A distinction shall be drawn between an accused that is a threat to himself 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 Rule for Courts-Martial 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.C.C.A. 2001).

3.5.9. 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, and the facility must be capable of rendering the competency evaluations and providing care and treatment of the accused. Article 13, UCMJ; Rules for Courts-Martial 706, 909; Short v. Chambers, 33 M.J. 49, 52 (C.M.A. 1991); 18 U.S.C. § 4241.
Section 3C—Initial Disposition

3.6. Disposition Other Than Trial. 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 administrative disposition, including Article 15 punishment, and administrative discharge proceedings may potentially be disclosed as a routine use to victims and witnesses of a crime for the purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program; Article 6b, UCMJ; 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 are reviewed on an individualized basis, in light of the Privacy Act and the exceptions allowing disclosure, as provided therein.

3.7. Initial Disposition of a Sexual Assault Allegation (Rule for Courts-Martial 306).

3.7.1. Effective 28 June 2012, the Secretary of Defense withheld initial disposition authority from all commanders within the DoD who do not possess at least special court-martial convening authority and who are not in the grade of O-6 or higher (see Figure A3.18), with respect to the following alleged offenses (regardless of the date the offense was allegedly committed):

3.7.1.1. Rape, in violation of Article 120, UCMJ;
3.7.1.2. Sexual assault, in violation of Article 120, UCMJ;
3.7.1.3. Forcible sodomy, in violation of Article 125, UCMJ; and
3.7.1.4. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

3.7.2. The withholding of initial disposition authority applies to all alleged offenses arising from or relating to the alleged sexual assault(s), whether committed by the accused or by the victim. This includes collateral misconduct by the accused or by the victim. For those offenses for which initial disposition authority is withheld, the subordinate commander forwards the case file, along with a written recommendation, to the Initial Disposition Authority. Refer to Figures A3.9 through A3.12 for template documentation of the initial disposition decision. Note: The initial disposition process must be completed and documented whether the case is going forward to court-martial or being disposed of in another manner.

3.7.3. The Special Court-Martial Convening Authority with initial disposition authority is responsible for determining what initial disposition action is appropriate, including whether further action is warranted. (T 0). Rule for Courts-Martial 306 describes initial disposition as no action; administrative action; nonjudicial punishment; disposition of charges (preferral, dismissal, forwarding, or referral); or forwarding for disposition to a superior or subordinate authority. The Special Court-Martial Convening Authority’s initial disposition decision may
be to permit the subordinate commander to take action in the case in accordance with the subordinate commander’s recommendation.

3.7.3.1. The Special Court-Martial Convening Authority’s initial disposition decision shall, at a minimum, be based upon review of the following:

3.7.3.1.1. Matters transmitted;
3.7.3.1.2. Court-martial charges, if any;
3.7.3.1.3. Any independent review and recommendation received; and
3.7.3.1.4. Consultation with a judge advocate.

3.7.3.2. The factors in the discussion under Rule for Courts-Martial 306(b) may also be considered in the Special Court-Martial Convening Authority’s initial disposition decision.

3.7.4. Consideration of Victim’s Views on Jurisdiction and Disposition (Rule for Courts-Martial 306(e)).

3.7.4.1.1. In cases where the alleged sex offense occurs in the United States, or any political subdivision, possession or territory, thereof, the victim has the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. Special Court-Martial Convening Authority and Staff Judge Advocate responsibilities with regards to soliciting the victim’s inputs are detailed in Section 11D. Template documentation for victim input on jurisdiction is available at Figures A3.1 through A3.3.

3.7.4.1.2. Where the Special Court-Martial Convening Authority is considering taking no action or disposition by means other than court-martial, the Special Court-Martial Convening Authority will, through the Staff Judge Advocate, solicit the victim’s inputs prior to rendering a final decision. Refer to paragraph 11.16.2.2 for additional information. A sample memorandum soliciting the victim’s inputs as to disposition is included at Figure A3.8.

3.7.5. General Court-Martial Convening Authority Review of Initial Disposition Decision.

3.7.5.1. Effective 27 June 2013, the Under Secretary of the Air Force directed that the Special Court-Martial Convening Authority with initial disposition authority provide the General Court-Martial Convening Authority in the grade of O-7 or above written notice of the initial disposition within 30 days following the date of the initial disposition decision, with respect to the offenses listed in paragraphs 3.7.1.1 through 3.7.1.4. (T 1). See Figure A3.19. A template notice is available at Figure A3.11.

3.7.5.2. When disposition of the alleged offense is complete, the General Court-Martial Convening Authority signs the written review of the Initial Disposition Authority’s action. This responsibility is not delegable. A template review is included at Figure A3.12. This review is maintained by Air Force Office of Special Investigations or Security Forces Office of Investigations. Note: For additional review of General Court-Martial Convening Authority decisions not to refer a sex assault charge to court-martial, see paragraph 4.22.
Section 3D—Preferral of Charges (Article 30, UCMJ; Rule for Courts-Martial 307)

3.8. Considerations Prior to Preferral of Charges.

3.8.1. Accuser is Senior to the Convening Authority. Consult Rules for Courts-Martial 504(c)(2) and (3) when the accuser is senior in rank to the convening authority.

3.8.2. 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, Research and Development special access program, Air Force Office of Special Investigations 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. (T 1) 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.

3.8.2.1. 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 preliminary hearing 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 permission to proceed be sought before preferral and as soon as possible due to the length of time it takes to process these requests.

3.8.2.2. The Deputy Chief of Staff, Intelligence, Surveillance and Reconnaissance (AF/A2) has eliminated the discharge for cause program for personnel with Sensitive Compartmented Information access. Therefore, commanders are no longer required to submit a written request for personnel with sensitive compartmented information access. All other permission to proceed requirements are unchanged.

3.8.3. Preferral in Lengthy Absence Cases. Effective 14 November 1986, summary court-martial convening authorities are no longer required to receipt for charges alleging either desertion or absent without leave in order to toll the statute of limitations. Article 43, UCMJ. Therefore, where an unauthorized absence began after 14 November 1986, the statute of limitations is automatically tolled. With the exception of those cases involving desertion or absent without leave during a time of war, if the unauthorized absence began before or on 14 November 1986, the statute of limitations was tolled only (1) upon receipt of sworn charges and specifications by an officer exercising Summary Court-Martial convening authority within the statute of limitations period; or (2) if the accused was absent from territory in which the United States has authority to apprehend the accused, in the custody of civil authorities, or in the hands of the enemy. Thus, charges are not viable in a case alleging desertion or an unauthorized absence, either of which began before 14 November 1986, where preferral and receipt of charges was not accomplished, unless desertion or absence occurred during a time of war.

3.8.4. Involuntary Extension Beyond Expiration of Term of Service.
3.8.4.1. Airmen may be involuntarily retained beyond their expiration of term of service to undergo court-martial. The involuntary extension may be done in anticipation of the preferral of charges. The Staff Judge Advocate notifies the Air Force Personnel Center’s Separations Branch in writing through the local Force Support Squadron Career Development Section. Contact the Force Support Squadron Career Development Section to ensure the written notice was sent to the Air Force Personnel Center and the involuntary extension was done. AFPC/JA is available to assist Staff Judge Advocates with involuntary extensions of expiration of term of service. Note: an “administrative hold” may affect a member’s date of separation and prevent a permanent change of station or temporary duty, but it does not affect a member’s expiration of term of service or equate to an involuntary extension. See AFI 36-3208, Administrative Separation of Airmen; Webb v. United States, 67 M.J. 765 (A.F.C.C.A. 2009).

3.8.4.2. Time spent in confinement is generally considered “lost time” or non-creditable service and may serve as grounds to extend a member’s expiration of term of service for administrative discharge proceedings. See AFI 36-2134, Air Force Strength Accounting Duty Status Program, paragraph 3.4.1. Legal offices considering extending a member’s expiration of term of service for administrative discharge (as opposed to court-martial) should consult with AFPC/JA.

3.8.5. Retirement Holds and Other Actions Taken to Suspend or Cancel Separation Processing. If a member has applied to retire or has been approved to retire, the retirement may be suspended or cancelled by contacting the Air Force Personnel Center Retirements Branch with notice that the member is under investigation. If charges do not materialize or a punitive discharge is not adjudged at trial, the member’s retirement may be reinstated or they may reapply for retirement. Likewise, if the member is pending an approved separation date, whether voluntary or involuntary, separation authorities may withhold execution of the discharge or withdrawal approval by providing similar notice to the Air Force Personnel Center Separations Branch. Note that the common “administrative hold” may stop a member’s permanent change of station or temporary duty, but it does not prevent a member from retiring on an approved retirement date or separating on an approved separation date. See AFI 36-3203, Service Retirements.

3.8.6. Accused With Prior Adjudged Punitive Discharge. If an accused has an approved but unexecuted punitive discharge, the Staff Judge Advocate for the Special Court-Martial Convening Authority immediately notifies AFLOA/JAJM concerning preferral of new charges, with information copies sent to the appropriate General Court-Martial Convening Authority and major command Staff Judge Advocates. (T 1). This notice enables AFLOA/JAJM to ensure that the execution of the previous punitive discharge does not occur, providing continuing court-martial jurisdiction over the accused.

3.8.7. 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 10 U.S.C. § 2005(g), or 37 U.S.C. § 303a(e). The member should sign a statement of understanding regarding recoupment as shown in Figure A3.14. This notice is included in the record of trial with pretrial allied papers in accordance with AFMAN 51-203, Records of Trial, Figure 4.1, paragraph 21.
3.9. Charge Sheet (DoD Form 548, Charge Sheet).

3.9.1. Prepare charges and specifications on the DoD Form 458, Charge Sheet. The Charge Sheet is prepared by inputting the data into the Automated Military Justice Analysis and Management System and printing the electronic version of the DoD Form 458. Information in the Automated Military Justice Analysis and Management System is reflected as follows:

3.9.1.1. Blocks 1, 2, 3 and 4. Autofill information in the Automated Military Justice Analysis and Management System from the Air Force Personnel Center 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.

3.9.1.2. Block 5. Enter the accused’s assigned organization under the “Duty Status” tab. The address should reflect the base name, state and zip. Ensure the correct pull down is selected for your major command. At squadron level, enter “111th Civil Engineer Squadron,” not “111th Civil Engineering Squadron Section.” For members of the Reserve and Air National Guard serving on extended active duty, use the organization to which they are attached for active duty.

3.9.1.3. Block 6. The accused’s current service is the date the current enlistment began for enlisted personnel or 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 Reports on Individual Personnel (RIPs) against the information autofilled from the Air Force Personnel Center.

3.9.1.4. Block 7. The accused’s current pay per month is entered automatically based on the listed grade and should be updated if necessary, particularly if the incorrect grade is listed. If the accused’s grade changes prior to arraignment, the pay may be corrected with a pen and ink change and initials.

3.9.1.5. Blocks 8 and 9. Include any form of restraint, including restraint by civil authorities at the request of the Air Force, by adding the pretrial restraint folder under the pretrial information data. An example of this is when a member in absent without leave or deserter status is apprehended by civilian police and incarcerated or detained until Air Force officials take custody of the accused.


3.9.2.1. 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.

3.9.2.2. Additional Charges. When additional charges are preferred, add “Additional Charges Preferred.” The Automated Military Justice Analysis and Management System will label the charges as ADDITIONAL CHARGES. If charges are preferred after preferral of additional charges, add another “Additional Charges Preferred” folder in the Automated Military Justice Analysis and Management System. The Automated Military Justice Analysis and Management System will label each new set of charges with written numbers (e.g., SECOND ADDITIONAL CHARGES, THIRD ADDITIONAL CHARGES).

3.9.2.3. 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 major command. 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. Rule for Courts-Martial 307(c)(3), Discussion.

3.9.2.4. 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 and the Report of Result of Trial. See paragraph 9.7.

3.9.2.5. Pleading Check Cases. Where a check or other instrument appears regular 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 A3.13. If in doubt, plead the check verbatim, but include only the portions applicable at the time of the offense.

3.9.2.6. Pleading Child Pornography Cases. Exercise care in drafting specifications in a case involving multiple images of child pornography. See United States v. Piolunek, 72 M.J. 830 (A.F.C.C.A. 2013), aff’d 74 M.J. 107 (C.A.A.F. 2015). The best method of pleading a child pornography case will depend on the facts unique to that case. In certain cases, it may be prudent to charge each image as its own specification, while in other cases this approach may not be viable. Staff Judge Advocates and trial counsel should consult the latest case law and with AFLOA/JAJG or experts at higher headquarters as appropriate.

3.10. Forwarding of Charges (Rule for Courts-Martial 401). The commander forwards the charges to the convening authority by attaching an indorsement (Figure A3.15.) to the charge sheet. Attach a personal data sheet on the accused (Figure A3.16.) and a copy of the report of investigation or other evidence supporting the charges. Documents forwarded should be redacted to remove any Privacy Act information not relevant to the charges prior to forwarding to the convening authority for consideration on disposition of 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 Special Court-Martial Convening
Authority over the accused. If additional charges are later added, forward them with a new indorsement.

3.11. Receipt of Charges (Rule for Courts-Martial 403). A judge advocate may receipt for charges on behalf of the Special Court-Martial Convening Authority if the convening authority delegates that authority. If delegated, receive the charges “FOR THE COMMANDER.”

3.12. Release of Information to Defense Counsel. Staff Judge Advocates 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.

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

3.12.1.1. A copy of DoD Form 458;
3.12.1.2. A copy of the commander’s indorsement to the DoD Form 458 with all attachments; and
3.12.1.3. 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.

3.12.2. When stating that certain documents are protected from release, or that certain discoverable documents should be redacted before being provided to defense counsel, trial counsel should distinguish between rules pertaining to discovery and rules pertaining to the release of information to a third party (such as the Freedom of Information Act or Privacy Act). Trial counsel should maintain an unredacted copy of any redacted items provided to defense in the event unredacted items must later be provided to defense.

3.12.2.1. Releasing Privacy Act Material to Military Defense Counsel. When releasing Privacy Act material to military defense counsel, trial counsel should redact non-discoverable Privacy Act information regarding individuals other than the accused. An example of this would be social security numbers of individuals providing urinalysis samples, which are listed in an otherwise discoverable document, but which have no relevance to the case. When Privacy Act material is not redacted in discovery material, defense counsel should take appropriate steps to guard against improper release of this information.

3.12.2.2. Releasing Privacy Act Material to Civilian Defense Counsel. When releasing Privacy Act material to civilian defense counsel, trial counsel should redact non-discoverable Privacy Act information regarding individuals other than the accused. An example of this would be social security numbers of individuals providing urinalysis samples, which are listed in an otherwise discoverable document, but which have no relevance to the case. Additionally, when Privacy Act material is not redacted in discovery material, trial counsel should obtain a signed statement from the civilian defense counsel stating the defense counsel agrees not to release Privacy Act information to others not involved with the defense of the case, using the format set forth at Figure A3.17.
3.12.3. Defense counsel are 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.


3.12.5. These provisions are not intended to create any substantive right to discovery, which is described in the Rules for Courts-Martial, including Rule for Courts-Martial 701. After referral of charges to trial, both trial and defense counsel conduct discovery in accordance with Rule for Courts-Martial 701.

3.13. Release of Information to Special Victims’ Counsel. Requests from Special Victims’ Counsel for records pertaining to a court-martial proceeding involving their clients are properly addressed as “official use” requests under the Privacy Act and Freedom of Information Act. See 5 U.S.C. § 552a(b)(1). Staff Judge Advocates release those records that are minimally required to accomplish the Special Victims’ Counsel’s intended use as articulated in the request. See DoD 5400.11-R, Department of Defense Privacy Program, paragraph C4.2.1. When Privacy Act material is not redacted from records released to a Special Victims’ Counsel for official use, the Special Victims’ Counsel is responsible for protecting the information and taking steps to guard against its improper release.
Chapter 4

FORWARDING AND REFERRAL OF CHARGES

Section 4A—Article 32, UCMJ, Preliminary Hearings (Rules for Courts-Martial 404(e), 405, 406(b)(2), 601(d))

4.1. Preliminary Hearings.

4.1.1. Requirement for a Preliminary Hearing. No charge or specification may be referred to a general court-martial until completion of a preliminary hearing pursuant to Article 32, UCMJ, unless the accused waives the right to a preliminary hearing. Rule for Courts-Martial 405.

4.1.2. Purpose of the Preliminary Hearing. The purpose of the Article 32 preliminary hearing is limited to an examination of those issues necessary to determine whether there is probable cause to conclude that an offense has been committed and whether the accused committed it. The other limited functions of the preliminary hearing are to determine whether a court-martial would have jurisdiction over the offenses(s) and the accused; to consider the form of the charge(s); and to recommend the disposition that should be made of the charge(s).

4.2. Preliminary Hearing Personnel.

4.2.1. Preliminary Hearing Officer.

4.2.1.1. Appointment. A convening authority directs an Article 32 preliminary hearing by appointing the Preliminary Hearing Officer in writing. See sample appointment letter at Figure A4.1.

4.2.1.2. Qualifications of the Preliminary Hearing Officer. The convening authority directing a preliminary hearing will appoint an impartial judge advocate as the Preliminary Hearing Officer. The Preliminary Hearing Officer should be certified under Article 27(b), UCMJ. If precluded by military necessity or other compelling circumstances, the Preliminary Hearing Officer may be a judge advocate who is not certified under Article 27(b), UCMJ, including Reserve/Guard judge advocates who may be detailed to serve as a Preliminary Hearing Officer while on active duty or performing inactive duty training. Article 136(b), UCMJ, authorizes Reserve judge advocates to administer oaths while on active duty or performing inactive duty training. Air National Guard judge advocates must be on Title 10 orders. The accuser may not serve as the Preliminary Hearing Officer. Whenever practicable, the Preliminary Hearing Officer shall be equal to or senior in grade to military counsel detailed to represent the accused and the government at the preliminary hearing. The Preliminary Hearing Officer may be a military judge. Requests for a military judge to serve as a Preliminary Hearing Officer are coordinated with AF/JAT.

4.2.2. Counsel.

4.2.2.1. Counsel for the Government. A judge advocate, who is not the accuser, serves as counsel to represent the United States. The judge advocate serving as the counsel for the government need not be certified under Article 27(b), UCMJ.
4.2.2.2. Counsel for the Accused. The accused has the right to be represented by military defense counsel certified under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ. The accused may also be represented by civilian defense counsel at no expense to the government. Article 38, UCMJ. Civilian defense counsel must take an oath to perform his or her duties faithfully when representing an accused. The Preliminary Hearing Officer administers this oath. The accused may represent him or herself, but this right is not absolute. See United States v. Bramel, 29 M.J. 958 (A.C.M.R. 1990), aff’d, 32 M.J. 3 (C.M.A. 1990).

4.3. Scheduling and Pre-Hearing Matters.

4.3.1. Delays and Resulting Speedy Trial Issues. The convening authority may approve a delay of the Article 32 preliminary hearing. The period of time of such approved delays are excluded when determining whether the period in Rule for Courts-Martial 707(a) has run. Prior to referral, the convening authority may delegate the authority to grant a delay to an Article 32 Preliminary Hearing Officer. The Preliminary Hearing Officer has no independent authority to exclude time under Rule for Courts-Martial 707(c).

4.3.2. Disclosure.

4.3.2.1. Disclosure After Article 32 Preliminary Hearing Officer Appointment. Prior to the preliminary hearing and within five calendar days of issuance of the Article 32 appointment letter, counsel for the government must provide to defense the following in accordance with Rule for Courts-Martial 404A:

4.3.2.1.1. Charge Sheet;
4.3.2.1.2. Article 32 appointment letter;
4.3.2.1.3. Documents accompanying the charge sheet on which the preferral decision was based;
4.3.2.1.4. Documents provided to the convening authority when deciding to direct the preliminary hearing;
4.3.2.1.5. Documents government counsel intends to present at the hearing; and
4.3.2.1.6. Access to tangible objects government counsel intends to present at the preliminary hearing.

4.3.2.2. Should government counsel fail to comply with the provisions of Rule for Courts-Martial 404A, the Preliminary Hearing Officer shall note the issue in the preliminary hearing report. Further, if the convening authority has given the Preliminary Hearing Officer the authority to grant delays, the Preliminary Hearing Officer may grant a reasonable delay to allow government counsel to comply with the above disclosure requirements.

4.3.2.3. Disclosure Prior to the Preliminary Hearing. Prior to the preliminary hearing, government counsel shall provide to defense the following in accordance with Rule for Courts-Martial 405(f)(1):

4.3.2.3.1. Notice of any witnesses that the counsel for the government intends to call at the preliminary hearing;
4.3.2.3.2. Copies of or access to any written or recorded statements made by the witnesses government counsel intends to call at the preliminary hearing that relate to the subject matter of any charged offense (definitions of “written statement” and “recorded statement” are provided in Rule for Courts-Martial 405(f)(1)(A));

4.3.2.3.3. Notice of, and reasonable access to, any other evidence government counsel intends to offer at the preliminary hearing; and

4.3.2.3.4. Notice of, and reasonable access to, evidence that is within the possession or control of government counsel that negates or reduces the degree of guilt of the accused for an offense charged.

4.3.2.4. Victim Testimony. A victim of an offense under consideration at the preliminary hearing is not required to testify at the preliminary hearing pursuant to Article 32(d)(3), UCMJ. A victim who declines to testify is deemed to be unavailable for purposes of the preliminary hearing. When a victim is not available to testify, the Preliminary Hearing Officer may consider other evidence, including a victim’s prior written statements. See paragraph 4.4.8. A “victim” of an offense is any person who has suffered direct, physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ. See Article 6b, UCMJ.

4.3.3. Production of Witnesses and Evidence.

4.3.3.1. Defense Counsel Request for Production of Witnesses. The Preliminary Hearing Officer may establish a timeline prior to the preliminary hearing by which defense counsel shall provide to government counsel the names of proposed military and civilian witnesses whom the accused requests the government produce to testify at the preliminary hearing, and the requested form of the testimony.

4.3.3.2. Response to Defense Counsel Request for Witnesses. Upon receipt of a request from defense counsel to produce proposed military and civilian witnesses, government counsel may either agree that the witness testimony is relevant, not cumulative, and necessary for the limited scope and purpose of the preliminary hearing and will seek to secure the witness’s testimony for the hearing; or, object to the proposed defense witness on the ground that the testimony would be irrelevant, cumulative, or unnecessary based on the limited scope and purpose of the preliminary hearing. Government counsel provides this response in writing per the timeframe established by the Preliminary Hearing Officer.

4.3.3.3. Response to Government’s Objections to Witnesses. Should government counsel object to a witness requested by defense counsel, defense counsel may request, in writing, that the Preliminary Hearing Officer determine whether the witness is relevant, not cumulative, and necessary based on the limited scope and purpose of the preliminary hearing.

4.3.3.4. Military Witness Availability. If government counsel does not object to the defense-requested military witness or the Preliminary Hearing Officer determines that the military witness is relevant, not cumulative, and necessary, counsel for the government shall request that the commander of the military witness make that person available to provide testimony.
4.3.3.5. Commander Determination of Witness Availability. The commander of the witness at the time of the preliminary hearing determines whether the individual is available based on operational necessity or mission requirements, except with respect to a victim who declines to testify pursuant to Article 32(d)(3), UCMJ. The commander’s determination of whether an individual is available, as well as the means by which the individual is available, is a balancing test. The more important the testimony of the witness, the greater the difficulty, expense, delay, or effect on military operations must be to deny production of the witness. Based on operational necessity and mission requirements, the witness’s commander may authorize the witness to testify by video teleconference, telephone, or similar means of remote testimony. Factors to be considered in making this determination include the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the proceeding that may be caused by the production of the witness; and the likelihood of significant interference with operational deployment, mission accomplishment, or essential training. The commander’s determination is final. The commander’s determination may be made in writing, via email, or orally. The commander also resolves any dispute among the parties on whether the witness will testify in person, by video teleconference, by telephone, or by similar means of remote testimony. If there is a dispute between the parties as to the form of testimony, the commander’s decision should be in writing and included in the final report. The counsel for the government shall make arrangements for any military witness’s testimony.

4.3.3.6. Civilian Witnesses. If government counsel does not object to the defense-requested civilian witness or the Preliminary Hearing Officer determines the civilian witness to be relevant, not cumulative, and necessary, government counsel shall send a written invitation to the civilian witness to provide testimony and, if the individual agrees, government counsel shall make arrangements for that witness’s testimony. If expense to the government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority’s delegate, determines whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony. See Rule for Courts-Martial 405(g)(2).

4.3.3.7. Defense Counsel Request for Production of Evidence. The Preliminary Hearing Officer may establish a timeline prior to the preliminary hearing by which defense counsel is to provide government counsel a list of evidence the accused requests the government produce to the defense for introduction at the preliminary hearing. See Rule for Courts-Martial 405(g)(3). This timeline does not convey a right to discovery of evidence for future consideration by the defense. The Rule for Courts-Martial is limited to defense requests for evidence that the defense will seek to introduce at the preliminary hearing.

4.3.3.8. Response to Defense Counsel Request for Evidence. Upon receipt of a request from defense counsel to produce evidence for introduction at the preliminary hearing, counsel for the government shall either agree that the evidence is relevant, not cumulative, and necessary for the limited scope and purpose of the preliminary hearing and will make reasonable efforts to obtain the evidence; or, object to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary based on the limited scope and purpose of the preliminary hearing.
Government counsel must provide this response per the timeline established by the Preliminary Hearing Officer. If government counsel does not object to production of the defense-requested evidence, counsel for the government shall issue subpoenas duces tecum for the evidence.

4.3.3.9. Response to Government’s Objections to Evidence. Should government counsel object to production of evidence requested by defense counsel, defense counsel may request, in writing, that the Preliminary Hearing Officer determine whether the requested evidence should be produced.

4.3.3.9.1. Evidence Under the Control of the Government. If the Preliminary Hearing Officer determines the evidence is relevant, not cumulative, and necessary based on the limited scope and purpose of the preliminary hearing, then government counsel will make reasonable efforts to obtain the evidence. If those reasonable efforts are unsuccessful in obtaining the evidence, the Preliminary Hearing Officer shall note it in the report, to include what specific efforts were made.

4.3.3.9.2. Evidence Not Under the Control of the Government. If the Preliminary Hearing Officer determines the defense-requested evidence is relevant, not cumulative, and necessary based on the limited scope and purpose of the preliminary hearing, and that the issuance of subpoenas duces tecum would not cause undue delay to the preliminary hearing, the Preliminary Hearing Officer shall direct government counsel to issue subpoenas duces tecum for the defense-requested evidence. The Preliminary Hearing Officer notes in the preliminary hearing report any failure on the part of government counsel to issue subpoenas duces tecum as directed, or failure of the custodian of the evidence to answer the subpoenas duces tecum.

4.4. Conducting and Recording the Preliminary Hearing.

4.4.1. Recording of the Preliminary Hearing. Pursuant to Article 32(e), all preliminary hearings are recorded. Government counsel shall ensure the preliminary hearing is recorded by a suitable government recording device. A suitable government back-up recording by government counsel is also allowed. No other recordings of the preliminary hearing are allowed. A verbatim transcript is not required to be completed by the government following the hearing. The Staff Judge Advocate may authorize the completion of a verbatim transcript of the hearing.

4.4.2. Informing the Accused. At the beginning of the preliminary hearing, the Preliminary Hearing Officer informs the accused of the matters in Rule for Courts-Martial 405(f) and listed on the DoD Form 457, Preliminary Hearing Officer’s Report (December 2014), Item 10.

4.4.3. Preliminary Hearing Officer Limitations. Preliminary Hearing Officers are limited to an examination of the issues necessary to fulfill the purpose of the preliminary hearing described in paragraph 4.1.3. The Preliminary Hearing Officer is limited to hearing testimony and examining evidence presented by government and defense counsel. The Preliminary Hearing Officer may question witnesses called by government and defense counsel.

4.4.4. Presentation of Evidence. The Military Rules of Evidence do not apply to Article 32 preliminary hearings, except as discussed below. See Rule for Courts-Martial 405(h). Table
4.1 lists the Military Rules of Evidence that apply in their entirety. Table 4.2 lists the Military Rules of Evidence that apply in part.

### Table 4.1. Military Rules of Evidence that Apply in Their Entirety

<table>
<thead>
<tr>
<th>Military Rule of Evidence</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>301</td>
<td>privilege concerning compulsory self-incrimination</td>
</tr>
<tr>
<td>302</td>
<td>privilege concerning mental examination of an accused</td>
</tr>
<tr>
<td>303</td>
<td>degrading questions</td>
</tr>
<tr>
<td>305</td>
<td>warnings about rights</td>
</tr>
<tr>
<td>501</td>
<td>privilege in general</td>
</tr>
<tr>
<td>502</td>
<td>lawyer-client privilege</td>
</tr>
<tr>
<td>503</td>
<td>communications to clergy</td>
</tr>
<tr>
<td>504</td>
<td>husband-wife privilege</td>
</tr>
<tr>
<td>507</td>
<td>identity of informants</td>
</tr>
<tr>
<td>508</td>
<td>political vote</td>
</tr>
<tr>
<td>509</td>
<td>deliberations of courts and juries</td>
</tr>
<tr>
<td>510</td>
<td>waiver of privilege by voluntary disclosure</td>
</tr>
<tr>
<td>511</td>
<td>privilege matter disclosed under compulsion without opportunity to claim privilege</td>
</tr>
<tr>
<td>512</td>
<td>comment upon or inference from claim of privilege; instruction</td>
</tr>
<tr>
<td>513</td>
<td>psychotherapist-patient privilege</td>
</tr>
</tbody>
</table>

### Table 4.2. Military Rules of Evidence that Apply in Part

<table>
<thead>
<tr>
<th>Military Rule of Evidence</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>505</td>
<td>classified information</td>
</tr>
<tr>
<td>506</td>
<td>government information other than classified information</td>
</tr>
<tr>
<td>412</td>
<td>sex offenses: the victim’s sexual behavior or predisposition</td>
</tr>
<tr>
<td>514</td>
<td>victim advocate-victim privilege</td>
</tr>
</tbody>
</table>
4.4.5. Rulings on Evidence. In applying a Military Rule of Evidence to a preliminary hearing, the term “military judge” shall mean Preliminary Hearing Officer. The Preliminary Hearing Officer assumes the military judge’s authority to exclude evidence from the preliminary hearing and, in discharging this duty, follows the procedural requirements of the corresponding Military Rules of Evidence. Failure of either party to follow the procedural requirements of the corresponding Military Rules of Evidence ordinarily results in exclusion of evidence from the preliminary hearing, unless good cause is shown. The Preliminary Hearing Officer stands in the place of a military judge with respect to an Military Rules of Evidence that applies to the preliminary hearing as articulated in Rule for Courts-Martial 405(h). The Preliminary Hearing Officer has the authority to conduct closed hearings and to seal records. The Preliminary Hearing Officer notes the beginning and the end time of any closed hearing.

4.4.6. Military Rule of Evidence 412. Military Rule of Evidence 412 applies in any case that includes a charge defined as a sexual offense under Military Rule of Evidence 412(d). However, Military Rule of Evidence 412(b)(1)(C), the constitutionally required exception, does not apply. See Rule for Courts-Martial 405(h)(2). The Preliminary Hearing Officer assumes the military judge’s authority to follow procedures in Military Rules of Evidence 412 and to exclude evidence from the preliminary hearing. See Rule for Courts-Martial 405(h)(4). Sexual behavior is defined as “any sexual behavior not encompassed by the alleged offense.” Sexual predisposition refers to an alleged victim’s “mode of dress, speech or lifestyle that does not directly relate to sexual activities or thoughts but that may have a sexual connotation for the fact finder.” See Military Rule of Evidence 412(d).

4.4.7. Hearing Order of Events. After the Preliminary Hearing Officer has informed the accused of the accused’s rights, and completed preliminary evidentiary hearings, government counsel will present evidence. Witness testimony may be provided in-person, by video teleconference, by telephone or similar means of remote testimony. All testimony, except that of an unsworn statement of the accused, is taken under oath. See Rule for Courts-Martial 405(i)(3)(A). Upon the conclusion of government counsel’s presentation of evidence, defense counsel may present matters in defense and mitigation. See Rule for Courts-Martial 405(i). For purposes of the preliminary hearing, “matters in mitigation” are defined as matters that may serve to explain the circumstances surrounding a charged offense. The Preliminary Hearing Officer provides government counsel and defense counsel opportunity to cross-examine adverse witnesses on matters relevant to the limited scope and purpose of the preliminary hearing. See Rules for Courts-Martial 405(f)(2)(F), 405(i)(1).

4.4.8. Other Evidence. If relevant to the limited scope and purpose of the preliminary hearing, and not cumulative, the Preliminary Hearing Officer may consider other evidence, in addition to or in lieu of witness testimony (including victims), including statements, tangible evidence, or reproductions thereof, when submitted by either government counsel or defense counsel, that the Preliminary Hearing Officer determines to be reliable. This other evidence need not be sworn. See Rule for Courts-Martial 405(i)(3)(B).

4.4.9. Evidence Not Under Control of the Government. Evidence not under the control of the government may be obtained through noncompulsory means or by subpoenas duces tecum issued by government counsel. The Preliminary Hearing Officer cannot personally issue subpoenas duces tecum.
4.4.10. Public Access. Ordinarily, preliminary hearings are open to the public, including access by news media, whenever possible. Victims are entitled under Article 6b, UCMJ, to be present and may only be excluded if the Preliminary Hearing Officer determines by clear and convincing evidence that the testimony by the victim of an offense under the UCMJ would be materially altered if the victim heard other testimony at the hearing. If a Preliminary Hearing Officer excludes a victim from the hearing, the Preliminary Hearing Officer shall provide specific findings of fact in writing that support the exclusion and includes the written findings of fact in the Preliminary Hearing Officer’s report.

4.4.10.1. Closing a Hearing. Access by spectators to all or part of the proceeding may be restricted or foreclosed at the discretion of the convening authority who directed the preliminary hearing, or at the Preliminary Hearing Officer’s discretion when an overriding interest exists that outweighs the value of an open preliminary hearing. The convening authority or the Preliminary Hearing Officer must conclude that no lesser methods short of closing the preliminary hearing can be used to protect the overriding interest in the case before closing the hearing, and any closure must be narrowly tailored to achieve the overriding interest that justified the closure. The convening authority or the Preliminary Hearing Officer conducts a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. The Preliminary Hearing Officer should make every effort to close only those portions of the preliminary hearing that are clearly justified and keep the remaining portions of the preliminary hearing open. If the Preliminary Hearing Officer closes a hearing, the Preliminary Hearing Officer provides specific findings of fact in writing that support the closure and includes the written findings of fact in the Preliminary Hearing Officer’s report.

4.4.10.2. Reopening a Closed Hearing. A convening authority may reopen an Article 32 preliminary hearing that a Preliminary Hearing Officer previously closed. Prior to issuing procedural instructions to reopen a hearing, the convening authority must consider the Preliminary Hearing Officer’s written reasons for closing the hearing.

4.4.11. Special Victims’ Counsel Access to Hearing. Special Victims’ Counsel are entitled to attend all open sessions and all closed sessions involving their clients. (T-0).

4.4.12. Potential Witnesses. Although potential witnesses are normally excluded from watching the proceedings, the Preliminary Hearing Officer has the authority to permit some potential witnesses (e.g., experts) to be present if the Preliminary Hearing Officer considers their presence helpful to the proceedings. As stated in paragraph 4.4.10, victims have an Article 6b right to be present at the preliminary hearing.

4.4.13. Handling Other Offenses.

4.4.13.1. Authority to Examine other Offenses. If evidence adduced during the preliminary hearing indicates the accused committed an uncharged offense, the Preliminary Hearing Officer may examine evidence and hear witnesses relating to the subject matter of such offense and make the findings and recommendations enumerated in Rule for Courts-Martial 405(e)(1) regarding such offense without the accused first having been charged with the offense. The accused’s rights under Rule for Courts-Martial 405(f)(2) are the same with regard to both charged and uncharged offenses.
4.4.13.2. Procedure for Handling Other Offenses. When considering uncharged offenses identified during the preliminary hearing, the Preliminary Hearing Officer informs the accused of the general nature of each uncharged offense considered, either at the outset of the hearing or at any point during the hearing where the potential offense is revealed, and otherwise affords the accused the same opportunity for representation, cross-examination, and presentation afforded during the preliminary hearing of any charged offense. Specifically, the Preliminary Hearing Officer (1) informs the accused and counsel that the hearing or the presented evidence has disclosed that the accused is reasonably suspected of offenses other than the ones charged, (2) identifies these offenses to the accused and counsel, and (3) informs all parties that the preliminary hearing is enlarged to encompass the additional offense. The Preliminary Hearing Officer proceeds with the preliminary hearing of the new offenses. If the evidence presented supports the offense, the Preliminary Hearing Officer includes in the Preliminary Hearing Officer’s report a recommendation of disposition of charges, which may include recommendations concerning preferral of new charges prior to anyone forwarding them for referral.

4.4.13.3. Later Preferral of Other Offenses Examined at Preliminary Hearing. If an uncharged offense examined by the Preliminary Hearing Officer in the preliminary hearing is later preferred, the General Court-Martial Convening Authority may refer the offense to court-martial without convening an additional preliminary hearing, provided the Staff Judge Advocate’s Article 34, UCMJ pretrial advice addresses the offense. See Rule for Courts-Martial 601(d)(2).


4.5.1. Assembly of the Preliminary Hearing Officer Report. The Preliminary Hearing Officer Report contains the following: DoD Form 457, *Preliminary Hearing Officer Report*, and any attachments; DoD Form 458, *Charge Sheet*, and any attachments; the Preliminary Hearing Officer appointment letter; and the suitable government recording of the hearing. Summarized testimony of the witnesses is required if the recording of the hearing is not attached to the Preliminary Hearing Officer Report.

4.5.2. Distribution of the Report. The Preliminary Hearing Officer delivers the Preliminary Hearing Officer Report to the Staff Judge Advocate of the convening authority who directed the Article 32 preliminary hearing.

4.5.3. Right to Object. Any objections to the Preliminary Hearing Officer Report must be submitted to the convening authority who directed the preliminary hearing within five 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 five-day period.

4.5.4. Copy of the Recording. Government counsel provides a copy of the recording of hearing to the Preliminary Hearing Officer as soon as practicable following the conclusion of the hearing. The Preliminary Hearing Officer attaches a copy of the recorded preliminary hearing to the Preliminary Hearing Officer report. Upon written request from the victim or victim’s counsel, government counsel provides the victim a copy of or access to the recording upon completion of the Preliminary Hearing Officer’s report. Government counsel also provides a copy of the recording to defense counsel at the same time. In exceptional circumstances, the Staff Judge Advocate may delay immediate release to the victim or defense counsel. If immediate release is delayed by the Staff Judge Advocate, the Staff
Judge Advocate puts in writing and provides to the victim, the victim’s counsel (if applicable), and defense counsel the reasons for the delay and the expected date the recording will be released.

4.5.5. Forwarding the Article 32 Preliminary Hearing Report to a Superior Convening Authority. If the convening authority who directed the preliminary hearing decides to forward the Article 32 report to a superior Court-Martial Convening Authority for disposition, the convening authority who directed the preliminary hearing prepares a forwarding letter, which includes a recommendation for disposition of the charge(s). This letter is forwarded to the superior Court-Martial Convening Authority through the superior convening authority’s Staff Judge Advocate and includes the following documents as attachments: the charge sheet, the commander’s indorsement to the charge sheet, and the Preliminary Hearing Officer Report (with the Preliminary Hearing Officer appointment letter and any written objections attached to the report). If the superior convening authority is going to detail members to a court-martial to try the case, the Staff Judge Advocate provides a list of court member nominees and data to the superior convening authority. United States v. Credit, 2 M.J. 631 (A.F.C.M.R. 1976); Rule for Courts-Martial 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 (Article 135, UCMJ; Manual for Courts-Martial, Part I, Paragraph 2(b)(3))

4.6. 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 General Court-Martial Convening Authority may convene a court of inquiry. A court of inquiry should not be used when statute or regulation otherwise provides specific investigative procedures for a matter. A court of inquiry should not be used in place of an Article 32 preliminary hearing, 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 Rule for Courts-Martial 405(b) are met, an Article 32 preliminary hearing may not be necessary.

4.7. Personnel.

4.7.1. Members of the Court of Inquiry. A court of inquiry consists 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.

4.7.2. 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.

4.7.3. 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 is given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

4.7.4. 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 court-martial. Any party may retain a civilian counsel at no expense to the government. See Article 135(e), UCMJ; Military Rule of Evidence 305(d)(2); Rule for Courts-Martial 502(d)(3).

4.7.5. Reporter. A qualified court reporter records the proceedings and testimony and prepares a record of the proceedings for authentication by the president.


4.8.1. Convening Order. Use the sample format in Figure A4.2 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 this 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.

4.8.2. 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 legal advisor, rules on challenges.

4.8.3. 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.


4.8.5. Witnesses. The president of the court may issue subpoenas for civilian witnesses. Rule for Courts-Martial 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.

4.8.6. 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.

4.8.7. Record of the Court of Inquiry. Each court keeps a record of its proceedings. The record is authenticated 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 Staff Judge Advocate. The Staff Judge Advocate’s legal review includes a summary of the proceedings, a determination of the legal sufficiency of the proceedings, and a recommended action. If the record of the proceedings is to be used as a substitute for an Article 32 preliminary hearing, it must comply with the requirements of Rule for Courts-Martial 405(i).

4.8.8. 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 (Rule for Courts-Martial 702)

4.9. Requesting and Ordering a Deposition. If, after preferral of charges, it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at a preliminary hearing or court-martial, government counsel or the Staff Judge Advocate may request the convening authority order a deposition pursuant to Rule for Courts-Martial 702(a).

4.9.1. The convening authority determines whether the requesting party has shown by a preponderance of the evidence that, because of exceptional circumstances and in the interest of justice, the testimony must be taken and preserved for use at a preliminary hearing or court-martial. See Rule for Courts-Martial 702(c)(3)(A). A victim’s declination to testify at a preliminary hearing pursuant to Article 32(d)(3), UCMJ, or declination to submit to pretrial interviews shall not, by itself, be considered exceptional circumstances. See Rule for Courts-Martial 702(a).

4.9.2. When ordering a deposition, the convening authority details a deposition officer with the qualifications set forth in Rule for Courts-Martial 702(d)(1). A sample appointment memorandum is provided at Figure A4.3. The duties of the deposition officer are described in Rule for Courts-Martial 702(f).

4.10. Counsel for Depositions. 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.

4.11. Recording and Authentication of Depositions.

4.11.1. Written Depositions. Depositions taken on written interrogatories are recorded and authenticated using a DoD Form 456, Interrogatories and Depositions. The DoD Form 456 is not used for oral depositions.

4.11.2. Oral Depositions. Oral depositions are conducted in accordance with the procedures in Rule for Courts-Martial 702(g)(1). Figure A4.4 provides a format for conducting and transcribing the proceeding. Oral depositions are recorded and transcribed 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. Rule for Courts-Martial 702(g)(3). The deposition officer is the custodian for the record of deposition.

4.11.2.1. If the deposition is recorded, the transcriber certifies the transcription is true and accurate. See Figure A4.5. The deposition officer authenticates the record of deposition. See Figure A4.6. The certification and authentication are included as the last pages of the deposition.

4.11.2.2. For depositions recorded by other means, a written transcript is not required unless the convening authority or military judge directs one. Rule for Courts-Martial 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 A4.7.
Section 4D—Referral and Disposition of Charges


4.12.1. Staff Judge Advocate’s Advice. A person other than the Staff Judge Advocate may prepare the pretrial advice, but the Staff Judge Advocate is, unless disqualified, responsible for it and must personally sign it. An assistant performing the duties of the Staff Judge Advocate, in the absence of, or because of the disqualification of the Staff Judge Advocate, signs “Acting as the Staff Judge Advocate.” The Staff Judge Advocate’s pretrial advice is required for all general courts-martial and is optional for special courts-martial and summary courts-martial. Pretrial advice for a case referred to a special court-martial or summary court-martial should not reference Article 34, UCMJ, or Rule for Courts-Martial 406.


4.12.2.1. The pretrial advice must include the conclusions and recommendation described in Rule for Courts-Martial 406(b).

4.12.2.2. Capital Cases. In a case referred as capital, the pretrial advice must specify the aggravating circumstances relied upon and provide the convening authority with conclusions as to whether capital referral is warranted based on the analysis as set forth in Rule for Courts-Martial 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 capital, the referral should include special instructions stating the case is to be tried as a capital case. Rule for Courts-Martial 201(f)(1)(A)(iii); Rule for Courts-Martial 1004(b)(1)(A).

4.12.3. 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. A sample format for pretrial advice is provided at Figure A4.8.

4.12.4. When drafting pretrial advice, Staff Judge Advocates should understand the difference between a specification that is warranted by the evidence but carries litigation risk versus a specification that is unwarranted by the evidence. The language “the specification is unwarranted due to the lack of evidence” prohibits the convening authority from referring that specification. Staff Judge Advocates should use this language only when advising the convening authority that the specification cannot be referred to trial. See Article 34(a)(2), UCMJ; see also United States v. Murray, 25 M.J. 445 (C.M.A. 1988).

4.13. Forwarding of Pretrial Advice. The charge sheet, the commander’s indorsement, forwarding letters or other indorsements, and, if applicable, the Preliminary Hearing Officer’s appointment letter with attachments (including the report of hearing, receipts of report and any objections) should be forwarded with the pretrial advice to the convening authority. If the Article 32 preliminary hearing is waived, forward the accused’s waiver along with the documentary evidence that the Staff Judge Advocate 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 must detail members to a court-martial to try the forwarded case, appropriate documentation should be forwarded for court-member selection. See paragraph 4.5.5.

4.14. Dismissal of Charges (Rule for Courts-Martial 401(c)(1)).
4.14.1. If the convening authority determines some of the charges or specifications will be dismissed instead of referred to court-martial, the dismissed charges or specifications should be lined out, and the dismissal dated and initialed (e.g., “Dismissed on 15 Sep 11, [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 are renumbered as necessary. If no charges remain, the convening authority withdraws the charges. Withdrawal of charges is discussed in paragraph 7.3.

4.14.2. Dismissal of charges or specifications by order of the military judge pursuant to Rule for Courts-Martial 907 or other competent legal authority is documented on the Report of Result of Trial memorandum. Thus, charges or specifications dismissed by a military judge are ordinarily not lined out on the charge sheet. See paragraph 8.2.1.4.

4.15. Referral of Charges to Court-Martial (Rule for Courts-Martial 601). The convening authority must sign either the referral section on the DoD Form 458, Charge Sheet, or another document reflecting the intention to refer charges to trial. Such other documents may include concurrence with an Staff Judge Advocate’s pretrial advice and recommendation to refer the case to trial by a specified court-martial.

4.15.1. 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. The date should be the date the convening authority referred the charges. If the convening authority personally signs the referral, the language of “By ... Command or Order ... of...,” should be stricken and the convening authority’s signature block should be included. 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.”

4.15.1.1. Special instructions should be included in the referral block when appropriate. See Rule for Courts-Martial 601(e). For example, when additional charges are referred, the following language should be included: “To be tried with the original (charge) (charges), dated [date of preferral of original charge(s)].” Also, when a case is referred as a capital case, the following language should be included: “To be tried as a capital case.”

4.15.1.2. The Staff Judge Advocate to the Special Court-Martial Convening Authority ensures the accused’s records are 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 13.12.3. Comply with the reporting requirements of paragraph 13.12.1.

4.15.2. Disqualification of Convening Authority (Rule for Courts-Martial 601(c)).

4.15.2.1. An accuser may not refer charges to a general or special court-martial. Further, a convening authority with “an interest other than an official interest in the prosecution of the accused” is disqualified from referring that case to court-martial. Article I(9), UCMJ.

4.15.2.2. If the Special Court-Martial Convening Authority is disqualified, the case is forwarded to the General Court-Martial Convening Authority. If the General Court-Martial Convening Authority is disqualified, the major command commander determines who shall act as the General Court-Martial Convening Authority. If there is not an appropriate commander exercising General Court-Martial Convening Authority within
the command, the major command Staff Judge Advocate requests assistance from AFLOA/JAJM in the designation of a commander to serve as the General Court-Martial Convening Authority.

4.15.3. Referral Authority for Certain Sex Offenses (Rule for Courts-Martial 201(f)(1)(D)). Only a general court-martial has jurisdiction over the following offenses, if committed on or after 24 June 2014:

4.15.3.1. Rape, in violation of Article 120, UCMJ;
4.15.3.2. Sexual assault, in violation of Article 120, UCMJ;
4.15.3.3. Rape of a child or sexual assault of a child, in violation of Art 120b, UCMJ;
4.15.3.4. Forcible sodomy, in violation of Article 125, UCMJ; and
4.15.3.5. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

4.16. Transferring Charges to Parallel Convening Authority (Rule for Courts-Martial 601(g)). If it is impractical for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if already referred, to be transmitted to a parallel convening authority. This transmittal must be in writing. The original convening authority’s Staff Judge Advocate coordinates with AFLOA/JAJM and the gaining convening authority’s Staff Judge Advocate to transfer the case. (T-1).


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

4.18.1. New Referral. The new referral is documented in the same format as that on page two of the charge sheet, following the rules in paragraph 4.15. The new referral may be accomplished by typing the appropriate language on bond paper or by using the referral section from page two of another DoD Form 458. When completed, the new referral section should be cut out and attached to the charge sheet by stapling it immediately above the original referral section. A prior referral should never be removed or destroyed. If a third or subsequent referral is necessary, it should be attached in the same way as the second.

4.18.2. 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), the appropriate instructions should be incorporated in the referral section. Rule for Courts-Martial 810. For example, in a rehearing on sentence only, the following special instruction should be included: “For a rehearing on sentence only, as ordered by General Court-Martial Order No. 17, Headquarters, 18 AF, dated 4 June 2011, as to the charge and specification of which the accused was found guilty and affirmed by the Air Force Court of Criminal Appeals’ decision, dated 10 May 2011,” or a similar instruction.


4.19.1. Notification to 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 must notify AFLOA/JAJM immediately. The case currently under
review is identified by the accused’s full name, rank, and social security number and the case’s Army Court-Martial number (ACM), if available. The following information should also be provided: the nature of the new charges, the date referred, type of court-martial, anticipated date of trial, a brief statement of facts of the case, and any other information that might affect disposition of the current review concerning the case.

4.19.2. Follow-Up Messages. Follow-up messages should be sent to AFLOA/JAJM 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.

4.20. Arraignment and Pleas (Article 39(a), UCMJ). 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.

4.21. Docketing. AF/JAT is responsible for docketing procedures, which are described in the Uniform Rules of Practice Before Air Force Courts-Martial published by AF/JAT. See also paragraph 7.1.

4.22. General Court-Martial Convening Authority Decision Not to Refer Certain Sex Offense Charges.

4.22.1. In cases where the General Court-Martial Convening Authority decides not to refer a sex offense charge for which initial disposition authority has been withheld (see paragraph 3.7.1), the General Court-Martial Convening Authority forwards the decision to a superior convening authority for review as described below. (T-0). Fiscal Year 14 National Defense Authorization Act, Section 1744(d).

4.22.2. Superior General Court-Martial Convening Authority Review of Non-Referral Decision. In any case where the General Court-Martial Convening Authority decides not to refer the charge and any specification described in paragraph 3.7.1 and the General Court-Martial Convening Authority’s Staff Judge Advocate recommends in pretrial advice under Article 34, UCMJ, not to refer the charge and any specification, the General Court-Martial Convening Authority forwards the case file, described in paragraph 4.22.5, to the next superior General Court-Martial Convening Authority for review. See Figure A4.9. Pretrial advice under Article 34, UCMJ, is required if the charge and specifications have been forwarded to the General Court-Martial Convening Authority for disposition. The superior General Court-Martial Convening Authority, usually the major command commander, reviews the case and responds to the original General Court-Martial Convening Authority in writing. Figure A4.13 is a template for the superior General Court-Martial Convening Authority’s response.

4.22.3. Secretary of the Air Force Review of Non-Referral Decision. In any case where the General Court-Martial Convening Authority decides not to refer the charge and any specification described in paragraph 3.7.1, and the Staff Judge Advocate recommends in pretrial advice to refer at least one such specification, the General Court-Martial Convening Authority forwards the case file, described in paragraph 4.22.5, to the Secretary of the Air Force for review. The case file is transmitted to AFLOA/JAJM through functional channels. See Figure A4.9. Pretrial advice under Article 34, UCMJ, is required if the charge and
specifications have been forwarded to the General Court-Martial Convening Authority for disposition. The Secretary of the Air Force reviews the case and responds to the original General Court-Martial Convening Authority in writing. Figure A4.12 is a template for the Secretary of the Air Force’s response.

4.22.4. Request for Secretary of the Air Force Review of Non-Referral Decision. In addition to the circumstances mandating Secretary of the Air Force review described in paragraph 4.22.3, the Chief of the Government Trial and Appellate Counsel Division (AFLOA/JAJG) may request Secretary of the Air Force review in any case where the General Court-Martial Convening Authority decides not to refer the charge and any specification described in paragraph 3.7.1. The detailed trial counsel submits a request to AFLOA/JAJG and transmits the case file to the Staff Judge Advocate of the legal office trying the case, who forwards the request and case file to AFLOA/JAJG through functional channels with a copy to AFLOA/JAJM. If the AFLOA/JAJG Chief is already a detailed trial counsel in the case, the Chief of the Military Justice Division (AFLOA/JAJM) decides whether to request Secretary of the Air Force review.

4.22.5. Case file.

4.22.5.1. Required Contents. The case file that is forwarded to the Secretary of the Air Force and General Court-Martial Convening Authority under paragraphs 4.18.2, 4.18.3, or 4.18.4 shall include (T-0):

4.22.5.1.1. All charges and specifications preferred;

4.22.5.1.2. All reports of investigations, including but not limited to the Article 32 Preliminary Hearing Officer report, the Air Force Office of Special Investigations report of investigation, and any report of investigation by a military or civilian criminal investigative organization;

4.22.5.1.3. A certification that the victim of any alleged offense described in paragraph 4.22.1 was notified of the opportunity to express a preference as to disposition of the alleged offense for consideration by the convening authority. See paragraph 11.16.2.1 and Figure A4.10;

4.22.5.1.4. All statements from the victim provided to Air Force Office of Special Investigations and to the victim’s chain of command relating to any alleged offense described in paragraph 4.18.1;

4.22.5.1.5. Any statement provided by the victim to the convening authority expressing the victim’s view on the victim’s preferred disposition of the alleged offense;

4.22.5.1.6. The Staff Judge Advocate’s Pretrial Advice pursuant to Article 34, UCMJ. See Figure A4.8;

4.22.5.1.7. A written statement from the General Court-Martial Convening Authority explaining the reasons for the decision not to refer any charges for trial by court-martial. See Figure A4.9; and

4.22.5.1.8. A certification that the victim of any alleged offense described in paragraph 4.22.1. was informed of the General Court-Martial Convening Authority’s
decision to forward the case for review under paragraphs 4.18.2, 4.18.3, or 4.18.4. See Figure A4.10 and Figure A4.11.

4.22.5.2. Additional Matters. Additional matters may be included in the case file.

4.22.6. **Victim Notification of Results of Superior Review.** The Staff Judge Advocate ensures the alleged victim of any offense described in paragraph 4.22.1 is notified of the forwarding of a case for superior General Court-Martial Convening Authority or Secretary of the Air Force review. *See* Figures A4.10 and A4.11.
Chapter 5

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

Section 5A—Court-Martial Composition and Personnel

5.1. Detail of Military Judges (Rule for Courts-Martial 503(b)).

5.1.1. Chief Trial Judge. The Judge Advocate General’s designee for detail of military judges is the Chief Trial Judge, USAF Trial Judiciary.

5.1.2. Detailing Military Judges. The Chief Trial Judge details military judges to special courts-martial and general courts-martial. 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 to a court-martial. Orders detailing military judges may be oral or written. Any written orders are included in the record of trial. The authority who detailed the military judge is announced on the record.

5.1.2.1. A military judge from another U.S. Armed Force may be detailed to an Air Force court-martial according to the other Armed Force’s regulations applicable to military judges and with the approval of The Judge Advocate General.

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


5.2.1. Detailing Summary Courts-Martial. A summary court-martial is detailed by a convening order. The convening order is a special order prepared in accordance with Rule for Courts-Martial 504(d) signed by the convening authority. For qualifications of a summary court-martial, refer to Rule for Courts-Martial 1301(a). Guidelines for formatting and drafting a convening order are discussed at paragraph 5.13, and a sample summary courts-martial convening order is provided at Figure A5.5.

5.2.1.1. All summary courts-martial are constituted by special orders that are numbered consecutively on a fiscal year basis, starting with the number 1, and using an AC series letter prefix. See paragraph 5.13.3.

5.2.1.2. When generating the convening order, the following single paragraph is a model to be used for the convening authority’s signature in an appropriately formatted AC series special order:

“Pursuant to authority contained in Special Order G-15-001, Department of the Air Force, dated 24 March 2015, a summary court is hereby convened. I reviewed the charge sheet and evidence in the case of United States v. A1C John H. Doe. It may proceed at Vandenberg AFB, California, to try such persons as may be properly brought before it. Lt Col Will I. Judge, 30 SW/DO, is detailed as the Summary Court-Martial Officer.”

5.2.1.3. Even when a separate order is used, the convening authority or properly designated judge advocate completes and signs Block 14 of the charge sheet. See paragraph 4.15.1.
5.2.2. Reservists as Summary Court-Martial Officer. A reservist on active duty who is a commissioned officer may serve as a Summary Court-Martial Officer under Rule for Courts-Martial 1301. Reservists on inactive duty for training are not on active duty and cannot serve as a Summary Court-Martial officer. Air National Guard officers who are serving on active duty in federal service may serve as Summary Court-Martial Officers under Rule for Courts-Martial 1301.

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

5.3. Detail of Counsel (Rule for Courts-Martial 503(c)).

5.3.1. Procedure.

5.3.1.1. Defense Counsel. The Chief, Trial Defense Division has the authority to detail a Chief Senior Defense Counsel, Senior Defense Counsel, or Area Defense Counsel to any court-martial, and may delegate such authority as prescribed in the Military Defense Counsel Charter.

5.3.1.1.1. When requested by the Senior Defense Counsel in the circuit where a court-martial is to be held, the Senior Defense Counsel may detail an Area Defense Counsel from a base within that Senior Defense Counsel’s circuit as defense counsel to a court-martial outside that circuit, with the concurrence of the Chief, Trial Defense Division, or a Chief Senior Defense Counsel.

5.3.1.1.2. A Chief Senior Defense Counsel may detail any Area Defense Counsel or Senior Defense Counsel as defense counsel to any court-martial. The Chief, Trial Defense Division, retains the authority to override such detailing decisions.

5.3.1.1.3. The Chief, Trial Defense Division, may detail any Area Defense Counsel, Senior Defense Counsel, or Chief Senior Defense Counsel as defense counsel to any court-martial.

5.3.1.1.4. Announce orders detailing counsel on the record.

5.3.1.2. Trial Counsel. A Staff Judge Advocate, Chief Senior Trial Counsel, Senior Trial Counsel, 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 Record of Trial.

5.3.1.3. Rule for Courts-Martial 503(c)(3) and other Armed Forces’ regulations govern detailing counsel from other Armed Forces to Air Force courts-martial. The Chief, Military Justice Division (AFLOA/JAJM), is The Judge Advocate General’s designee with authority to make Air Force counsel, with the exception of those assigned to AFLOA/JAJD, available for detail to trials convened by another Armed Force. AFLOA/JAJD exercises this authority over defense counsel.
5.3.2. Qualifications.

5.3.2.1. General Court-Martial. Only attorneys certified according to Article 27(b), UCMJ, and AFI 51-103, Judge Advocate Professional Development, may be detailed as trial counsel, defense counsel, or assistant defense counsel for a general court-martial. 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. If the trial counsel is qualified to act as counsel before a general court-martial the defense counsel must be a person similarly qualified. See Article 27(c)(2), UCMJ.

5.3.2.2. Special Court-Martial. Only attorneys certified according to Article 27(b), UCMJ, and AFI 51-103 may be detailed as defense counsel for a special court-martial. Any person detailed as trial counsel, assistant trial counsel, or assistant defense counsel for a Special Court-Martial must be designated as a judge advocate under 10 U.S.C. § 8067(g) and AFI 51-103. 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 makes a detailed written statement, to be included in the record of trial, 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 summary court-martial may request representation by a military defense counsel, but is not entitled to military defense counsel certified according to Article 27(b), UCMJ. See Rule for Courts-Martial 1301(e). Civilian counsel obtained by the accused and qualified under Rule for Courts-Martial 502(d)(3) are permitted to represent the accused at the Summary Court-Martial if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it. Rule for Courts-Martial 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 paragraphs 5.3.2.1 through 5.3.2.3 also 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. Paragraph 5.4.5 provides additional guidance on reserve component judge advocates performing individual military defense counsel duties.

5.3.2.5. Civilian Counsel (Rule for Courts-Martial 502(d)(3)). When a civilian counsel represents an accused at a court-martial, the counsel’s qualifications to serve as defense counsel, including information about the counsel’s bar membership and standing, should be included in the record. Ordinarily, the military judge will have the civilian counsel announce his or her qualifications on the record during court-martial proceedings.

5.3.3. Disqualifications (Articles 26(d) and 27(a), UCMJ; Rule for Courts-Martial 502(d)(4)). A Preliminary Hearing Officer for an Article 32, UCMJ, preliminary hearing 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 Preliminary Hearing Officer for the Article 32,
UCMJ, preliminary hearing 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. Request for Individual Military Defense Counsel (Rules for Courts-Martial 502(d)(3) and 506(b)). An accused may request representation by an individual military defense counsel in an Article 32, UCMJ, preliminary hearing or at a court-martial. The requested counsel represents the accused, if reasonably available. The right to request an individual military defense counsel does not extend to representation for actions under Article 15, UCMJ.

5.4.1. Format of Individual Military Defense Counsel Requests. An individual military defense counsel request must be in writing and signed by the accused or detailed counsel. The request shall include the following, as applicable:

5.4.1.1. The date of the Article 32, UCMJ, preliminary hearing 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 preliminary hearing or trial; and,
5.4.1.6. A statement acknowledging the accused’s understanding that, if the individual military defense counsel 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 Rule for Courts-Martial 506(b)(1), the following persons are not ordinarily reasonably available to serve as individual military defense counsel 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 Senior Defense Counsel or Area Defense Counsel;
5.4.2.3. Attorneys attending an Air Force Institute of Technology sponsored program such as an Master of Laws program;
5.4.2.4. Attorneys assigned or attached to the Air Force Office of Special Investigations;
5.4.2.5. Attorneys detailed to perform duties as an Senior Trial Counsel, detailed trial counsel, 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 Manual for Courts-Martial or this instruction, and the appropriate approval authority determines the requested counsel can perform the duties of an individual military defense counsel 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 Rule for Courts-Martial 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 individual military defense counsel 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 (C.A.A.F. 2000). A statement, signed by the requested attorney and accused, asserting the attorney-client relationship and providing an overview of the relationship must accompany the request. See paragraph 5.4.1.4.

5.4.5. Individual Military Defense Counsel Requests for Air Reserve Component Attorneys. Only Air Reserve Component attorneys on extended Title 10 active duty tours can be requested. The reasonable availability of Air Reserve Component attorneys is assessed in the context of Rule for Courts-Martial 506(b)(1) and paragraph 5.4.2. (i.e., the restrictions apply to the active and reserve components alike). Air Reserve Component attorneys must be in Title 10 status at all times when performing as an individual military defense counsel. Requests for Air Reserve Component attorneys are processed in accordance with paragraph 5.4.7.


5.4.6.1. Individual military defense counsel requests for Area Defense Counsel and Senior Defense Counsel are forwarded through defense channels to the appropriate approval authority as follows:
5.4.6.1.1. The Chief, Trial Defense Division has the authority to act on any individual military defense counsel request for any Chief Senior Defense Counsels, Senior Defense Counsel, or Area Defense Counsel, and may delegate such authority as prescribed in the Military Defense Counsel Charter.

5.4.6.1.2. The Chief, Trial Defense Division, or a Chief Senior Defense Counsel take action on individual military defense counsel requests for Senior Defense Counsel. However, the Chief, Trial Defense Division, may override a Chief Senior Defense Counsel’s decision to grant an individual military defense counsel request.

5.4.6.1.3. The Chief, Trial Defense Division, takes action on individual military defense counsel requests for the Chief Senior Defense Counsel.

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

5.4.7. Processing Individual Military Defense Counsel Requests for Other Counsel. Individual military defense counsel requests for all other counsel (not addressed in paragraph 5.4.6) are forwarded to the convening authority through the trial counsel, if any. See Rule for Courts-Martial 506(b)(2). Because the Trial Defense Division (AFLOA/JAJD) is responsible for defense services throughout the Air Force, it is incumbent upon those individual military defense counsel who are not assigned to AFLOA/JAJD to notify the Chief, Trial Defense Division, of their association with a case as soon as practicable. These individual military defense counsel should also keep the circuit Senior Defense Counsel informed about the progress of the case. Additionally, the individual military defense counsel must coordinate in advance any anticipated expenditure of AFLOA/JAJD funds for travel or other reasons. (T-1).

5.4.7.1. Disposition when Counsel is Not Reasonably Available. If the requested counsel is not reasonably available for a reason identified in Rule for Courts-Martial 506(b)(1) or paragraph 5.4.2, and the accused does not assert an attorney-client relationship, the convening authority will deny the request and notify 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 in accordance with Rule for Courts-Martial 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 Headquarters 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), the Air Force Judge Advocate General’s School or Headquarters Air Force Directorates to the respective Director or Division Chief. Requests for Area Defense Counsel and Senior Defense Counsel shall be forwarded per paragraph 5.4.6.
5.4.7.2.2. Master of Laws Students. Send requests for attorneys in a Master of Laws program to the Director, Professional Development Division, Headquarters USAF/JAX.

5.4.7.2.3. Staff Judge Advocates. Send requests for Staff Judge Advocates to the Staff Judge Advocate’s commander.

5.4.7.2.4. All Others. Send requests for all other attorneys to the requested counsel’s Staff Judge Advocate, supervising officer, or commander.

5.4.8. **Appeals.** The accused may request review of a disapproved individual military defense counsel request by the next higher level of supervision of the officer who denied the request. Appeals are 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, the appeal is forwarded 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 individual military defense counsel request initially disapproved by a major command 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, the appeal is forwarded to the approval authority’s superior officer for review and decision. The Deputy Judge Advocate General reviews denials by Directors of AFLOA/JAJ, AFLOA/JAC, AFLOA/JAS, the Air Force Judge Advocate General’s School or by Headquarters Air Force Directorates. There is no further review of denials 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 individual military defense counsel is reasonably available, notwithstanding any provision of this instruction.

5.5. **Oaths (Article 136, UCMJ; Rule for Courts-Martial 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 take a one-time oath.

5.5.1.1. 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.

5.5.1.2. For military judges, send the original and one copy to Headquarters 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 UCMJ to which I am detailed to perform such duties, (so help me God).”

5.5.1.3. For military counsel, the Staff Judge Advocate or designee should ensure the original and one copy is sent to Headquarters USAF/JAX. The following oath is used: “I [name of military counsel], do (swear) (affirm) that I will faithfully perform the duties of counsel in any proceeding under the UCMJ 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).”

5.5.1.4. For court reporters, the Staff Judge Advocate or designee should 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, the Staff Judge Advocate should forward a copy of the oath to the receiving Staff Judge Advocate. 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 UCMJ to which I am detailed, (so help me God).”

5.5.2. Uncertified Military Counsel and Civilian Defense Counsel. Military counsel not certified according to Article 27(b), UCMJ, and civilian defense counsel are sworn for each court-martial. In a general court-martial or special court-martial, the military judge administers the oath. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath (e.g., Summary Court-Martial Officer, deposition officer, Preliminary Hearing Officer). The Staff Judge Advocate or trial counsel ensures the oath is documented in the record of the proceeding.

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

5.5.4. Interpreters. In a general court-martial or special court-martial, 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, Preliminary Hearing Officer). The Staff Judge Advocate or trial counsel ensure the oath is documented 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)?”


5.6.1. Defense requests for investigative support are made in writing to the servicing Staff Judge Advocate, who forwards 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 Air Force Office of Special Investigations investigators, the convening authority appoints an investigator.

5.6.2. If the convening authority concludes that appointment of an Air Force Office of Special Investigations special agent is necessary under the circumstances, the convening authority informs the local Air Force Office of Special Investigations detachment commander. The Air Force Office of Special Investigations detachment commander forwards the request through command channels for a determination of whether or not investigative resources exist to support the defense request. If Headquarters AFOSI/CC agrees that appointment of a special agent is appropriate and an agent is available, Headquarters AFOSI/CC appoints one. Headquarters AFOSI/CC is the decision authority for appointment of Air Force Office of Special Investigations agents as defense investigators, except in the extraordinary case where a trial judge specifically mandates the appointment of an Air Force Office of Special Investigations special agent. In all cases, the convening
authority provides the requisite funding. See Table 6.1, Note 7; see also United States v. Pomarleau, 57 M.J. 351 (C.M.A. 2002). Contact Headquarters AFOSI/IA with any questions regarding this policy or its application, including provisions that apply to the conduct of special agents who have been assigned to provide defense investigative support.

Section 5B—Court Reporters

5.7. Court Reporter Duties. The primary role of the Air Force court reporter is to report, transcribe, and assemble court-martial records, Article 32, UCMJ, preliminary hearings, 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 general and special courts-martial. 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 Staff Judge Advocate, 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 in special courts-martial, including acquittals, not involving a bad conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months. See Rule for Courts-Martial 1104(a)(2). When authenticating the record of trial, court reporters use the page provided for in the DoD Form 490, Record of Trial, package, deleting the words “military judge,” and substituting therefor the words “court reporter.”

5.8. Detailing Court Reporters. AF/JAT is responsible for the centralized management of the court reporter program and the single point of contact for all requests for transcription assistance and court reporter temporary duty support. The Court Reporter Manager, in coordination with the Central Docketing Office, will detail court reporters to travel, record, or transcribe proceedings. All court reporter requests should be submitted through the SharePoint® Centralized Court Reporter Management Homepage. See AFMAN 51-203 for additional guidance. Following assignment, Staff Judge Advocates detail court reporters to perform the functions specified in Article 28, UCMJ, and Rule for Courts-Martial 502(e)(3)(B), and any other duties for which they are needed. See Rule for Courts-Martial 501(c).

5.9. Methods of Reporting. Digital recording is the primary method of recording. Court reporters use both a primary and backup system to ensure a record can be accurately prepared.

5.10. 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, UCMJ, hearings, depositions, and other proceedings as the expeditionary mission allows.

Section 5C—Convening Courts-Martial


5.11.1. Convening authorities detail the best qualified persons for courts-martial in accordance with the criteria in Article 25(d), UCMJ. A sufficient number of 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. For courts-martial involving Reservists, convening authorities should consider detailing Reserve members who meet the qualifications in Article 25, UCMJ, and Rule for Courts-Martial 502. The Staff Judge Advocate 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 Staff Judge Advocate reiterates the Article 25(d), UCMJ, criteria. The Staff Judge Advocate may prepare a list of proposed nominees. If such a list is used, the Staff Judge Advocate also informs the convening authority that persons on the nomination list as well as any other eligible persons subject to his or her command or others made available by their commanders may be considered. The Staff Judge Advocate maintains all documents submitted to the convening authority.

5.11.2. Enlisted Members (Rule for Courts-Martial 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 a sufficient number of 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 details additional enlisted members.

5.12. Changing or Excusing Detailed Members (Rule for Courts-Martial 505). 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 Staff Judge Advocate 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. See Rule for Courts-Martial 505(c).

5.13. Special Order Convening Courts-Martial. Convening orders are prepared in accordance with Rules for Courts-Martial 504, 1302, and this chapter. A sample convening order is provided at Figure A5.2.

5.13.1. Authority Cited in Convening Order. The current Department of the Air Force Special Order (i.e., the “worldwide convening order”), or other document authorizing the commander to convene courts is cited as authority for convening the court-martial.

5.13.2. Amendments. Convening orders may be amended. A sample amended convening order is provided at Figure A5.3. The original order should be amended to reflect changes in court members, except when members are excused without replacement. If excusal of a member without replacement is not reduced to writing, the military or trial counsel announces the excusal on the record. Generally, no more than two amendments to the original order should be issued. If it is necessary to further amend the convening order, a new order should be published with a savings clause that transfers all cases in which the court has not yet been assembled to the new order. A sample order containing a savings clause is included at Figure A5.4. All amendments to a convening order and all convening
orders with a savings clause should cite all prior orders. Copies of all convening orders and amendments to convening orders should be provided to the military judge and included in all copies of the record of trial.

5.13.3. 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 follows an A-series letter prefix. AFI 33-328, Administrative Orders, Table 2.1, Rule 17. Use an A letter prefix for general courts-martial, an AB letter prefix for special courts-martial, and an AC letter prefix for summary courts-martial (see paragraph 5.2. for additional guidance on convening summary courts-martial).

5.13.4. 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 (e.g., 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.

5.13.5. Members of Same Squadron. An enlisted court member may not be from the same unit as the accused. This limitation refers to the organization to which the individuals are assigned and does not apply to entities to which they are attached for administrative purposes. In no event does this limitation refer to an organization larger than a squadron or comparable organization.
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 “AFI 65-601v1”), Table 10.2, prescribes the travel funding authorities for persons required for preliminary hearings and courts-martial. AFI 65-601v1 is controlling; however, the travel funding table is substantially reprinted at Table 6.1. Additional procedural guidelines are distributed by AFLOA/JAJM through the Central Witness Funding Guide to Witness Travel. Note: The Central Witness Funding Guide to Witness Travel is located on the AFLOA/JAJM Virtual Military Justice Deskbook.

6.2. AFLOA Central Funding. AFLOA/JAJM centrally funds and manages travel for persons identified in AFI 65-601v1, Table 10.2, for travel required for Article 32, UCMJ, preliminary hearings and courts-martial. Witnesses will be funded for Article 32, UCMJ, preliminary hearings and courts-martial based on their status as determined by Table 6.1. AFLOA/JAJM does not fund travel for other matters related to UCMJ proceedings, such as travel to and from depositions and administrative actions. AFLOA/JAJM does not fund trial preparation days. If a court-martial or Article 32, UCMJ, preliminary hearing is conducted within Regular Air Force channels for a Category A or B Reservist, the applicable Regular Air Force convening authority prescribed in Table 6.1 is responsible for witness travel costs.

6.2.1. Requesting Air Force Legal Operating Agency Central Travel Funds and the Witness Funding Management System. Rule for Courts-Martial 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 may be funded by AFLOA/JAJM, including a witness required by the military judge, the Staff Judge Advocate requests travel funds electronically through the Witness Funding Management System.

6.2.1.1. The Witness Funding Management System tracks all requests submitted by legal offices and is currently the sole method for requesting central witness funding. This system provides an up-to-date status on each request. In addition, the system has bulletin and e-mail capability that allows AFLOA/JAJM’s Central Witness Funding branch to provide essential information to field legal offices.

6.2.1.2. All requests should be sent electronically through the Witness Funding Management System to AFLOA/JAJM at least ten calendar days before the requested person is required to travel. Requests not received in a timely manner may require the convening authority to provide the initial funding. A link to the Witness Funding Management System is accessible via FLITE at https://aflsa.jag.af.mil/flite/training/jaguar/wfms/wfms_home.php.

6.2.2. Roles and Responsibilities within the Witness Funding Management System.

6.2.2.1. Requesters. All personnel assigned to the requesting legal office can create a request for central witness funding in the Witness Funding Management System. The requester will need a FLITE ID and password, or a Common Access Card card and personal identification number to log into the database. Creating a request includes
supplying the initial information in the Witness Funding Management System and forwarding the request to a local Witness Funding Management System manager for approval.

6.2.2.2. Local Witness Funding Management System Managers. The Staff Judge Advocate, the Chief of Military Justice and the Noncommissioned Officer in charge of military justice are appointed as local Witness Funding Management System managers. Only managers can approve, cancel, and forward the initial request to AFLOA/JAJM. AFLOA/JAJM will not know a request has been generated until the local manager approves and forwards the request to AFLOA/JAJM. The Witness Funding Management System will not allow a manager to both create and approve or forward an initial funding request. Managers are responsible for managing the status of witnesses until the witness voucher has been paid, expert fees are paid, if applicable, and all orders and vouchers have been provided to AFLOA/JAJM. Witness Funding Management System managers ensure all fields on the Central Witness Funding request and constructive travel worksheet are completed prior to forwarding the request to AFLOA/JAJM. (T 1). After approval by the local manager, the request is forwarded to Central Witness Funding for review.

6.2.2.3. Central Witness Funding Branch. The Central Witness Funding branch located at AFLOA/JAJM approves or disapproves all requests. The requesting office is notified of the decision through the Witness Funding Management System.

6.2.2.3.1. All requests received through the Witness Funding Management System are assumed to be approved by the appropriate authority for witness production. AFLOA/JAJM does not determine whether a witness will or will not be produced for the proceeding. Witness production and witness funding are two separate processes, and AFLOA/JAJM only determines whether or not the witness will be centrally funded.

6.2.2.3.2. A witness that is not funded by AFLOA/JAJM may still need to be funded by the convening authority. Therefore, funding may be approved or denied without regard to whether the witness is required to be produced.

6.2.3. Responsibilities for Travel of Centrally Funded Witnesses.

6.2.3.1. AFLOA/JAJM Responsibilities.

6.2.3.1.1. AFLOA/JAJM is responsible for funding the witness to travel from their current location (Permanent Duty Station, leave, or Area of Responsibility) to the base where the proceeding is being conducted.

6.2.3.1.1.1. Per diem rates are determined based on the Joint Travel Regulations. If lodging is not available and either a non-availability number or a non-availability letter is provided, or there is a letter from the requesting legal office stating a dining facility is not operable, then full rate per diem is authorized.

6.2.3.1.1.2. AFLOA/JAJM considers funding rental vehicles in accordance with the Joint Travel Regulations, paragraph 020209, Rental Vehicle, and paragraph 020212B1, Travel in and around the Temporary Duty Location. These state an order-issuing official may authorize/approve a rental vehicle when advantageous
to the government. Travelers’ personal preference or minor inconvenience shall not be the basis for authorizing/approving rental vehicle use. If disapproved by AFLOA/ JAJM, the convening authority may choose to personally fund a rental vehicle from a separate fund cite.

6.2.3.1.2. AFLOA/JAJM furnishes procedural instructions through e-mail for AFLOA/JAJM funded travel. AFLOA/JAJM does not fund trial preparation and only funds a witness to arrive the night prior to the start of the proceeding. A witness may begin traveling one day prior to the start of the proceeding for stateside travel, or two days prior to the start of the proceeding for travel to or from an overseas location. The convening authority may choose to personally fund trial preparation days from a separate fund cite.

6.2.3.2. Legal Office Responsibilities.

6.2.3.2.1. The requesting legal office is responsible for ensuring all temporary duty arrangements are completed in a timely manner (flight reservations, billeting, transportation, etc.). It is the base legal office’s responsibility to ensure the witness is transported to and from court, meals, and the lodging facility or hotel.

6.2.3.2.2. The requesting legal office’s Witness Funding Management System manager notifies AFLOA/JAJM immediately when the presence of a centrally funded witness is no longer required.

6.2.3.2.3. The requesting legal office is responsible for obtaining Defense Travel System access for the witness. The finance office associated with AFLOA/JAJM will not process a manual DoD Form 1610 or DoD Form 1351-1.

6.2.3.2.4. The legal office shall provide justification for witnesses requiring more than six temporary duty days for stateside travel and eight temporary duty days for overseas travel. Additionally, the legal office must obtain prior approval from AFLOA/JAJM for any deviations to the authorized travel itinerary, or the organization approving such deviation may be responsible for the additional costs. (T-1). Witnesses subject to recall should remain in the local area until released to avoid travel itinerary deviations.

6.2.4. Expert Witnesses. AFLOA/JAJM funds only those expert witnesses involved in urinalysis cases. See Table 6.1. In cases involving an expert urinalysis witness, the Staff Judge Advocate for the requesting legal office must also certify the attendance and testimony of the expert witness in writing before payment of expert or inconvenience fees can be made.

6.2.4.1. Requesting Funding for an Expert. AFLOA/JAJM centrally funds experts (forensic experts such as chemists, toxicologists, qualified physicians) approved by a convening authority to testify at courts-martial relating to urinalysis testing. AFLOA/JAJM does not fund consultants. See paragraph 6.2.5. The witness fee per day, travel costs, and per diem should be included in the request. The request must include a statement of the convening authority’s approval of the expert and the amount of compensation.

6.2.4.2. Non-Government Civilian Expert Witnesses. Before requesting funding for a non-government civilian expert witness, trial counsel must first ascertain the non-
availability of the forensic urinalysis experts at the Air Force Drug Testing Laboratory, Joint Base San Antonio-Lackland, Texas, or any other expert under contract with the Air Force. Staff Judge Advocates 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 A6.1. For additional requirements, refer to paragraph 6.4.5.

6.2.4.3. 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 AFLOA/JAJM will not include payment for days devoted to travel, trial preparation, or consultation. Any agreement to pay amounts exceeding AFLOA/JAJM’s limits is not binding on AFLOA/JAJM and will result in the convening authority paying the difference. The Staff Judge Advocate must certify the attendance and testimony of expert witnesses before payment of expert fees can be made.

6.2.4.4. Inconvenience Fees. AFLOA/JAJM may fund up to $500 per expert 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 a mere cancellation is required. Expert witnesses are expected to mitigate any financial loss caused by a cancellation.

6.2.5. Consultants. Central witness funds are 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 AFLOA/JAJM approve and fund an expert witness who does not testify at trial, the funding authorization for the travel expenses will not be revoked.

<table>
<thead>
<tr>
<th>Rule</th>
<th>A If the witness is</th>
<th>B and the type of travel is</th>
<th>C Then the travel is funded by</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Involved in an Aircraft Accident Investigation</td>
<td>See paragraph 7.14. of AFI 65-601v1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Involved in an Administrative Board</td>
<td>Convening Authority</td>
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<tr>
<td>3</td>
<td>Accused</td>
<td>Inter-command</td>
<td>AFLOA/JAJM (see note 1)</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>Intra-command</td>
<td>Convening Authority (see note 1)</td>
</tr>
<tr>
<td>5</td>
<td>Military Judge</td>
<td></td>
<td>USAF Judiciary</td>
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<td></td>
<td>Role</td>
<td>Command Location</td>
<td>Authority</td>
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<td>6</td>
<td>Trial Counsel</td>
<td></td>
<td>Convening Authority (see note 2)</td>
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<tr>
<td>7</td>
<td>Defense Counsel</td>
<td></td>
<td>(See note 3)</td>
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<td>8</td>
<td>Preliminary Hearing Officer</td>
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<td>Convening Authority (see note 2)</td>
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<td>9</td>
<td>Individual Military Defense Counsel</td>
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<td>(See notes 3 &amp; 4)</td>
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<td>Department of the Air Force Civilian Employee</td>
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<td>AFLOA/ JA JM</td>
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<td>Other DoD Civilian Employee</td>
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<td>14</td>
<td>Member of other Service</td>
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<td>15</td>
<td>Civilian (non-DoD and non-federal)</td>
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<td>16</td>
<td>Regular Air Force Member</td>
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<td>17</td>
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<td>Intra-command</td>
<td>Convening authority</td>
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<tr>
<td>18</td>
<td>Threatened Airman</td>
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<td>(See note 6)</td>
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<tr>
<td>19</td>
<td>Confidential Source (Air Force Office of Special Investigations)</td>
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<td>(See note 6)</td>
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<td>20</td>
<td>Air Force Office of Special Investigations Agent</td>
<td></td>
<td>Headquarters Air Force Office of Special Investigations (see note 7)</td>
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<tr>
<td>21</td>
<td>Expert Witness (Urinalysis)</td>
<td></td>
<td>AFLOA/ JA JM (see note 8)</td>
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<td>22</td>
<td>Non-DoD federal civilian employees (FBI, USPS, etc.)</td>
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<td>Convening Authority (Exception -- see note 9)</td>
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<tr>
<td>23</td>
<td>Reservist (Active Duty)</td>
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<td>24</td>
<td></td>
<td>Inter-command</td>
<td>AFLOA/ JA JM</td>
</tr>
<tr>
<td>25</td>
<td>Reservist (Non-Active Duty)</td>
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<tr>
<td>26</td>
<td>Government Representative</td>
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<tr>
<td>27</td>
<td>Air National Guard member</td>
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<td>Convening Authority (see note 10)</td>
</tr>
<tr>
<td>28</td>
<td>Prisoner (appearing as witness)</td>
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<td>(see note 11)</td>
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<tr>
<td>29</td>
<td>Prisoner Escort</td>
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<td>Convening Authority (see note 11)</td>
</tr>
<tr>
<td>30</td>
<td>Sexual Assault Victim Escort</td>
<td></td>
<td>Convening Authority (see note 12)</td>
</tr>
</tbody>
</table>
NOTES:
1. The Joint Travel Regulations, Chapter 7, Part X, Paragraph 7620, covers travel of members for disciplinary action. The temporary duty 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 United States Air Force Judiciary circuit to which assigned ONLY for United States Air Force Judiciary Members. The Convening Authority funds costs for other individuals.

3. The United States Air Force Judiciary Circuit to which assigned when the attorney-client relationship was formed.

4. AFLOA/JAJM will fund if the individual military defense counsel is not assigned to the United States Air Force Judiciary at the time the individual military defense counsel request is made and had no prior attorney-client relationship with the requestor on the matter in issue.

5. The Joint Travel Regulations, Chapter 7, Part L, Paragraph 7415, directs that travel expenses of members summoned as witnesses shall be paid from funds of the requesting Service.

6. Submit requests through local Air Force Office of Special Investigations detachments. Fund according to the status of the person requested (e.g., Regular Air Force, Reservist, Air National Guard, civilian, etc. as noted in the table).

7. Air Force Office of Special Investigations agents assigned as defense investigators to an accused and defense counsel are funded by the Convening Authority.

8. For expert witnesses in urinalysis cases, request AFLOA/JAJM funding in accordance with this publication. 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.

9. Funding for testimony of Federal civilian employees belonging to non-DoD Agencies is a Convening Authority responsibility. However, if a non-DoD Federal civilian employee is being called to present testimony in a case that involves an employment-related activity, 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 witnesses remains with the Convening Authority.

10. AFLOA/JAJM will fund Air National Guard members in Title 10 status for intercommand travel between the Title 10 duty station and the location of the UCMJ proceeding. The applicable General Court-Martial Convening Authority will fund travel-related entitlements for Air National Guard members recalled to active duty under 10 U.S.C. § 802(d) for courts-
martial and nonjudicial punishment proceedings.

11. The Joint Travel Regulations, Chapter 7, Part X, Paragraph 7620, and AFI 31-105 cover funding of prisoners and prisoner escorts. The prisoner’s travel is to be funded according to the status of the prisoner (e.g., Regular Air Force, Reservist, Air National Guard, civilian, etc.). The Convening Authority requesting the prisoner’s appearance provides escort funding.

12. The Joint Travel Regulations, Chapter 7, Paragraph 7415-E, and Table 3-3, authorizes temporary duty travel and transportation allowances for an escort or attendant of a sexual assault victim travelling to testify or participate in proceedings in connection with the sexual assault.

Section 6B—Witness Production

6.3. Military Witnesses. The Staff Judge Advocate or trial counsel provides notice to the witness and their commander of the time, place, and date the witness’s presence is required and requests the commander issue any necessary orders to the witness. See Rule for Courts-Martial 703(e)(1).

6.4. Civilian Witnesses. A civilian may be compelled to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board if they have been duly issued a subpoena in accordance with Article 47, UCMJ, and Rule for Courts-Martial 703. Except as provided in paragraphs 6.4.4, 6.4.5, and 6.4.6, DoD Form 453, Subpoena, and DoD Form 453-1, Travel Order, are used to obtain the presence of civilian witnesses and to authorize reimbursement for their travel expenses. Trial counsel should mark through any inapplicable or outdated dollar amounts in parentheses on DoD Form 453-1 and insert the applicable dollar amounts in the space provided. The Defense Travel System may be used to generate and process the DoD Form 453-1 and DoD Form 1351-2, Travel Voucher or Subvoucher.

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 A6.2 is a sample letter to accomplish informal service. Rule for Courts-Martial 703(e)(2)(D), Discussion.

6.4.2. Formal Service for Unwilling Witnesses. If a witness is unwilling to attend the court-martial voluntarily, the trial counsel or designee ordinarily serves the subpoena personally on the witness and tenders travel orders. See Rule for Courts-Martial 703(e)(2)(D) and Discussion. A witness who violates a subpoena faces potential arrest or prosecution by federal authorities under Article 47, UCMJ. Such arrest or prosecution is typically initiated by requesting the issuance of a warrant of attachment. See paragraph 6.4.3.

6.4.2.1. Where it is impracticable for the trial counsel or designee to personally serve a subpoena (i.e., if the witness is not in the local area), the trial counsel should contact the Staff Judge Advocate or commander of the military installation nearest to the witness for assistance. Personal service may also be requested through the local law enforcement office or Air Force Office of Special Investigations detachment nearest the witness.
6.4.2.2. To meet the threshold requirement for requesting a warrant of attachment and subject the witness to federal prosecution under Article 47, UCMJ, the person serving the subpoena must provide the witness a means of reimbursement of fees and mileage or, in cases of hardship, ensure that such reimbursement is advanced to the witness.

6.4.2.2.1. Except in cases involving a hardship requiring an advance, providing a witness instructions on the mechanism for filing a voucher for reimbursement should ordinarily be sufficient to satisfy this requirement.

6.4.2.2.2. Trial counsel should consult with the base finance office to determine the proper method of obtaining any necessary funds for an advance. The Staff Judge Advocate 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 finance office may draft a check to the witness that accompanies the subpoena for service or attempted service upon 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 DoD Form 454, Warrant of Attachment, to compel the witness to appear or produce evidence. See Rule for Courts-Martial 703(e)(2)(G), Discussion; United States v. Ortiz, 35 M.J. 391 (C.M.A. 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 Rule for Courts-Martial 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 United States Marshals 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 United States Marshals 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 where applicable, or that the witness was provided a means for reimbursement for fees and mileage;

6.4.3.2.2.5. The dollar amount, reasons that witness is material, and why it is believed the witness refuses or willfully neglects to appear;

6.4.3.2.2.6. A Military Interdepartmental Purchase Request number. See paragraph 6.4.3.4. Legal office personnel should consult with their local finance office to obtain this information.

6.4.3.2.3. The General Counsel’s Office for the United States Marshals Service 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 Rule for Courts-Martial 707(c) if applicable.

6.4.3.2.4. If the United States Marshals 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 United States Marshals 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 used 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 United States Marshals Service or other civilian law enforcement agency did not execute the Warrant of Attachment, coordinate with the United States Marshals 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 Table 6.1 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 United States Marshals Service, funding will be accomplished through a Military Interdepartmental Purchase Request.

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, preliminary hearing. However, a subpoena duces tecum (for documents) may be duly issued in accordance with Article 47, UCMJ, and Rule for Courts-Martial 703, for a preliminary hearing pursuant to Article 32(b), UCMJ. Invitational Travel Orders (Figure A6.3) should be issued to a civilian witness who voluntarily agrees to appear at such proceedings. Joint Travel Regulations, Appendix E1. A sample letter to accompany the Invitational Travel Order is at Figure A6.2.

6.4.5. Civilian Expert Witnesses for Urinalysis Cases (not employees of the United States). When a party determines 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. Rule for
Courts-Martial 703(d). The terms of employment in approved requests should be
memorialized in a Memorandum of Agreement for Expert Witnesses. See sample at Figure
A6.1. Use Invitational Travel Orders (Figure A6.3) to authorize travel of civilian experts and
to notify them of billeting and travel arrangements. The finance office associated with
AFLOA/JAJM will not process a manual DoD Form 1610 or DoD Form 1351-1. The
requesting legal office is responsible for obtaining Defense Travel System access for the

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 DoD Form 1610, Request and Authorization for temporary
duty Travel of Department of Defense 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 protecting 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’s Staff Judge Advocate.
The Staff Judge Advocate forwards a request to the General Court-Martial Convening
Authority’s Staff Judge Advocate addressing the following:

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 General Court-Martial Convening Authority’s Staff Judge Advocate
approves or disapproves the issuance of the subpoena. The Special Court-Martial
Convening Authority’s Staff Judge Advocate immediately files a Special Interest Report
in accordance with Section 13G of this instruction.

6.4.7.3. In the event exigent circumstances prevent prior consultation with the General
Court-Martial Convening Authority’s Staff Judge Advocate, a trial counsel may issue a
subpoena with the Special Court-Martial Convening Authority Staff Judge Advocate’s approval. In that case, the Staff Judge Advocate immediately informs the General Court-Martial Convening Authority’s Staff Judge Advocate, major command Staff Judge Advocate, and AFLOA/JAJM by e-mail 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 employed by the United States Government is paid as authorized by the Joint Travel Regulations or by the Federal Travel Regulation, 41 C.F.R. Subtitle F (for non-DoD civilian employees).


6.4.9. Processing Travel Vouchers. The requesting legal office ensures travelers promptly prepare and submit travel vouchers to AFLOA/JAJM as applicable. If AFLOA/JAJM does not have access to the member’s Defense Travel System account, all paid vouchers should be e-mailed to Central Witness Funding within 5 days of completion. All Defense Travel System users will accomplish their vouchers through Defense Travel System, and it is the base’s responsibility to ensure AFLOA/JAJM promptly receives a copy of the paid Defense Travel System voucher. If a witness does not file a voucher within 30 days of the initial travel date, the orders are automatically revoked.

6.4.9.1. If a military witness files a voucher thirty or more days after the initial travel date, the travel voucher may be returned as “no order on file” and a letter from the witness’ commander may be required to explain why the voucher was not filed in a timely manner.

6.4.9.2. If a civilian witness files a voucher thirty or more days after the initial travel date, the travel voucher may be returned as “no order on file” and a letter may be required to explain why the voucher was not filed in a timely manner.

6.4.9.3. If an accused is adjudged confinement, ensure the travel voucher is filed prior to entering confinement. Failure to file the travel voucher prior to entering confinement will require the member’s unit to make arrangements for the confined member to file the voucher.

6.4.10. Processing Expert Fee Vouchers. Use the Standard Form 1034, Public Voucher for Purchases and Services Other than Personal or Standard Form 1164, Claim for Reimbursement for Expenditures on Official Business. The Staff Judge Advocate with administrative responsibility for the proceeding in which the expert witness testified, ensures the expert witness prepares and submits the appropriate forms to the servicing finance office. Centrally Funded Witness forms are sent to AFLOA/JAJM for processing. Before AFLOA/JAJM will pay a civilian expert witness, the Staff Judge Advocate must certify the
dates of attendance and any scheduled witness fees (expert testimony, inconvenience, etc.). See paragraph 6.2.3.2. and Figure A6.6.

6.5. 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. (DoD Directive 4500.54E, Department of Defense Foreign Clearance Program). Ensure the prospective witness has a passport or applies for one. The responsible Staff Judge Advocate 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. Air Force Office of Special Investigations. Submit witness requests for special agents to the Air Force Office of Special Investigations detachment to which the agent is assigned.

6.5.2.1. Submit witness requests for threatened Airmen and confidential sources to the local Air Force Office of Special Investigations detachment. A threatened airman is a person who has had “threats of bodily harm or death” made against the airman and the threats must be “of such severity that military and civilian authorities are unable to provide the family’s continued safety.” See AFI 36-2110, Assignments, Attachment 12.

6.5.2.2. Only the Air Force Office of Special Investigations may contact another installation to request threatened Airmen and confidential sources as witnesses.

6.5.3. Deployed Witness. Normally, requests to return a deployed witness will be routed through the Combatant Command’s service component’s legal office. For example, for Air Force witnesses, AFCENT/JA will coordinate requests with Central Command. Additionally, contact AFLOA/ JAJM in cases requiring the use of central witness funding.

6.5.4. Escort or Attendant for an Active Duty Sexual Assault Victim. A sexual assault victim as defined in DoD Directive 6495.01, Sexual Assault Prevention and Response Program, is authorized an escort or attendant when required to travel to testify or participate in proceedings (e.g., an Article 32, UCMJ, preliminary hearing; pretrial motion hearing; or court-martial) in connection with the sexual assault. See Joint Travel Regulations, paragraph 7415-E. Funding for such travel is provided by the convening authority.

Section 6C—Immunity

6.6. Grants of Immunity (Rule for Courts-Martial 704, Military Rule of Evidence 301(e)). Only a General Court-Martial Convening Authority possesses the authority to grant immunity to witnesses. All grants of immunity must be in writing and attached to the record of trial as an allied paper. Figure A6.5 is a sample grant of immunity and order to testify. Grants of immunity should include language stating the immunity grant takes effect on the date the witness receives a copy of it. When another General Court-Martial Convening Authority retains administrative control over the witness to be immunized, prior coordination with that retaining General Court-Martial Convening Authority is recommended.
6.6.1. Witnesses Not Subject to UCMJ. The General Court-Martial Convening Authority may disapprove immunity requests for witnesses not subject to the UCMJ without Department of Justice coordination. However, the General Court-Martial Convening Authority may only approve such requests after receiving authorization from the Attorney General of the United States or other authority designated under 18 U.S.C. § 6004. Prepare requests for Department of Justice authorization in accordance with paragraph 6.6.4.

6.6.2. Witnesses Who May Be Considered for Federal Prosecution. If the Department of Justice has an interest in investigating and prosecuting a witness suspected of criminal activity pursuant to DoD Instruction 5525.07, 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 according to paragraph 6.6.4, regardless of whether the witness is subject to the UCMJ. AFLOA/JAJM is responsible for coordinating such cases with the Department of Justice and other interested United States agencies. NOTE: Complete the additional reporting and processing requirements specified in Section 13G for national security cases independent of immunity authorization requests.

6.6.4. Requests for Department of Justice Authorization.

6.6.4.1. In cases requiring Department of Justice authorization, the Staff Judge Advocate administering the court-martial initiates the request for Department of Justice authorization. When the General Court-Martial Convening Authority indicates in a memorandum the intent to grant immunity, the General Court-Martial Convening Authority Staff Judge Advocate forwards the request with written endorsement, preferably by e-mail, directly to AFLOA/JAJM, with information copies to the major command Staff Judge Advocate. The Staff Judge Advocate should consult with AFLOA/JAJM prior to forwarding the request as the Department of Justice requires that requests be forwarded in a specific format. Requests should be forwarded thirty days in advance of the date the witness is expected to testify. Staff Judge Advocates should consider requesting a delay pursuant to Rule for Courts-Martial 707(c)(1) while authorization is pending.

6.6.4.2. The written request should include the following information:

6.6.4.2.1. Case name and nature of the proceeding for which requesting immunity;
6.6.4.2.2. Nature of the charges against the accused and anticipated date of the proceeding;
6.6.4.2.3. Name, social security number, date and place of birth, and address of the witness;
6.6.4.2.4. The witness’s military status and organization, if any;
6.6.4.2.5. Whether the defense or prosecution requested the immunity;
6.6.4.2.6. Name, grade, organization, and mailing address of the General Court-Martial Convening Authority who will grant the immunity after receiving Department of Justice authorization, and a statement that the General Court-Martial Convening Authority supports the immunity request. NOTE: Immunity is not actually granted
until approved by the General Court-Martial Convening Authority after receiving Department of Justice authorization;

6.6.4.2.7. 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;

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

6.6.4.2.9. A summary of the witness’s expected testimony;

6.6.4.2.10. 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;

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

6.6.4.2.12. 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 are to 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, the Department of Justice.
Chapter 7

TRIAL MATTERS (POST REFERRAL)

Section 7A—Rules of Court-Martial Practice (Rule for Courts-Martial 108)

7.1. Authority to Prescribe Rules of Court-Martial Practice. The Judge Advocate General designates the Chief Trial Judge (AF/JAT) as the official responsible for making and disseminating rules for the conduct of Air Force court-martial proceedings. AF/JAT publishes the Uniform Rules of Practice Before Air Force Courts-Martial.

Section 7B—Changes to and Withdrawal of Charges or Specifications

7.2. Changes to Charges or Specifications. Minor and major changes may be made to charges or specifications after referral as authorized and explained in Rule for Courts-Martial 603. Changes should be made by lining through the material while ensuring the form remains legible. All changes and modifications should be dated and initialed by the trial counsel. Major changes are made only with the permission of the convening authority. Do not use white-out tape or liquid for minor or major changes.

7.2.1. Minor Changes. Minor changes may be accomplished without having the charge sworn anew by the accuser. Trial counsel should promptly provide the accused and defense counsel with copies of the charge sheet with the changes. After arraignment, only a military judge may authorize minor changes to the charge sheet. Rule for Courts-Martial 603(a) and its accompanying Discussion provides a definition of a “minor change.”

7.2.2. Major Changes. Major changes or amendments to a charge or specification may not be made over the objection of the accused unless the charge 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 preliminary hearing will be required if the charge or specification, as changed, was not covered in the prior preliminary hearing.

7.2.2.1. If the accused objects to a major change, the Staff Judge Advocate or trial counsel will ensure a new preferral and referral of the changed or amended charge or specification is accomplished and documented by attaching an indorsement to the original charge sheet containing the following matters: a new preferral, notification to the accused, receipt by the Summary Court-Martial Convening Authority, referral, and service under Rule for Courts-Martial 602.

7.2.2.2. 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).

7.3. Withdrawal of Charges or Specifications. Before findings are announced, a convening authority may cause any charges or specifications to be withdrawn from a court-martial. Rule for Courts-Martial 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 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 or specifications at the direction of the convening authority.

7.3.1. Complete Withdrawal. To withdraw all charges and specifications from a court-martial, trial counsel should 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 11, [initials]”). If the convening authority or a superior competent authority directs both withdrawal and dismissal of all charges and specifications, reflect accordingly (e.g., “Withdrawn and Dismissed on 15 Sep 11, [initials]”).

7.3.2. Partial Withdrawal. To withdraw a specific charge or specification from a court-martial, while allowing the other offense(s) to proceed to trial, trial counsel should line through the affected charge or specification, specify the disposition and the date, and initial the action taken. (e.g., “Withdrawn on 15 Sep 11, [initials]”). If the convening authority directs both withdrawal and dismissal of a particular charge and/or specification, both actions should be reflected accordingly (e.g., “Withdrawn and Dismissed on 15 Sep 11, [initials]”). The trial counsel determines whether any remaining charges and/or specifications should be renumbered (and if renumbered, initials the renumbering). The following rules apply to renumbering charges and/or specifications:

7.3.2.1. When charges or specifications are withdrawn before arraignment, trial counsel ensures the remaining charges or specifications are renumbered and the new numbers are reflected on the charge sheet and throughout the record of trial.

7.3.2.2. When charges or specifications are withdrawn after arraignment but before the court members are aware of the charges, the military judge directs whether the remaining charges or specifications are renumbered.

7.3.2.2.1. If the military judge directs renumbering, the new numbers should be reflected on the charge sheet and referred to throughout the record of trial from the point of renumbering. Withdrawn charges or specifications should not be brought to the attention of the members.

7.3.2.2.2. If the military judge does not direct renumbering, the remaining charges 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.

7.3.2.3. When charges 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 or specifications ordinarily are not renumbered. The military judge instructs the members that the withdrawn charges or specifications should not be considered for any reason.

Section 7C—Conditional Guilty Plea

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 Staff Judge Advocate or the person “Acting as the Staff Judge Advocate” to the convening authority, or the trial counsel at the direction of the Staff Judge Advocate or the person “Acting as the Staff Judge Advocate,” is authorized to consent for the government to the accused entering a conditional guilty plea.

Section 7D—Pretrial Agreements (Rule for Courts-Martial 705)

7.5. Policy Considerations. Court-Martial Convening Authorities and Staff Judge Advocates should exercise caution when considering a pretrial agreement.

7.5.1. Staff Judge Advocates have an obligation to preserve a military justice system that promotes good order and discipline and is fair, timely, and transparent to the military community and the public at large. There are many undesirable aspects associated with the use of a pretrial agreement in a criminal trial, not the least of which is the impression often created by such an agreement that the interests of justice are being compromised. The advantages to both the government and the accused should clearly outweigh the unattractive features of a pretrial agreement. The Staff Judge Advocate should be able to articulate to the convening authority the benefits to the government and the accused as well as the costs to the military justice system of entering a pretrial agreement in order to properly balance the considerations; otherwise any articulable benefit makes a pretrial agreement seem attractive. Pretrial agreements should not be used to mask case-processing inefficiencies.

7.5.2. The use of a pretrial agreement may be advisable in the following situations:

7.5.2.1. Cases where the victim of crime is traumatized and experts advise the government that participation in the trial process will cause further trauma.

7.5.2.2. Cases where sensational information involving innocent persons can be avoided through a negotiated plea.

7.5.2.3. Cases where several accused are involved, and the testimony of one is required in the trial of one or more of the others. In this case, a plea agreement may be more desirable than a grant of immunity.

7.5.2.4. Cases where essential witnesses are located at exceptional distances, are not amenable to process or are not otherwise available. Current operations, in some circumstances, may make critical witnesses unavailable.

7.5.2.5. Cases involving national security where harm to the government of a fully litigated trial should be avoided. In these cases, pretrial agreements can be used so that evidence involving exposure of national security information can be protected.

7.5.3. Cost, expediency, collateral consequences, forum selection, and litigation risk are all factors the Staff Judge Advocate and the convening authority should consider in determining whether a pretrial agreement is warranted. However, individually they are not ordinarily factors that outweigh the detrimental aspects of pretrial agreements.

7.5.4. Pretrial agreements that would include a provision for waiver of mandatory forfeitures should 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 (C.A.A.F. 2003); United States v. Perron, 58 M.J. 78 (C.A.A.F. 2003).

7.5.5. Defense Offer. The Staff Judge Advocate, trial counsel, and counsel for the accused may clarify the terms of a defense pretrial agreement offer to obtain sufficient information to enable the convening authority to decide whether to accept or reject the offer, or request permission to negotiate in accordance with paragraph 7.6.

7.5.6. Pretrial Agreements in Cases Involving a Mandatory Minimum Sentence. Offenses listed in Article 56(b)(2)(A)–(D), UCMJ, carry a mandatory minimum sentence of a dismissal or dishonorable discharge. In a case involving such an offense, the General Court-Martial Convening Authority may, however, enter into a pretrial agreement that commutes a dishonorable discharge to a bad conduct discharge. See Article 60(c)(4)(C)(i), UCMJ; Rule for Courts-Martial 1107.

7.6. Pretrial Agreements in National Security and Related Cases.

7.6.1. The Staff Judge Advocate must obtain permission from the Chief of the Military Justice Division (AFLOA/JAJM) to enter into pretrial agreement 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. (T-1). AFLOA/JAJM ensures coordination with the Department of Justice according to DoD Instruction 5525.07. AFLOA/JAJM permission is not required for the convening authority to reject a pretrial agreement offer.

7.6.2. Request for Permission to Negotiate. The General Court-Martial Convening Authority personally or through the Staff Judge Advocate requests by the most expeditious means available permission from AFLOA/JAJM to negotiate a pretrial agreement. The following information should be included in the request:

7.6.2.1. Background information on the accused including name, rank, and organization;
7.6.2.2. The offenses charged;
7.6.2.3. A summary of evidence against the accused;
7.6.2.4. Terms of the accused’s pretrial agreement offer; and,
7.6.2.5. Factors warranting a pretrial agreement.

7.6.3. Permission to Proceed. A grant of permission to enter into pretrial agreement discussions does not amount to approval of the terms or conditions of any pretrial agreement, which may result from the negotiations.

7.7. Authority to Approve a Pretrial Agreement. Unless withheld by a superior authority, General Court-Martial Convening Authorities and Special Court-Martial Convening Authorities are authorized to enter into or reject offers to enter into pretrial agreements. The decision to accept or reject a pretrial agreement 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). Under ordinary circumstances, a convening authority, through the servicing Staff Judge Advocate, consults with the victim and obtains the victim’s views concerning a pretrial agreement with the accused. See paragraph 11.16.2.5.

**7.8. Pretrial Agreement Terms and Format.** Rule for Courts-Martial 705(b) and (c) discusses terms and conditions that may be in a pretrial agreement. Pretrial Agreements must be in writing and signed by the accused and counsel. When a convening authority accepts a pretrial agreement, the convening authority personally signs it, unless the convening authority previously authorized another individual such as the Staff Judge Advocate or trial counsel to sign. If the Staff Judge Advocate or trial counsel signs the pretrial agreement, an authority line such as “FOR THE COMMANDER” should accompany the signature. Oral pretrial agreements are prohibited, as are promises to intervene on the accused’s behalf in any manner in exchange for a guilty plea. The Staff Judge Advocate or designee ensures all documentation pertaining to a pretrial agreement, including Appendix A, changes, or modifications, are included in the record of trial. Figure A7.1 is a template for a pretrial agreement, but it may be modified to fit the circumstances of a case; however, modification of template should be undertaken very cautiously as the sample language reflects generally required and legally acceptable agreement terms.

7.8.1. Changes to Pretrial Agreement. If the negotiation results in an agreement for different relief for the accused than such included in the original offer, the Staff Judge Advocate or designee should prepare a different offer or Appendix A reflecting the agreed terms. If only a new Appendix A is prepared, the date of the original offer should still appear in the first paragraph of Appendix A. If another Appendix A or offer is prepared, the Staff Judge Advocate or designee ensures the original Appendix A or offer is attached to the Record of Trial as an allied paper.

7.8.2. 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 pretrial agreement. See Rule for Courts-Martial 705(c)(2)(A).

**7.9. Withdrawal from Pretrial Agreement.** Either party may withdraw from a pretrial agreement as provided in Rule for Courts-Martial 705(d)(4).

7.9.1. Withdrawals by the convening authority must be in writing and signed by the convening authority. The Staff Judge Advocate or designee gives a copy of the withdrawal to the accused and defense counsel.

7.9.2. Withdrawals by the accused should be in writing and given to the Staff Judge Advocate or trial counsel.

7.9.3. The Staff Judge Advocate or designee ensure the pretrial agreement and the withdrawal, by either side, is included in the record of trial as a pretrial allied paper. See AFMAN 51-203, *Records of Trial,* Figure 4.1.

7.9.4. Accused’s Failure to Satisfy Pretrial Agreement Condition. If the accused does not fulfill a promise to satisfy certain conditions before action or during any period of suspension
of the sentence as agreed to in the pretrial agreement, the convening authority may be relieved of the obligation to fulfill the pretrial agreement, provided that the accused’s promise was included in the pretrial agreement and the hearing requirements in Rule for Courts-Martial 1109 have been satisfied. See Rule for Courts-Martial 705(c)(2)(D); United States v. Smith, 46 M.J. 263 (C.A.A.F. 1997); United States v. Hunter, 65 M.J. 399 (C.A.A.F. 2008); United States v. Shook, 70 M.J. 578 (A.F.C.C.A. 2011).

7.10. In-Court Inquiry. Trial counsel should notify the military judge of a pretrial agreement 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 pretrial agreement 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. Pretrial agreements that are subject to in-court inquiry, whether or not accepted by the military judge, are appellate exhibits in the record of trial. Rule for Courts-Martial 705(e) discusses nondisclosure requirements for pretrial agreements.

Section 7E—Trial by Military Judge Alone

7.11. Requesting Trial by Military Judge Alone (Rule for Courts-Martial 903). To request a trial by military judge alone, the accused uses the DoD Form 1722, Request for Trial Before Military Judge Alone. If the DoD Form 1722 is used, the military judge admits it as an appellate exhibit. See AFMAN 51-203, Records of Trial, Figure 4.1.

Section 7F—Findings and Sentencing Worksheets

7.12. Use of Findings and Sentencing Worksheets. The following forms may be used to document court-martial findings and sentences in the format required by the Manual for Courts-Martial:

7.12.1. Air Force Form 1092, Court-Martial Findings Worksheet. Where a specification against a service member alleges wrongful acts on “divers occasions,” trial counsel requests that 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 be accomplished through reference in the substituted language to a relevant date or other facts in evidence that put the accused and the reviewing court on notice of what conduct served as the basis for the finding. See United States v. Walters, 58 M.J. 391 (C.A.A.F. 2003).


7.12.3. Air Force Form 835, Sentence Worksheet (general court-martial).

Section 7G—Audiovisual and Teleconferencing Technology

7.13. Use of Audiovisual and Teleconferencing Technology. The use of audiovisual and teleconferencing technology is authorized by Secretary of the Air Force to the extent and under the conditions allowed for in Rules for Courts-Martial 804(b), 805(a), 805(c), and 914B.
Section 7H—Evidentiary Matters


7.14.1. Although the interchange of records entirely within the Armed Forces is exempt from the prohibitions in paragraph 7.14, the DoD 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 90-507, Military Drug Demand Reduction Program (implementing DoD Directive 1010.01, Military Personnel Drug Abuse Testing Program).

7.14.2. Disclosure of these records is permitted at the request of, and with written consent of, the accused-patient in the following circumstances:

7.14.2.1. As evidence for the defense before findings.

7.14.2.2. As evidence in mitigation or extenuation in pre-sentencing proceedings.

7.14.2.3. After trial in support of clemency or clemency petitions to The Judge Advocate General or Secretary of the Air Force.

7.14.3. The 42 Code of Federal Regulations § 2.31 outlines the procedures to be followed in authorizing release of the records by the accused-patient. Discussion of the records in open court should be avoided to the extent feasible.

7.14.4. Only those portions of the records necessary and relevant should be released. 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, the matter may be resolved among counsel or by an in camera review of the records by the military judge.


7.15. Psychotherapist-Patient Privilege (Military Rule of Evidence 513). When psychotherapist-patient communications are involved, counsel should consult the psychotherapist-patient privilege under Military Rule of Evidence 513 and, when applicable, the evidentiary protections and limitations extended to an accused entered in the Limited Privilege Suicide Prevention Program under AFI 44-172, Mental Health.

7.15.1. Military Rule of Evidence 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. Although the privilege broadly applies to all “patients,”
including military members, the privilege is narrowed by seven exceptions enumerated in the rule. If an exception applies, no privilege under the rule exists to preclude disclosure.

7.15.2. Military Rule of Evidence 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 Military Rule of Evidence 1101. Military Rule of Evidence 513 has no application outside such UCMJ proceedings. As stated in the Manual for Courts-Martial’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.” See Manual for Courts-Martial, Appendix 22.

7.15.3. The Military Rule of Evidence 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.

7.15.4. Disputes between a requestor and a psychotherapist or patient may arise over the disclosure of confidential communications. In such circumstances, release of mental health records, like all protected health information, is made in accordance with DoD 6025.18-R, Department of Defense Health Information Privacy Regulation, and other applicable law. DoD 6025.18-R generally permits disclosure of most individuals’ mental health records in response to a written request from a DoD law enforcement agency, but it does not permit disclosure of a crime victim’s records in response to such a written law enforcement request. If the crime victim does not consent to release of a record, release of such records may be obtained (with the appropriate basis) through an order from a military judge or military magistrate. The Staff Judge Advocate in possession of any crime victim’s mental health records related to a UCMJ case must guard against improper disclosures to investigators and trial counsel that may “poison the case” with inadmissible evidence.

7.15.5. The Military Rule of Evidence 513 privilege also interacts with the protections afforded members in the Limited Privilege Suicide Prevention Program. Confidential communications of members in the Limited Privilege Suicide Prevention Program cannot be used against them in a UCMJ action, even if an exception in Military Rule of Evidence 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.


7.16.1. A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made between the victim and a victim advocate, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or supportive assistance to the victim. See Military Rule of Evidence 514.
7.16.2. When communications between an alleged victim of sexual assault and a Sexual Assault Response Coordinator, healthcare personnel, or Victim Advocate are involved, Staff Judge Advocates and counsel should consult the confidential reporting program for victims of sexual assault established by DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program, and Air Force Policy Directive 90-60.

7.17. Restricted and Unrestricted Reports of Sexual Assault.

7.17.1. Restricted Reporting.

7.17.1.1. Restricted reporting allows a sexual assault victim to confidentially disclose the details of the 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 Sexual Assault Response Coordinator, Victim Advocate, or a health care provider. In cases where a victim elects restricted reporting, the Sexual Assault Response Coordinator, assigned Victim Advocate (whether uniformed or civilian), and health care providers may not disclose covered communications to law enforcement or command authorities, either within or outside the DoD, except as provided by the DoD Instruction or Air Force Policy.

7.17.1.2. In the event confidential information is required to be disclosed, the disclosure is limited to information necessary to satisfy the purpose of the disclosure. Disclosure may be made to:

7.17.1.2.1. Command officials or law enforcement (including Security Forces, Air Force Office of Special Investigations, or other criminal investigative service) when the disclosure is authorized in writing by the victim;

7.17.1.2.2. 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;

7.17.1.2.3. Disability Retirement Boards and board officials when disclosure by a healthcare provider is required for fitness for duty for disability retirement determinations, limited only to information that is necessary to process the disability retirement determination;

7.17.1.2.4. Sexual Assault Response Coordinator, Victim Advocates, or health care providers when disclosure is necessary for the supervision of direct victim services; or

7.17.1.2.5. 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.

7.17.1.3. The Sexual Assault Response Coordinator, assigned Victim Advocate, and health care providers 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 is
resolved in accordance with AFI 90-6001, Sexual Assault Prevention and Response Program, Chapter 3.

7.17.2. Unrestricted Reporting. Any report of a sexual assault made through normal reporting channels, including the victim’s chain of command, law enforcement, and the Air Force Office of Special Investigations or other criminal investigative service is considered an unrestricted report.

Section 7I—Pre-sentencing Matters (Rule for Courts-Martial 1001)

7.18. Personnel Records of the Accused. “Personnel records of the accused,” as referenced in Rule for Courts-Martial 1001, includes 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.

7.18.1. Personnel Information File. Relevant material contained in an accused’s unit personnel information file may be admitted pursuant to Rule for Courts-Martial 1001(b) if:

7.18.1.1. Counsel provided a copy of the document or made the document available to opposing counsel prior to trial; and

7.18.1.2. There is some evidence in the document or attached to the document that:

7.18.1.2.1. 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,

7.18.1.2.2. The document is not over five years old on the date the charges were referred to trial.

7.18.1.3. Relevant material contained in an accused’s personnel information file that does not comply with paragraphs 7.18.1.2.1. and 7.18.1.2.2. may be admitted under Rule for Courts-Martial 1001(d) for rebuttal purposes 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).

7.18.2. Nonjudicial Punishment. Records of nonjudicial punishment under Article 15, UCMJ, from any file in which the record is properly maintained by regulation, may be admitted if not over five years old on the date the charges were referred. This time period is measured from the date the commander notified the accused of the commander’s intent to impose nonjudicial punishment. Periods in which the accused is absent without authority is excluded in computing the five-year period. If the personnel information file contains an Air Force Form 366, Record of Proceedings of Vacation of Suspended Nonjudicial Punishment, that meets this five-year requirement, a copy of the underlying record imposing the nonjudicial punishment 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 Rule for Courts-Martial 1001(d).
7.18.3. 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. See Rule for Courts-Martial 1001(b)(2); United States v. Wingart, 27 M.J. 128 (C.M.A. 1988).

7.18.4. Previous Convictions. The DoD Form 493, Extract of Military Records of Previous Convictions, may be used to introduce evidence of an accused’s previous conviction. Evidence of a previous conviction by summary court-martial in which counsel did not represent the accused may not be introduced unless the accused waived the right to counsel. (T-0). See United States v. Booker, 5 M.J. 238, 246 (C.M.A. 1977). A conviction by summary court-martial is not admissible until reviewed pursuant to Article 64(a), UCMJ. See Rule for Courts-Martial 1001(b)(3).

7.19. 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. See Rule for Courts-Martial 1001(b)(4).

Section 7J—Officer Resignation in Lieu of Trial by Court Martial

7.20. General. Officers (including United States Air Force Academy cadets) may submit a request to resign in lieu of trial by court-martial with the understanding that the Secretary of the Air Force may direct a discharge under other than honorable conditions when their conduct makes them subject to trial by court-martial. A resignation in lieu of trial by court-martial is a type of resignation for the good of the service and addressed in AFI 36-3207, Separating Commissioned Officers, Section 2C. See Figure A7.2.

7.21. Considerations. Commanders should not recommend that the Secretary of the Air Force accept a resignation in lieu of trial by court-martial for expediency when the alleged offense(s) would be more appropriately resolved at trial. Before making any recommendation, reviewing commanders at all levels should consider the best interests of the Air Force and the effect a resignation would have on good order and discipline. The time and expense of a court-martial is rarely the deciding factor. To permit the full development of the facts of the case and appropriate consideration of dispositions other than trial, officers are encouraged not to submit a resignation in lieu of trial by court-martial request before charges are referred to trial by court-martial. Any reviewing commander may deny a resignation in lieu of trial by court-martial request submitted prior to the referral of charges. If denied, the officer may resubmit the request after referral of charges. Once charges are referred, the resignation in lieu of trial by court-martial request may only be acted upon by the Secretary of the Air Force or designee except that a resignation in lieu of trial by court-martial request may be rejected if submitted after arraignment. A resignation in lieu of trial by court-martial may not be submitted post-arraignment.

7.22. Defense Counsel. Before submitting a resignation in lieu of trial by court-martial request, officers may consult with counsel and are provided military defense counsel unless they expressly decline one.

7.22.1. If an officer refuses military counsel, the officer should so state in the request.

7.22.2. The Air Force does not pay for or reimburse officers for civilian defense counsel.
7.23. **Recoupment.** Officers should understand that if the Secretary of the Air Force 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. AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, provides more detailed recoupment guidance. Officers who are subject to recoupment of education assistance, special pay, or bonuses must sign a Recoupment Statement and attach it to their request. *See* Figure A7.4.

7.24. **Procedures.** All pre-referral resignations in lieu of trial by court-martial of which approval is recommended by the reviewing commanders who have the authority to disapprove the resignation in lieu of trial by court-martial and all post-referral resignations in lieu of trial by court-martial are forwarded expeditiously to AFLOA/ JAJM through functional channels. The legal offices processing the resignation in lieu of trial by court-martial use the Comprehensive Resignation In Lieu Of Trial by Court-Martial Checklist located on the AFLOA/ JAJM Virtual Military Justice Deskbook. *(T-1).*

7.24.1. Resignation in Lieu of Trial by Court-Martial Request and Additional Documents. The resignation in lieu of trial by court-martial package is transmitted to AFLOA/JAJM through functional channels and includes the following (as applicable):

7.24.1.1. The officer’s request, any additional documents submitted by the officer, and the signed Recoupment Statement.

7.24.1.2. Recommendations on disposition of the resignation in lieu of trial from each commander required to review the resignation in lieu of trial. *See* paragraph 7.24.2.

7.24.1.3. A comprehensive legal review from the wing-level (or equivalent) legal office supporting the initial reviewing commander. *See* paragraph 7.24.3.

7.24.1.4. Views of any victims on whether the resignation in lieu of trial by court-martial should be approved.

7.24.1.5. The charge sheet, forwarding letters, and any indorsements with attachments, including the personal data sheet.

7.24.1.6. The report of the Article 32, UCMJ, preliminary hearing with attachments.

7.24.1.7. Any reports of investigation, statements, or other documents supporting the charges or accusations against the officer.

7.24.1.8. Documents submitted by the requesting officer or defense counsel after the original submission of the request are considered at the discretion of the reviewing and decision authorities.

7.24.2. Review and Recommendation. The wing commander or equivalent authority reviews and makes a recommendation and forwards the package to the General Court-Martial Convening Authority (or to the Special Court-Martial Convening Authority if the wing commander or equivalent authority does not exercise Special Court-Martial Convening Authority). *See* Figure A7.3.

7.24.2.1. The General Court-Martial Convening Authority reviews and makes a recommendation and forwards the package to the requesting officer’s major command commander.
7.24.2.2. The major command commander (or major command vice commander if delegated) reviews and makes a recommendation and forwards the package to AFLOA/JAJM with an information copy of the officer’s request to Headquarters AFPC/DPSOS.

7.24.2.3. The wing commander or any superior reviewing commander may return to an officer without action a request that is conditioned on the characterization of discharge the Secretary of the Air Force may direct or that is conditioned on a specific date of separation.

7.24.3. Legal Review. The required legal review is done by the wing-level legal office supporting the initial reviewing commander and should address the views of any victims on whether the resignation in lieu of trial by court-martial should be approved. See paragraph 11.16.2.7. Written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Otherwise, written coordination indicating concurrence is all that is required unless the relevant major command legal office requires otherwise.

7.24.4. AFLOA/JAJM writes a comprehensive legal review and processes the resignation in lieu of trial by court-martial package for Headquarters Air Force review and action by the Secretary of the Air Force or designee.

7.24.5. Headquarters AFPC/DPSOS schedules the officer’s date of separation as soon as possible upon receiving notification from AFLOA/JAJM that a resignation in lieu of trial by court-martial request has been approved.

7.24.6. The processing of a court-martial and court-martial charges should not be delayed solely because a resignation in lieu of trial by court-martial request may or has been submitted.

7.24.7. Permission to Proceed to Trial Pending Action on a Resignation in Lieu of Trial by Court-Martial Request. Prior permission from AFLOA/JAJM is required before a case proceeds to trial if the officer accused has submitted a resignation in lieu of trial by court-martial on which action is pending. (T-1). For purposes of this paragraph, the start of trial is defined as the acceptance of pleas at arraignment. The Staff Judge Advocate for the Special Court-Martial Convening Authority decides whether to request permission to proceed. A request for permission to proceed should include a justification for why the trial should proceed while the resignation in lieu of trial by court-martial is pending action, such as witness availability for the scheduled trial date. If AFLOA/JAJM grants permission to proceed, the trial may proceed but the convening authority may not take action on the court-martial until after Secretary of the Air Force action on the resignation in lieu of trial by court-martial request. Permission to proceed is not required to conduct pre-arraignment preliminary sessions pursuant to Article 39(a)(1), (2) and (4), UCMJ, including evidentiary hearings, and other motion practice that may expedite case processing in the interest of judicial economy.

7.24.7.1. Seven Day Rule. AFLOA/JAJM will normally approve requests for permission to proceed to trial while a resignation in lieu of trial by court-martial is pending if the officer submitted the request more than seven calendar days after service of charges
under Rule for Courts-Martial 602. In such cases, it is sufficient to justify the request for permission to proceed by citing the untimely submission of the resignation in lieu of trial by court-martial request. However, additional justification should be submitted if it exists.

7.24.7.2. AFLOA/JAJM will normally disapprove requests for permission to proceed to trial while a resignation in lieu of trial by court-martial is pending if the officer submitted the request within seven calendar days of service of charges under Rule for Courts-Martial 602, unless circumstances warrant trial while the resignation in lieu of trial by court-martial is pending.

7.24.7.3. A resignation in lieu of trial by court-martial request will be processed and not stopped, delayed, returned or rejected solely because it was submitted more than seven calendar days after service of charges unless submitted after arraignment.

7.24.8. Subsequent Resignation in Lieu of Trial by Court-Martial Requests. The wing commander (or equivalent), or any superior reviewing commander, may return to an officer a subsequent resignation in lieu of trial by court-martial request that is based on the same grounds, supported by the same evidence, or is similarly insufficient as a previously rejected or disapproved resignation in lieu of trial by court-martial request, with the following exceptions:

7.24.8.1. An officer whose resignation in lieu of trial by court-martial request has been rejected or disapproved prior to referral of charges may resubmit the request after charges are referred to trial. A resubmitted request should be processed expeditiously to the command level that rejected or disapproved the original request. Additional indorsements or recommendations should not be attached unless different from those accompanying the original request or required by changed circumstances.

7.24.8.2. The Show Cause Authority (as defined in AFI 36-3206) may determine that circumstances warrant processing the subsequent resignation in lieu of trial by court-martial request.

7.24.9. Withdrawing Resignation in Lieu of Trial by Court-Martial Requests. If an officer who submitted a resignation in lieu of trial by court-martial request subsequently submits a request to withdraw it, the request to withdraw is processed in the same manner as the resignation in lieu of trial by court-martial request and forwarded to AFLOA/JAJM through functional channels. The wing-level Staff Judge Advocate or designee also notifies AFLOA/JAJM and intermediate legal offices of the request to withdraw as soon as practicable. Upon receiving notification of the request to withdraw, the agency in possession of the resignation in lieu of court-martial request suspends further processing of the resignation in lieu of trial by court-martial request until it receives the withdrawal request. The resignation in lieu of trial by court-martial request and withdrawal request are then processed together.

7.24.9.1. When forwarding a withdrawal request, the Staff Judge Advocate or designee includes the following:

7.24.9.1.1. The officer’s request to withdraw and any additional documents submitted by the officer.
7.24.9.1.2. Recommendations on disposition of the withdrawal request from each commander required to review the original resignation in lieu of trial by court-martial request.

7.24.9.1.3. A legal review from the wing-level legal office (or equivalent) of the withdrawal request.

7.24.9.1.4. Views of any victims on whether the withdrawal request should be approved.

7.24.9.1.5. A copy of the original resignation in lieu of trial by court-martial request and additional documents; reviewing commanders’ recommendations; the wing-level legal review; and views of any victims.

7.24.9.2. The major command legal office provides an information copy of the request to withdraw and related documents to Headquarters AFPC/DPSOS.

7.24.9.3. AFLOA/JAJM writes a comprehensive legal review and processes the request to withdraw for Headquarters Air Force review and action by the Secretary of the Air Force.

7.24.10. Resignation in Lieu of Court-Martial Processing Time Management. Expeditious processing of resignations in lieu of court-martial is essential to preventing judicial inefficiency, unnecessary trial delay, wasted resources, disruptions for victims and witnesses, prolonged uncertainty and anxiety for the accused, and impairment of mission accomplishment. The following Air Force measures are established for resignation in lieu of trial by court-martial processing:

7.24.10.1. Process a resignation in lieu of trial by court-martial request within 60 days from the date the officer submits the request to the date the officer is notified of final action on the request. The 60 days are allotted as follows:

7.24.10.1.1. Wing-level (or equivalent) legal office processes and forwards the resignation in lieu of trial by court-martial package to AFLOA/JAJM with electronic copies for review and processing by legal offices at intermediate levels of command within 10 days from the date the officer submits the resignation in lieu of trial by court-martial request.

7.24.10.1.2. Numbered Air Force or General Court-Martial Convening Authority-level (or equivalent) legal office processes and forwards the General Court-Martial Convening Authority’s recommendation within seven days after the wing-level legal office provides the electronic copy.

7.24.10.1.3. Major command legal office processes and forwards the major command commander’s recommendation within seven days after the Numbered Air Force-level legal office provides an electronic copy of the General Court-Martial Convening Authority’s recommendation.

7.24.10.1.4. AFLOA/JAJM and AFLOA/JAJ processes and forwards the resignation in lieu of trial by court-martial package to AF/JA within seven days after receipt of the complete package, including required recommendations by reviewing commanders and legal reviews.
7.24.10.1.5. AF/JA processes and forwards the resignation in lieu of court-martial package for Headquarters Air Force coordination within five days after receipt of the package from AFLOA/JAJ.

7.24.10.1.6. This leaves 24 days for Headquarters Air Force coordination, SAF/MRBP recommendation, and SAF/MRB action or recommendation followed by Secretary of the Air Force action.

7.24.10.2. Failure to meet these time measures at any stage of resignation in lieu of trial by court-martial processing does not confer any rights or benefits on the accused.

7.24.11. Withdrawal and Dismissal of Charges. If a resignation in lieu of trial by court-martial request is pending action and the convening authority withdraws and dismisses all charges, the request is returned to the officer without further processing or action. If charges are later re-preferred and the officer submits another resignation in lieu of trial by court-martial request, the process begins anew.

7.25. Retirement in Lieu of Trial by Court-Martial. If an officer submits a request to retire in lieu of trial by court-martial, the wing-level (or equivalent) Staff Judge Advocate or designee immediately contacts AFLOA/JAJM for further guidance. Generally, a retirement in lieu of trial by court-martial request is processed in the same manner as a resignation in lieu of trial by court-martial request. That the requesting officer is pending trial by court-martial and trial has not yet begun is a retirement restriction that may be waived by the Secretary of the Air Force or delegate in the best interest of the Air Force. The retirement in lieu of trial by court-martial request is considered both a request to retire in lieu of trial by court-martial and a request for waiver of the retirement restriction of pending trial by court-martial. In order to be eligible to request a retirement in lieu of trial by court-martial, the officer must be otherwise eligible to retire with twenty years of Total Active Federal Military Service (and ten years of Total Active Federal Commissioned Service to retire as an officer if requesting to retire as an officer) as of the date the officer submits the retirement in lieu of trial by court-martial request. AFI 36-3203, Service Retirements, Section 2C discusses retirement prohibitions and waiverable restrictions.

Section 7K—Trial Matters Requiring Air Force Legal Operations Agency Assistance

7.26. Classified or Controlled Information (Military Rule of Evidence 505). Special procedures and requirements apply in cases where classified information may be used as evidence. In all such cases, AFLOA/JAJM should be contacted as soon as possible for guidance on how to proceed.

7.26.1. Declassification. At the earliest stage practicable, government counsel should coordinate with the original classification authority to request declassification of potential evidence.

7.26.2. Asserting the Military Rule of Evidence 505 Privilege. Only the Secretary of the Air Force, the Chairman of the Joint Chiefs of Staff or the Chairman’s delegate, 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. See Military Rule of Evidence 505(c). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on his or her behalf. Requests for assertion of the privilege are forwarded through command channels to AFLOA/JAJM.
7.26.3. Classified Material in the Record. When a record of trial contains classified material, the Staff Judge Advocate or designee takes appropriate steps to declassify the material when proper. If it is impossible to declassify the material, the record must be classified. In determining whether a particular record of trial must be classified because of its content, consideration should be given to DoD Memorandum 5200.01, Vol. 1, *Department of Defense Information Security Program: Overview, Classification, and Declassification*, and AFI 16-1404, *Air Force Information Security Program*. AFMAN 51-203, Chapter 6, provides additional guidance.

7.26.4. Controlled Material in the Record. When a record of trial contains controlled material (e.g., promotion testing materials, professional military education test materials, and career development course exams), the materials should be safeguarded to prevent further disclosure or unauthorized access. AFMAN 51-203, Chapter 6, provides additional guidance.

7.27. Government Information Other than Classified Information (Military Rule of Evidence 506).

7.27.1. Asserting the Military Rule of Evidence 506 Privilege. Only the Secretary of the Air Force, the Chairman of the Joint Chiefs of Staff or the Chairman’s delegee, or the head of a government agency for documents owned by agencies outside the Air Force, may claim the privilege from disclosure of government information other than classified information. The privilege for records and information of The Inspector General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, The Inspector General, or any other superior authority. See Military Rule of Evidence 506(c). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on his or her behalf.

7.27.2. Requests for assertion of the privilege should be forwarded through command channels and the Air Force Safety Center Office of the Staff Judge Advocate (AFSC/JA) to AFLOA/JAJM.

7.28. Lawyer-Client Privilege with the Air Force as the Client. Contact AFLOA/JAJM before asserting any privilege on behalf of the Air Force.

7.29. Appeals by the United States from an Adverse Ruling by a Military Judge (Rule for Courts-Martial 908).

7.29.1. Trial counsel may file a notice of appeal by the United States under Article 62, UCMJ, and Rule for Courts-Martial 908, only after consultation with the Government Trial and Appellate Counsel Division (AFLOA/JAJG). The Staff Judge Advocate decides whether to file such notice of appeal with the convening authority’s concurrence.

7.29.2. After filing a notice of appeal conforming to the requirements of Rule for Courts-Martial 908(b) with the military judge, trial counsel sends notice to AFLOA/JAJG within twenty days, requesting that office file the appeal with the Air Force Court of Criminal Appeals. In the request, trial counsel will identify the ruling or order to be appealed and include the following:

7.29.2.1. A copy of the charges and specifications;
7.29.2.2. An original and two copies of the verbatim record of the applicable proceedings, or, if not available, a summary of the evidence and facts;
7.29.2.3. Trial counsel’s certification that the appeal is not taken to delay the case;
7.29.2.4. 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
7.29.2.5. 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.

7.29.3. AFLOA/JAG decides whether to file the appeal with Air Force Court of Criminal Appeals, and notifies the trial counsel, Staff Judge Advocate, and AFLOA/JAJM.

7.30. Extraordinary Writs by Trial or Victim’s Counsel. A petition for extraordinary relief by the prosecution or victim’s counsel (see paragraph 11.12.) in a court-martial is, and should remain, a rare course of action.
Chapter 8

POST-TRIAL PROCEDURE

Section 8A—Post-Trial Processing and Report of Result of Trial (Rules for Courts-Martial 1101, 1305).

8.1. Post-Trial Processing.

8.1.1. An accused has a right to timely review during the post-trial process. Notwithstanding any established metrics and milestones, a presumption of unreasonable delay attaches to any case completed after 11 June 2006 that did not have initial action taken within 120 days of the date the sentence was adjudged. See United States v. Moreno, 63 M.J. 129 (C.A.A.F. 2006).

8.1.2. If more than 120 days has elapsed between sentence and convening authority action, the trial legal office prepares a chronology or similar documentation explaining any delays. (T-1). The Staff Judge Advocate ensure this documentation is included in the record of trial.

8.2. Report of Result of Trial. The Report of Result of Trial is the primary source of findings and sentence information.

8.2.1. Publication of Report of Result of Trial. After final adjournment of the court-martial in every case, trial counsel promptly signs and publishes the Report of Result of Trial memorandum. (T 1). The Staff Judge Advocate ensures copies of the Report of Result of Trial memorandum are distributed to the accused’s immediate commander, the General and Special Court-Martial Convening Authorities and their Staff Judge Advocates, the commanders of the local Security Forces and Air Force Office of Special Investigations detachment, AFLOA/JAJM, AF/JAT, and, if the accused is in confinement, the commanding officer responsible for the confinement facility and the confinement officer or noncommissioned officer. In the case of an Air National Guard member, the Staff Judge Advocate also provides a copy of the Report of Result of Trial memorandum to 201 MSS/CC. Refer to the Report of Result of Trial (RRT) Memo Checklist on the AFLOA/JAJM Virtual Military Justice Deskbook for the most updated distribution list. The Report of Result of Trial memorandum is formatted and distributed as follows:

8.2.1.1. Format. Use the Automated Military Justice Analysis and Management System to produce the initial draft of the Report of Result of Trial memorandum. The date on the Report of Result of Trial memorandum is the date it is published. Pleas and findings are entered for both the charges and the specifications. Figure A8.1 is a sample Report of Result of Trial memorandum.

8.2.1.2. Corrected Copies. If a published Report of Result of Trial memorandum contains errors, the Staff Judge Advocate or designee ensures a corrected copy is published and included in the Record of Trial.

8.2.1.2.1. If the correction involves deletion of text, the deleted matter is included with a line through it; the deleted text should still be legible (e.g., Technical). If the correction involves the addition of text, the added matters are underscored (e.g., Technical). If the correction is a substitution, both the deleted and the added matters
are included, with the former lined out and the latter underscored (e.g., Staff Technical Sergeant).

8.2.1.2.2. The corrected copy is identified in the heading by using “CORRECTED COPY – DESTROY ALL OTHERS.”

8.2.1.2.3. In cases involving sex offenses or child victims (see paragraph 8.2.1.3), if the corrected copy is expurgating an erroneously unexpurgated matter, the previously unexpurgated text is not included.

8.2.1.2.4. The date included on the corrected copy is the date the corrected copy is published, not the date of the original order.

8.2.1.2.5. If additional corrections are necessary, the heading reflects that the order is the second, third, etc., corrected copy. Changes from a previous corrected copy are incorporated by deleting the language lined through and retaining the added language without the underscore.

8.2.1.3. Expurgated and Unexpurgated Copies. When the content of a Report of Result of Trial memorandum includes classified or other matters unfit for publication, the Staff Judge Advocate or designee prepares an unexpurgated copy and an expurgated copy. (T-1). Both versions are included in the record of trial. The Staff Judge Advocate or designee adheres to the following guidance in preparing unexpurgated and expurgated copies of the Report of Result of Trial memorandum:

8.2.1.3.1. Classified material should be replaced with asterisks in the expurgated copy.

8.2.1.3.2. For cases involving sex offenses, the names of victims are replaced with their initials in the expurgated copy.

8.2.1.3.3. In cases involving child victims 16 years and under, the names of child victims are replaced with their initials in both the expurgated and unexpurgated copies.

8.2.1.3.4. Obscene language is replaced with asterisks in the expurgated copy.

8.2.1.3.5. Distribution. Distribute unexpurgated versions of the Report of Result of Trial memorandum to AFLOA/IAJM, the commanding officer for the confinement facility, and the confinement officer or noncommissioned officer in charge, unless it contains classified information. Only distribute unexpurgated Report of Result of Trial memorandum containing classified information to AFLOA/IAJM as part of the original record of trial, and properly maintain an unexpurgated version in the legal office’s copy of the record of trial. Distribute expurgated versions to the remaining parties or entities listed in paragraph 8.2.1. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list mark, “*Recipients of unexpurgated Report of Result of Trial Memorandum.”

8.2.1.4. Content.

8.2.1.4.1. Pleas and Findings. The Staff Judge Advocate or designee ensures the Report of Result of Trial memorandum accurately reflects pleas and findings, to
include charges and specifications dismissed by the military judge, findings of guilty to lesser included offenses, and pleas or findings with exceptions or substitutions. Specifications that have pleas and findings with exceptions or substitutions are entered verbatim, not simply summarized.

8.2.1.4.2. Sentence. If applicable, the Staff Judge Advocate or designee includes both the sentence as announced as well as any pretrial agreement sentence limitation in the sentence portion of the Report of Result of Trial memorandum.

8.2.1.4.3. Pretrial Confinement Credit. If applicable, the Staff Judge Advocate or designee includes any pretrial confinement credit awarded to the accused on the Report of Result of Trial memorandum, along with the source of each portion of credit and total days of credit awarded (e.g., “310 days of confinement credit based upon 10 days of credit for restriction tantamount to confinement, 100 days of credit for military pretrial confinement, and 200 days of administrative credit for illegal pretrial confinement.”).

8.2.1.4.4. Other Matters. The Staff Judge Advocate ensures the Report of Result of Trial memorandum reflects “Sex Offender Notification Required,” “DNA Processing Required,” or “Crime of Domestic Violence” as appropriate. More information on the requirements for such cases is provided in Sections 13L, 13M, and 13N.

8.2.1.5. In addition to the Report of Result of Trial memorandum, use the DoD Form 2707-1, Department of Defense Report of Result of Trial, in conjunction with the DoD Form 2707, Confinement Order, if the accused is sentenced to confinement. Further guidance on use of the DoD Form 2707-1 is available on the Virtual Military Justice Deskbook.

Section 8B—Post-Trial Confinement

8.3. Entry into Post-Trial Confinement. Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused’s chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See Rule for Courts-Martial 1101(b). The DoD Form 2707, Confinement Order, is used to enter an accused into post-trial confinement.

8.3.1. Processing the DoD Form 2707. When a court-martial sentence includes confinement, the legal office should prepare the top portion of the Form 2707. The sentence adjudged by the court is included in item 5, even in cases where a pretrial agreement provides for a lesser sentence than that adjudged by the court. The person directing confinement, typically the trial counsel, signs item 7(a). The Staff Judge Advocate signs item 8(d) as the officer conducting a legal review and approval. The same person cannot sign both item 7(a) and 8(d). Before signing the legal review, the Staff Judge Advocate should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

8.3.2. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the Form 2707. Security Forces personnel ensure medical personnel complete items 9 and 10. A completed copy of the Form 2707 is returned to the legal office, and the legal office
includes the copy in the record of trial. Security Forces retains the original Form 2707 for inclusion in the prisoner’s Correctional Treatment File.

8.3.3. If an accused is in pretrial confinement, no action is normally necessary to continue that confinement post-trial. In those cases, the Report of Result of Trial memorandum may serve in lieu of the DoD Form 2707.

8.4. 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.C.C.A. 1995); and *United States v. Pinson*, 54 M.J. 692 (A.F.C.C.A. 2001). An accused may also be awarded pretrial confinement credit for restriction tantamount to confinement, prior nonjudicial punishment for the same offense, violations of Rule for Courts-Martial 305, or violations of Articles 12 or 13, UCMJ.

8.4.1. When a military judge directs credit for illegal pretrial confinement (violations of Article 12, Article 13, or Rule for Courts-Martial 305), in accordance with Rule for Courts-Martial 1107(f)(4)(F), the Staff Judge Advocate or designee ensures this credit is ordered in the convening authority’s initial action. *See* Section 8G.

8.4.2. Any credit for pretrial confinement should be clearly reflected in the Report of Result of Trial memorandum (see paragraph 8.2.1.4.3.) and DoD Form 2707, along with the source of each portion of credit and total days of credit awarded (e.g., “310 days of confinement credit based upon 10 days of credit for restriction tantamount to confinement, 100 days of credit for military pretrial confinement, and 200 days of administrative credit for illegal pretrial confinement.”).

8.5. Confinement Facility (Rules for Courts-Martial 1101, 1107(f)(4)(C), 1113(d)(2)(C)).

8.5.1. AFSFC/FC, which oversees Air Force correctional facilities worldwide, is responsible for inmates gained by AFSFC/FC and approves all inmate transfers between military corrections facilities. AFSFC/FC, not the convening authority, selects the corrections facility for post-trial confinement and rehabilitation for inmates gained by AFSFC/FC. Refer to AFI 31-105 for confinement rules and practices.

8.5.2. Correctional facilities other than those in the Air Force Corrections System may be used to confine inmates. AFSFC/FC sends detailed instructions covering selection of inmates for these assignments, details of transfer, and other administrative matters. The General Court-Martial Convening Authority 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, for inmates in the Air Force Corrections System.

Section 8C—Preparing, Serving, and Forwarding the Record of Trial (Rule for Courts-Martial 1104)


8.7. Serving the Record of Trial.
8.7.1. The Staff Judge Advocate ensures the record of trial is served on the accused in accordance with Rules for Courts-Martial 1104(b) or 1305(d). The Staff Judge Advocate also ensures proof of service, or substitute service, is included in the record of trial. The defense counsel of record should be notified when service on the accused is completed.

8.7.2. Victims of a crime punishable under Articles 120, 120b, 120c, 125, UCMJ, or any attempt to commit such offense in violation of Article 80, UCMJ, are entitled to a copy of the record of proceedings without charge as soon as the records are authenticated. See Rule for Courts-Martial 1103(g)(3); Article 54, UCMJ. The victim’s counsel of record should be notified when service of the record of trial on the victim is completed.

8.7.2.1. Conviction. In a case with a conviction, in accordance with Rule for Courts-Martial 1103(g)(3), trial counsel or a designated representative provides victims with the record of proceedings. The record of proceedings served on the victim includes the following: a copy of the transcript; a copy of the charge sheet; a copy of the convening order and any amending orders; a copy of the request, if any, for trial by military judge alone, or that the membership of the court shall include enlisted persons; a copy of the exhibits that were received in evidence; and, when made available, a copy of the dated, signed action by the convening authority.

8.7.2.1.1. The convening authority’s action is normally prepared after the record of trial is authenticated. The victim may request a delay in receiving the record of trial until receipt of the convening authority’s action. Any request to delay receipt of the record of trial until action is coordinated through the victim’s counsel, if any, made in writing, and memorialized with documentation. NOTE: a delay in the victim’s receipt of the record of trial may affect a victim impact statement submitted pursuant to Rule for Courts-Martial 1105A.

8.7.2.1.2. Records sealed in accordance with Rule for Courts-Martial 1103A are not provided to the victim. The Staff Judge Advocate ensures all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act. In a case involving multiple victims, it may be necessary to redact the privacy information and content pertaining to one victim (e.g., photographs of a sexual nature, medical information, personal identifying information, etc.) from the copy of the record provided to other victims.

8.7.2.2. Acquittal. In a case resulting in acquittal, trial counsel or a designated representative furnishes the victim with the same record provided to the accused, including the following: a copy of the convening order (and any amending orders); sufficient information to establish jurisdiction over the accused and the offense; and an abbreviated record of trial. Rule for Courts-Martial 1103(e) and AFMAN 51-203. The Staff Judge Advocate, trial counsel, or designee ensures all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act.

8.8. Forwarding the Record of Trial. The servicing Staff Judge Advocate or designee forwards the record of trial to the convening authority or the convening authority’s Staff Judge Advocate in accordance with Rule for Courts-Martial 1104(e). After the convening authority takes action (or in the case of an acquittal, after the promulgating order is signed), the Staff Judge Advocate or designee promptly forwards the original record of trial and required copies for post-trial review.
8.8.1. Cases requiring Article 64(a) review are forwarded to the General Court-Martial Convening Authority’s Staff Judge Advocate using the most cost-effective method that provides for means of tracking. (T-1).

8.8.2. All other cases are forwarded to AFLOA/JAJM, this includes cases resulting in an acquittal or terminated without findings (e.g., mistrial or dismissal of all charges) (T-1).

8.8.3. Incomplete records of trial (e.g., records of trial that are missing documents or have unsigned receipts) should not be forwarded to AFLOA/JAJM, and incomplete records of trial are not considered transferred to AFLOA/JAJM in the Automated Military Justice Analysis and Management System.

8.8.4. AFMAN 51-203, Chapters 3 and 13, provide additional guidance related to the number of required copies that must accompany the original record of trial and forwarding instructions.

Section 8D—Matters Submitted by Victims (Rule for Courts-Martial 1105A)

8.9. Post-Trial Submission of Victim Impact Statement. In any case where findings and sentence have been adjudged for an offense that involved a victim, the Staff Judge Advocate ensures the victim is provided an opportunity to submit matters for consideration by the convening authority, or by another person authorized to act under Article 60, UCMJ, before the convening authority or such other person takes action. See Rule for Courts-Martial 1105A and paragraphs 11.11.1.10 and 11.16.1.10.

8.9.1. In this section, the term “victim” means a person who has suffered a direct physical, emotional, or pecuniary loss as a result of a commission of an offense under the UCMJ of which the accused was found guilty and on which the convening authority is taking action under Rule for Courts-Martial 1107. See Article 6b(b), UCMJ. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes one of the following (in order of precedence): spouse, legal guardian, parent, child, sibling, or similarly situated family member.

8.9.2. Immediately following trial, or as soon thereafter as practicable, the Staff Judge Advocate or trial counsel creates and signs a letter to each victim, if any, concerning the results of trial. The trial counsel or designee personally serves this letter on the victim or the victim’s counsel in conjunction with the DoD Form 2704, Victim/Witness Certification and Election Concerning Prisoner Status. A template for this letter is provided at Figure A8.2.

8.9.2.1. This letter invites the victim to provide input, in the form of a written, signed victim impact statement, as to whether or not the convening authority should approve the findings and sentence or grant some form of clemency.

8.9.2.2. The letter notifies the victim that he or she has ten calendar days after the later of (A) if the victim is entitled to a copy of the record of proceedings in accordance with paragraph 8.7.2, the date on which the victim receives a copy of the record of proceedings or waives the right to receive a copy of the record of proceedings, or (B) the date on which the Staff Judge Advocate’s Recommendation is served on the victim. For summary courts-martial, the victim has seven calendar days after the sentence is announced to submit a statement to the Summary Court-Martial officer. If a victim requests additional time for submission of matters, the convening authority or other
person taking action may, for good cause, extend the submission period for up to but not more than an additional twenty calendar days.

8.9.2.3. The letter states that any statements will be provided to the accused and defense as part of the post-trial process and that the defense will have an opportunity to comment on it as a part of their post-trial submission to the convening authority.

8.9.3. Eligible victims may consult with a legal assistance attorney or Special Victims’ Counsel about the results of the court-martial and the post-trial process in accordance with AFI 51-504, Legal Assistance, Notary, and Preventive Law Programs. The trial counsel or designee may explain the post-trial process to victims in accordance with DoD Form 2703, Post-Trial Information for Victims and Witnesses of Crime.

8.9.4. Staff Judge Advocates should not unreasonably delay providing the Staff Judge Advocate’s Recommendation and post-trial paperwork to the accused and defense counsel in order to try to locate a victim who is not readily available or who chooses to provide a statement after the time and date set forth in the letter from the Staff Judge Advocate to the victim.

8.9.5. Failure to submit a statement within the time prescribed is deemed a waiver of the right to submit such a statement. The right to submit a statement is not a continuing right beyond the allotted time for submission. A victim may expressly waive, in writing, the right to submit a statement. Once filed, such a waiver may not be revoked.

8.10. Service of Victim Impact Statement. The victim impact statements, if any, are served on the accused and defense counsel. If the victim submits a statement after the Staff Judge Advocate’s Recommendation and Record of Trial have been served on the accused and defense counsel, service of the victim impact statement on the accused and defense counsel re-starts the 10-day period for the accused to submit matters for the convening authority’s consideration on clemency. If the victim impact statement is served separately from the Staff Judge Advocate’s Recommendation or Staff Judge Advocate’s Recommendation Addendum, the Staff Judge Advocate or designee includes proof of service or substitute service in the record of trial.

Section 8E—Matters Submitted by the Accused and Defense Counsel (Rule for Courts-Martial 1105)

8.11. Notice Regarding Post-Trial Submissions. The Staff Judge Advocate, trial counsel, or assistant trial counsel provides the accused and defense counsel a memorandum 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. A template of this letter is provided at Figure A8.3.

8.11.1. The letter is addressed to the accused and a copy is provided to the defense counsel responsible for post-trial matters. If a Staff Judge Advocate recommendation is not required in the case, the letter is provided to the detailed military defense counsel, unless the accused requested otherwise. The Staff Judge Advocate or designee ensures a copy of the notification letter is included, with the accused’s receipt, in the record of trial as specified in AFMAN 51-203, paragraph 4.6 and Figure 4.1.

8.11.2. Waiver of Accused’s Right to Submit Matters. If the accused submits a waiver of the right to submit matters, the Staff Judge Advocate or designee ensures the written waiver
is included in the record of trial. Waiver templates are included at Figure A8.4 and Figure A8.5.

8.12. Application 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 Staff Judge Advocate, to defer any adjudged 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), UCMJ. If an accused has dependents, an application may also be submitted to the convening authority, through the servicing Staff Judge Advocate, to waive any mandatory forfeiture of pay and allowances under Article 58b(b) for the benefit of the accused’s dependents. Applications for deferral or waiver may be submitted through the servicing Staff Judge Advocate any time after the sentence is announced and before action. See Section 8H for additional guidance on deferring and waiving forfeitures of pay and allowances.

8.13. Matters Submitted by the Accused. An accused may submit matters, including clemency recommendations, for the convening authority to consider before taking action on the case. Failure to submit matters within the time prescribed is deemed a waiver of the right to submit such matters. Submission of any matters is deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limits is expressly reserved in writing. An accused may also waive, in writing, the right to submit matters; once submitted, such waiver may not be revoked. See Rule for Courts-Martial 1105(d). Rule for Courts-Martial 1105 provides further discussion on matters that may be submitted, waivers, and the appropriate time periods for submissions.

8.14. Return to Duty. The return to duty system offers selected enlisted personnel with exceptional potential the opportunity for clemency action concerning the characterization of their discharges and possible return to duty. The applicant, with assistance of defense counsel, submits a letter and attachments to the convening authority or The Judge Advocate General requesting a recommendation for return to duty. The defense counsel is responsible for ensuring the application, with the requisite recommendation, is forwarded to the Air Force Clemency and Parole Board. AFI 31-105, paragraph 12.9 and Attachment 18, provides additional guidance on applications and requirements for applications for return to duty.

Section 8F—Staff Judge Advocate’s Recommendation and Addendum (Rule for Courts-Martial 1106)

8.15. Requirement for Staff Judge Advocate’s Recommendation.

8.15.1. A Staff Judge Advocate’s Recommendation is required in cases where the convening authority takes action on a record of trial by general court-martial, a record of trial by special court-martial that includes a sentence to a bad conduct discharge or confinement for one year, or a record of trial by special court-martial in which a victim is entitled to submit a statement pursuant to Rule for Courts-Martial 1105A. Rule for Courts-Martial 1106(a).

8.15.2. In the case where a Staff Judge Advocate’s Recommendation is not required, the Staff Judge Advocate must provide the convening authority with the following documents: the record of trial, the defense submission, a draft acknowledgement that the convening authority considered the defense submissions (to be signed by the convening authority), and a proposed action for the convening authority’s signature.
8.15.2.1. When a Staff Judge Advocate’s Recommendation is not required, the action may be forwarded using the sample action memorandum provided in Figure A8.6, to ensure all of the matters the convening authority is required to consider are listed. If this action memorandum is not used, the Staff Judge Advocate ensures that whatever form is used reflects that the convening authority considered all the required matters.

8.15.2.2. Practitioners should be deliberate if raising new matters in the Staff Judge Advocate Recommendation. The Staff Judge Advocate ensures any new matters are served on the accused and accused’s counsel and allows ten days from service for the accused to submit comments. Rule for Courts-Martial 1106(f)(7).

8.16. **Staff Judge Advocate’s Recommendation Contents.** A Staff Judge Advocate’s Recommendation should be a clear and concise recommendation written in memorandum format containing the information required by Rule for Courts-Martial 1106(d). The Staff Judge Advocate or designee ensures copies of the Report of Result of Trial memorandum and the accused’s personal data sheet admitted at trial, or at a post-trial hearing (whichever is current), are attached to the Staff Judge Advocate’s Recommendation. The original Staff Judge Advocate’s Recommendation with all attachments are included in the record of trial.

8.16.1. When combined with the Staff Judge Advocate’s Recommendation and the Report of Result of Trial memorandum, the personal data sheet ensures that required information concerning the accused’s service record is provided to the convening authority. The Staff Judge Advocate or designee ensure the attachments follow immediately behind the Staff Judge Advocate’s Recommendation in the record of trial, even if these documents are also included in other parts of the record. A copy of the Staff Judge Advocate’s Recommendation and attachments is included in each copy of the record of trial.

8.16.2. The Staff Judge Advocate must include in the Recommendation items required by Rule for Courts-Martial 1106 that are not included on the personal data sheet or the Report of Result of Trial memorandum. This includes any clemency recommendations made by the sentencing authority (made in conjunction with the announced sentence) and any additional credit awarded by the military judge for illegal pretrial confinement. See Rule for Courts-Martial 1106(d)(3). The Staff Judge Advocate’s Recommendation should also attach the victim impact statement (if any), the maximum sentence for the guilty specifications/charges, and a copy or summary of the terms and conditions of any pretrial agreement, including a statement of any action the convening authority is obligated to take under the agreement or a statement of the reasons why the convening authority is not obligated to take specific action under the agreement.

8.16.2.1. The Staff Judge Advocate’s Recommendation should contain a statement informing the convening authority what is prohibited under Article 60(c), UCMJ, for offenses committed on or after 24 June 2014 per Fiscal Year 2014 National Defense Authorization Act (Fiscal Year 14 National Defense Authorization Act), Section 1702(b). For cases that involve at least one offense committed before 24 June 2014, paragraph 8.24.3, discusses the limits of the convening authority’s discretion. Templates are provided at Figure A8.8 and Figure A8.9.

8.16.2.2. If trial counsel recommends to the convening authority that the accused be recognized for substantial assistance, that memorandum should be included as an
attachment to the Staff Judge Advocate’s Recommendation. See paragraph 8.17.1. and Figure A8.7.

8.16.3. When an allegation of legal error is raised in matters submitted under Rule for Courts-Martial 1105, or when otherwise deemed appropriate by the Staff Judge Advocate, the Staff Judge Advocate’s Recommendation states the Staff Judge Advocate’s opinion as to whether corrective action on the findings or sentence should be taken.

8.16.4. The Staff Judge Advocate’s Recommendation 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. The Staff Judge Advocate or designee ensures approved deferrals and waivers are documented in the convening authority’s action, and the convening authority must act upon pending requests.

8.16.4.1. If a convening authority previously disapproved a request for deferral or waiver prior to initial action on the sentence, comment in the Staff Judge Advocate’s Recommendation 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. 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 Rule for Courts-Martial 1107(b)(3)(B)(iii). Notice may be satisfied through the Staff Judge Advocate’s Recommendation.

8.16.4.2. Any legal reviews of waivers of forfeitures are included as an attachment to the Staff Judge Advocate’s Recommendation if the legal review is accomplished before the Staff Judge Advocate’s Recommendation is published. Any legal review that may be prepared after the Staff Judge Advocate’s Recommendation should be treated as an addendum to the Staff Judge Advocate’s Recommendation and served on the accused for comment. The Staff Judge Advocate or designee ensures the legal review is served on the accused before submission to the convening authority and is included in the completed record of trial. See paragraph 8.32. for additional discussion.

8.17. Exceptions to Limitations on Actions by Convening Authority.

8.17.1. Trial Counsel Substantial-Assistance Exception. Upon the recommendation of the trial counsel identified in the record of trial, in recognition of substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority has the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part even with respect to an offense for which a mandatory minimum sentence exists. See Fiscal Year 14 National Defense Authorization Act § 1702(b)(4)(B); Article 60(c)(4)(B), UCMJ. When substantial assistance is provided, trial counsel may make such a recommendation and attach it to the Staff Judge Advocate’s Recommendation or to the Addendum. A template for the assistance memorandum is provided at Figure A8.7. An assistant trial counsel may only sign the trial counsel memorandum if the trial counsel is not reasonably available. If the assistant trial counsel and trial counsel do not agree on whether the accused provided substantial assistance, the opinion of the trial counsel identified in the record of trial controls.
8.17.2. Pretrial Agreement Exception. If a pretrial agreement has been entered into by the convening authority and the accused as authorized by Rule for Courts-Martial 705, the convening authority:

8.17.2.1. Has the authority to approve, disapprove, commute, or suspend a sentence in whole or in part pursuant to the terms of the pretrial agreement, with the exception of mandatory minimum sentences as described in 8.17.2.2.

8.17.2.2. May commute a mandatory sentence of a dishonorable discharge to a bad conduct discharge pursuant to the terms of the pretrial agreement. The convening authority may not disapprove, commute or suspend any other mandatory minimum sentence.

8.18. Preparing and Signing the Staff Judge Advocate’s Recommendation. The Staff Judge Advocate must clearly indicate in the Staff Judge Advocate’s Recommendation that the recommendation is from the Staff Judge Advocate. (T-0). An assistant performing the duties of the Staff Judge Advocate may sign as “Acting as the Staff Judge Advocate.” An assistant Staff Judge Advocate may prepare the recommendation, but the Staff Judge Advocate (or if unavailable, the person “Acting as the Staff Judge Advocate”) must review the record of trial and sign the Recommendation. No person who participated in the court-martial as a member, a military judge, a trial counsel, a defense counsel, or an investigating officer may draft or sign the Staff Judge Advocate’s Recommendation or Addendum, or otherwise act as the Staff Judge Advocate or legal advisor to any reviewing or convening authority in that case. See Rule for Courts-Martial 1106(b).

8.18.1. If the convening authority does not have a Staff Judge Advocate (or “Acting as the Staff Judge Advocate”), or the person serving in that capacity is disqualified, then the convening authority requests the assignment of another Staff Judge Advocate to prepare the Staff Judge Advocate’s Recommendation or forwards the record to any General Court-Martial Convening Authority as provided in Rule for Courts-Martial 1107(a). See Rule for Courts-Martial 1106(c)(1). If the original Staff Judge Advocate did not sign the Staff Judge Advocate’s Recommendation, the Staff Judge Advocate signing the Recommendation includes an explanation in the allied papers of the record of trial. An explanation is not required if the record of trial makes clear (e.g., forwarding memorandum, transfer memorandum) the reasons the original Staff Judge Advocate did not sign the Staff Judge Advocate’s Recommendation.

8.18.1.1. For a special court-martial, if all judge advocates on the Special Court-Martial Convening Authority’s staff are disqualified from preparing and signing the Staff Judge Advocate’s Recommendation, forward the record to the General Court-Martial Convening Authority’s Staff Judge Advocate. That officer may prepare and sign the Staff Judge Advocate’s Recommendation or designate another Staff Judge Advocate (or the person “Acting as the Staff Judge Advocate”) in the General Court-Martial Convening Authority’s command to prepare and sign the Recommendation.

8.18.1.2. For a general court-martial, if all judge advocates on the General Court-Martial Convening Authority’s staff are disqualified from preparing and signing the Staff Judge Advocate’s Recommendation, forward the record to the major command’s Staff Judge Advocate. That officer may prepare and sign the Staff Judge Advocate’s Recommendation or designate another Staff Judge Advocate (or the person “Acting as
8.18. Designation of Staff Judge Advocate. If the Staff Judge Advocate, or the person “Acting as the Staff Judge Advocate,” in the major command is disqualified from preparing and signing the Staff Judge Advocate’s Recommendation, the major command Staff Judge Advocate requests AFLOA/JAJM’s assistance in designating a Staff Judge Advocate to prepare and sign the Recommendation.


8.19.1. Service on the Accused. The Staff Judge Advocate or designee ensures copies of the Staff Judge Advocate’s Recommendation, including its attachments, are served on the accused’s counsel and, unless impracticable, on the accused. The Staff Judge Advocate or designee obtains receipts for service of the Staff Judge Advocate’s Recommendation from both the accused and the accused’s counsel and includes them in the record of trial. If service on the accused is impracticable, or if the accused so requests on the record at the court-martial or in writing, the Staff Judge Advocate or designee forwards the accused’s copy to the accused’s defense counsel and attaches a statement to the record of trial explaining the reasons the accused was not served. See Rule for Courts-Martial 1106(f)(1).

8.19.2. Service on Victim. If the accused was found guilty of any offense that resulted in direct physical, emotional, or pecuniary harm to a victim or victims, a separate copy of the recommendation will be served on the victim(s). When a victim is under eighteen years of age, incompetent, incapacitated, deceased, or otherwise unavailable, service shall be made in accordance with the Rule for Courts-Martial 1106(f)(1).

8.20. Defense Response to the Staff Judge Advocate’s Recommendation. The accused’s counsel may submit objections or rebuttal to any matter in the Staff Judge Advocate’s Recommendation and may comment on any other matter. Defense counsel must submit comments within ten days of service of the record of trial on the accused (under Rule for Courts-Martial 1104(b)) or receipt of the Staff Judge Advocate’s Recommendation, whichever is later, unless the period is extended. See Rule for Courts-Martial 1106(f)(4) and (5). If a victim impact statement is accepted by a Staff Judge Advocate during the accused’s ten days, the accused’s ten-day clock will restart on the day the accused and defense counsel have been served with the victim’s impact statement. See paragraph 8.10.

8.21. Addendum to the Staff Judge Advocate’s Recommendation. When the Staff Judge Advocate receives matters submitted by an accused or defense counsel under Rules for Courts-Martial 1105 or 1106(f)(4) after service of the Staff Judge Advocate’s Recommendation on defense, the Staff Judge Advocate prepares an Addendum to the Staff Judge Advocate’s Recommendation for the convening authority. The Staff Judge Advocate must address whether corrective action is required when an allegation of error is raised in matters submitted under Rule for Courts-Martial 1105. The response may consist of a statement of agreement or disagreement with the matter raised by the accused or counsel. Rule for Courts-Martial 1106(d)(4). The Staff Judge Advocate may address other matters raised by defense submissions in the Addendum. Figure A8.10 is a template addendum to the Staff Judge Advocate’s Recommendation when defense matters are submitted. If matters are not submitted, the Staff Judge Advocate must still prepare an addendum to the Staff Judge Advocate’s Recommendation. See paragraph 8.21.3.

8.21.1. The Staff Judge Advocate ensures the Addendum to the Staff Judge Advocate’s Recommendation:
8.21.1.1. Lists each defense submission as a separate attachment to the addendum;

8.21.1.2. Advises that, per Rule for Courts-Martial 1107(b)(3)(A), the convening authority must consider the result of trial, the Staff Judge Advocate Recommendation, and all written matters submitted by the defense. Rule for Courts-Martial 1107(b)(3)(A)(iii); and

8.21.1.3. Advises that the convening authority may consider other matters prior to taking action, such as the record of trial, 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 (e.g., additional matters raised by any victim impact statements submitted), the accused is notified and given an opportunity to rebut. See Rule for Courts-Martial 1107(b)(3)(B).

8.21.2. New Matters in Addendum. New matters include all references to issues that are not included in the record of trial and are not served on defense counsel and the accused with the Staff Judge Advocate’s Recommendation. New matters ordinarily do not include the Staff Judge Advocate’s discussion of the correctness of the defense counsel’s comments on the recommendation. If the Addendum includes new matters, the Staff Judge Advocate or designee serves the accused and defense counsel with the Addendum containing the new matters. The accused and the accused’s counsel are allowed ten days from service of the Addendum to submit comments. Rule for Courts-Martial 1106(f)(7).

8.21.2.1. When an Addendum containing new matters is served upon the accused and defense counsel for comment, the Staff Judge Advocate prepares a second or additional Addendum to address defense comments or the absence of such comments.

8.21.2.2. The second or additional Addendum lists any additional defense submissions as an attachment, re-advises the convening authority to comply with paragraphs 8.21.1.2. and 8.21.1.3, and may address any matters raised in additional defense submissions. If any Addendum contains new matters, comply with paragraph 8.21.2.

8.21.3. If the Staff Judge Advocate does not receive matters from the accused or defense counsel per Rule for Courts-Martial 1105 after service of the Staff Judge Advocate’s Recommendation per Rule for Courts-Martial 1106, the Staff Judge Advocate must still prepare an Addendum for the convening authority. In this case, the matters addressed in paragraphs 8.21.1.1 are not required, nor would paragraph 8.21.2 apply unless new matters are addressed in the Addendum. Figure A8.11 is a template addendum to the Staff Judge Advocate’s Recommendation when defense matters are not submitted.

8.22. Staff Summary Sheet. Staff Judge Advocates should avoid use of a staff summary sheet in conjunction with the Staff Judge Advocate’s Recommendation, the Addendum, and convening authority action memorandum. If a staff summary sheet or other document is used to forward documents, the Staff Judge Advocate or designee must ensure it is included in the record of trial. The contents of any staff summary sheet should not ordinarily include any information not previously addressed in the Staff Judge Advocate’s Recommendation or Addendum as such information may constitute new matters. The Staff Judge Advocate or designee ensures any document used by the Staff Judge Advocate to supplement the post-trial recommendation is served on the defense counsel if it contains new matters. United States v. Thompson, 43 M.J. 703 (A.F.C.C.A. 1995). If the staff summary sheet adds new matters not otherwise addressed in
the Staff Judge Advocate’s Recommendation or the Addendum, the Staff Judge Advocate or designee ensures it is served on the accused and defense counsel for comment. *United States v. Leslie*, 16 M.J. 714 (A.F.C.M.R. 1983).

Section 8G—Initial Action by the Convening Authority (Article 60, UCMJ; Rule for Courts-Martial 1107)

8.23. Initial Action. The convening authority may not take initial action until the time period for the accused to submit matters for consideration under Rule for Courts-Martial 1105(c) has expired or the accused has waived the right to submit such matters under Rule for Courts-Martial 1105(d). A copy of the initial action by the convening authority should be served on the appropriate parties in accordance with paragraph 8.7.

8.23.1. Action While Resignation in Lieu of is Pending. The convening authority must not, under any circumstances, take action under Rule for Courts-Martial 1107 on any officer case in which an accused’s resignation for the good of the service is pending final Secretary of the Air Force decision. See paragraph 7.20.4.

8.23.2. Acquittals. There is no convening authority action for cases resulting in acquittal of all charges and specifications, mistrial, or dismissal of all charges, or for cases otherwise terminated without findings. In such cases, the Staff Judge Advocate or designee drafts a promulgating order. See paragraph 9.8.1.1.

8.24. 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 consistent with Article 60(c), UCMJ, is a matter of command prerogative and within the discretion of the convening authority.

8.24.1. 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 the Secretary of the Air Force, administrative, rather than punitive, separation under Article 74(b), UCMJ. Where a convening authority is considering making such a recommendation, the convening authority’s Staff Judge Advocate should contact AFLOA/JAJR, 1500 West Perimeter Road, Ste 1170, Joint Base Andrews Naval Air Facility Washington, Maryland 20762, for assistance and coordination.

8.24.2. Action on findings where all the convicted offenses were committed on or after 24 June 2014. The convening authority may take action on findings subject to the following limitations:

8.24.2.1. For offenses charged under Article 120(a) or 120(b), UCMJ; offenses charged under Article 120b, UCMJ; and offenses charged under Article 125, UCMJ:

8.24.2.1.1. The convening authority is prohibited from the following:

8.24.2.1.1.1. Setting aside any finding of guilt or dismissing a specification; or

8.24.2.1.1.2. Changing a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.
8.24.2.1.2. The convening authority may direct a rehearing in accordance with Rule for Courts-Martial 1107(e).

8.24.2.2. For offenses other than those listed in paragraph 8.24.2.1 for which the maximum sentence of confinement that may be adjudged does not exceed two years, without regard to the jurisdictional limits of the court; and the sentence adjudged does not include dismissal, a dishonorable discharge, bad conduct discharge, or confinement for more than six months:

8.24.2.2.1. The convening authority may change a finding of guilty for a charge or specification to a finding of guilty for an offense that is a lesser included offense of the offense stated in the charge or specification; or

8.24.2.2.2. Set aside any finding of guilty and—

8.24.2.2.2.1. Dismiss the specification and, if appropriate, the charge, or

8.24.2.2.2.2. Direct a rehearing in accordance with Rule for Courts-Martial 1107(e).

8.24.2.3. If the convening authority acts to dismiss or change any charge or specification for an offense, the convening authority provides, at the same time, a written explanation of the reasons for such action. The Staff Judge Advocate or designee ensures the written explanation is made a part of the record of trial and action thereon.

8.24.3. Action on the sentence where all the convicted offenses were committed on or after 24 June 2014.

8.24.3.1. Unless authorized under paragraph 8.17, the convening authority’s ability to affect the sentence is described as follows:

8.24.3.1.1. The convening authority shall not disapprove, commute, or suspend in whole or in part any portion of an adjudged sentence of confinement for more than six months.

8.24.3.1.2. The convening authority shall not disapprove, commute, or suspend that portion of an adjudged sentence that includes a dismissal, dishonorable discharge, or bad conduct discharge.

8.24.3.1.3. The convening authority shall not disapprove, commute or suspend any mandatory minimum sentence. See Article 56, UCMJ.

8.24.3.1.4. The convening authority may disapprove, commute, or suspend in whole or in part any portion of an adjudged sentence not explicitly prohibited by this rule, to include reduction in pay grade, forfeitures of pay and allowances, fines, reprimands, restrictions, and hard labor without confinement.

8.24.3.2. If the convening authority acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation is made a part of the record of trial and action thereon.

8.24.4. Action on findings and sentence where at least one of the convicted offenses occurred before 24 June 2014.
8.24.4.1. The convening authority has the same authority to take action on such findings and sentence as was in effect before 24 June 2014, except with respect to a mandatory minimum sentence required under Article 56(b), UCMJ. A mandatory minimum sentence applies only to those offenses listed in Article 56(b)(2) committed on or after 24 June 2014. See Fiscal Year 14 National Defense Authorization Act, Section 1705.

8.24.4.1.1. For example, if the accused is convicted of several offenses committed before 24 June 2014, and one specification of sexual assault in violation of Article 120(b), occurring on or after 24 June 2014, then the mandatory minimum applies because the accused was 1) convicted of an offense that qualifies for a mandatory minimum sentence under Art. 56(b)(2) that 2) occurred on or after 24 June 2014.

8.24.4.1.2. However, if the accused is convicted of offenses listed in Article 56(b)(2) that all occurred before 24 June 2014, then the mandatory minimum sentence does not apply.

8.24.4.2. If the specification for an offense specifies a date range beginning earlier than 24 June 2014 (e.g., “between on or about 1 June 2014 and on or about 1 July 2014”), the offense is considered to have been committed before 24 June 2014.


8.25.1. If the Special Court-Martial Convening Authority is unable to take action in a case, the Special Court-Martial Convening Authority’s Staff Judge Advocate, or designee, forwards the case to the General Court-Martial Convening Authority through the General Court-Martial Convening Authority’s Staff Judge Advocate. If the General Court-Martial Convening Authority is unable to take action, the major command commander may act personally or may designate another convening authority to do so.

8.25.2. The Staff Judge Advocate of the convening authority taking action will draft, and include in the record of trial, allied papers explaining why a different convening authority took action. The memorandum is not required if it is clear from the record of trial (e.g., transfer memorandum) why a different convening authority took action on the case.

8.25.3. 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 General Court-Martial Convening Authority for the command to which the accused is currently assigned.

8.26. Format for Initial Action. The convening authority’s initial action is prepared in accordance with Rule for Courts-Martial 1107(f) and the guidance in the Manual for Courts-Martial, Appendix 16. Samples of a convening authority’s initial action are at Figure A8.12. If a convening authority or reviewing authority withdraws an action and substitutes a new one, refer to paragraph 9.10.2.
8.26.1. Findings. Findings are addressed in the action only when any findings of guilty are disapproved, in whole or in part. *See* sample formats in Appendix 16.

8.26.2. Deferred Forfeitures and Reduction in Grade and Waiver of Automatic Forfeitures. *See* Section 8H for guidance, and Figure A8.13 and Figure A8.14 for sample formats and language for the convening authority’s action.

**8.27. Additional Considerations for Initial Action.**

8.27.1. Limitation on Forfeitures (Rule for Courts-Martial 1003).

8.27.1.1. If no confinement is adjudged and a forfeiture exceeding two-thirds pay per month is adjudged, the convening authority reduces 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.

8.27.1.2. Where an accused sentenced to confinement and forfeitures exceeding two-thirds pay per month has served the confinement prior to the convening authority’s action, the convening authority will reduce the approved forfeitures 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* Rule for Courts-Martial 1107(d)(2), Discussion; *United States v. Craze*, 56 M.J. 777 (A.F.C.C.A. 2002); *United States v. York*, 53 M.J. 553 (A.F.C.C.A. 2000); and *United States v. Warner*, 25 M.J. 64 (C.M.A. 1987).

8.27.1.3. Forfeitures of pay per month are stated in whole dollars. *See* Rule for Courts-Martial 1003.

8.27.2. Duration of Forfeitures. When total forfeitures are approved, the duration of forfeitures should not be specified. Where an enlisted member sentenced to a punitive discharge, confinement, and total forfeitures has been restored to duty after release from confinement, the member is entitled to pay and allowances from the date the member is restored to duty, and the forfeitures become inoperative thereafter. *See* DoD 7000.14-R, *Department of Defense Financial Management Regulation*, Vol. 7A, paragraph 480704.

8.27.3. Application of Article 58a, UCMJ. The provisions of Article 58a do not apply to the Air Force. All reductions in grade are based upon adjudged and approved sentences.

8.27.4. Suspension of Sentences and Proceedings to Vacate a Suspended Sentence (Rules for Courts-Martial 1108 and 1109). In a case where the convening authority suspends all or part of the execution of a sentence, the Staff Judge Advocate or designee includes a copy of the suspension terms and the member’s receipt in each copy of the record of trial with the suspension action. If a suspended sentence is later vacated, the Staff Judge Advocate or designee documents the vacation hearing on a DoD 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 Form 455 is not required. The Staff Judge Advocate or designee sends the completed Form 455 or the member’s waiver to AFLOA/JAJM for review and filing with the original record of trial. Supplemental court-martial orders announcing the vacation of a suspended sentence should be distributed in
accordance with Chapter 10. Special orders are used to announce sentence vacations in a summary court-martial.

Section 8H—Forfeiture of Pay, Deferment, and Waiver (Articles 57(a) and 58b, UCMJ)

8.28. Distinctions between Deferment and Waiver. Articles 57(a) and 58b are separate and distinct statutory provisions. They serve different purposes.

8.28.1. Article 57(a) establishes the effective date of any forfeiture of pay and allowances or reduction in grade that is included in the sentence of a court-martial. Adjudged forfeitures and an adjudged reduction in grade take effect upon the date of the convening authority’s action or fourteen days after the sentence is adjudged, whichever occurs first. Under Article 57(a), any adjudged confinement or punitive discharge has no impact on the effective date of adjudged forfeitures and an adjudged reduction in grade. Therefore, adjudged forfeitures and reductions, unless deferred, should take effect on the date provided for in Article 57(a), UCMJ, even if there is no confinement or punitive discharge in the case.

8.28.2. Article 58b, UCMJ, requires a convicted member to forfeit pay (and allowances in general courts-martial) during qualified periods of confinement or parole.

8.28.2.1. Conditions for Mandatory Forfeitures. The mandatory forfeitures (also known as required or automatic forfeitures) under this provision only take effect if the following three conditions exist:

8.28.2.1.1. 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;
8.28.2.1.2. The accused is in confinement or on parole; and
8.28.2.1.3. The accused is otherwise entitled to pay and allowances that are subject to mandatory forfeitures.

8.28.2.2. Effective Date of Mandatory Forfeitures. As with adjudged forfeitures, mandatory forfeitures take effect the date of action or forfeitures days after the sentence is adjudged, whichever is sooner.

8.28.2.3. Amount of Mandatory Forfeitures. 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. In these cases, forfeitures should be announced in whole dollar amounts. Allowances otherwise due are not subject to mandatory forfeitures in a special court-martial.

8.29. Deferral and Waiver Provisions. Articles 57(a) and 58b, UCMJ, contain provisions that enable a convening authority to permit payments to the accused or the accused’s dependents that would otherwise have been forfeited.

8.29.1. Deferral of Forfeitures under Article 57(a)(2), UCMJ.

8.29.1.1. The convening authority may defer either adjudged forfeitures or an adjudged reduction in grade, or both, from taking effect until action. The convening authority may
also defer mandatory forfeitures. The accused must submit any request to defer adjudged and, if applicable, mandatory forfeitures in writing.

8.29.1.2. The accused’s pay does 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. Deferred forfeitures are paid to the accused.

8.29.1.3. The convening authority may rescind a deferment at any time.

8.29.2. Waiver of Mandatory Forfeitures under Article 58b, UCMJ.

8.29.2.1. Dependency Requirement. A convening authority may waive mandatory forfeitures only in cases where an accused has dependents. Waived forfeitures are paid to the dependents. Paragraph 8.31. discusses dependency determinations.

8.29.2.2. Maximum Waiver Period. A convening authority may waive mandatory forfeitures for a period not exceeding six months, or the period of confinement if less than six months. Waived forfeitures cannot be applied beyond the member’s expiration of term of service because the pay entitlement ceases at that point.

8.29.2.3. Written Application not Required. The convening authority may waive mandatory forfeitures even if the accused does not apply for such a waiver.

8.29.2.4. Timing and Effective Date of Waiver. The convening authority may 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 fourteen days after the sentence is adjudged.

8.29.2.5. Requirement to Defer, Suspend, Mitigate, or Disapprove Adjudged Forfeitures. 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. A convening authority may waive mandatory forfeitures 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 (C.A.A.F. 2002).

8.29.3. A convening authority may 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 the accused’s family.

8.30. Mechanics of Deferring and Waiving Forfeiture of Pay. Figure A8.14 explains the relationship between adjudged and mandatory forfeitures from the date the sentence is adjudged until the end of the forfeiture period. To assist in drafting the convening authority’s action on the sentence, refer to Figure A8.12 and Figure A8.13.

8.30.1. Accused’s Deferral Request. If an accused requests a deferral of a reduction in grade 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.

8.30.1.1. 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.
8.30.1.2. The convening authority’s action on the request should be reflected in a signed and dated document.

8.30.1.3. The terms of approved deferrals are reported in a fourteen-day memorandum in accordance with Figure A8.16 and are reported in the action the convening authority ultimately takes on the case.

8.30.1.4. 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.

8.30.2. 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, unless the waiver is for total pay and allowances in a general court-martial. If forfeiture of two-thirds pay is approved in a special court-martial, the forfeitures should be reflected in whole dollar amounts.

8.30.2.1. The convening authority must identify the dependents that will receive the waived forfeitures. If payments are made to an ex-spouse, or multiple ex-spouses, or other person on behalf of minor dependents, the Staff Judge Advocate or designee obtains confirmation that the designated payee is the appointed guardian or custodian of a minor dependent as required. Legal offices should provide information described in AFMAN 65-116V1, Defense Joint Military Pay System Active Component Financial Services Office Procedures, paragraph 67.5.5, to the local finance office when processing waiver requests. This information includes a copy of the waiver request (if submitted), copy of the approved waiver request with amount approved, full name of payees, proof of dependency of payees or certification that the payees are dependents of the member, payment account information, and a statement signed by payee and member agreeing to notify legal and finance if the payee ceases being a dependent during the period payments are made.

8.30.2.2. If mandatory forfeitures are waived before action, the convening authority must reflect approval in a signed and dated document. Such a waiver of mandatory forfeitures are also reported in the fourteen-day memorandum and in the convening authority’s action on the case.

8.30.2.3. The local accounting and finance office should be consulted 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:

8.30.2.3.1. Basic Allowance for Subsistence. In most cases, the accused will lose Basic Allowance for Subsistence upon entering confinement. Therefore, the convening authority cannot give the accused’s family any portion of the accused’s Basic Allowance for Subsistence.

8.30.2.3.2. Taxes. Federal and state taxes are 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.
8.30.2.3.3. 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.

8.30.2.3.4. Regular Air Force Spouse. A spouse who is also a Regular Air Force member may receive only waived forfeiture of pay, not pay and allowances.

8.30.2.3.5. Expiration of Term of Service. There are no forfeitures to waive on any date after the accused’s expiration of term of service. Any pretrial agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond his or her expiration of term of service may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve pretrial agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. See United States v. Perron, 58 M.J. 78 (C.A.A.F. 2003) and paragraph 7.5.4.

8.31. Dependency Determinations under Article 58b, UCMJ. When addressing waivers of mandatory forfeitures under Article 58b, UCMJ, an issue may arise as to whether a person qualifies as a dependent.

8.31.1. Dependent Categories. Rule for Courts-Martial 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:

8.31.1.1. Spouse of the accused, regardless of military status.

8.31.1.2. Unmarried child of the accused under twenty-one years of age, including an adopted child or stepchild. In addition, special rules permit a child as old as twenty-three to be a dependent if enrolled as a full-time student and a child older than twenty-one years of age 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.

8.31.1.3. Parent of the accused. Additional dependency requirements are required, including the accused providing over one-half of the parent’s support. Parents include 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.

8.31.1.4. Unmarried persons placed in legal custody of the member as a result of a court order for a period of at least twelve 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).

8.31.2. Evidence of Dependency. Sufficient evidence of dependency is required to support an Article 58b, UCMJ, waiver. The nature of this evidence will depend on the status of the dependent.

8.31.2.1. Dependency status for a spouse or child may be established by their enrollment in the Defense Enrollment Eligibility Reporting System or by other competent evidence,
such as, a marriage certificate, a birth certificate, or a court order establishing paternity or child support obligations for a child.

8.31.2.2. Dependency determinations for a child over twenty-one 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 precondition for waiving forfeitures for the benefit of one of these dependents should be an “approval letter” of dependency from the Defense Finance & Accounting Services. The accused, or other party requesting the waiver, should provide a copy of the Defense Finance & Accounting Services “approval letter” with any request to waive mandatory forfeitures. If an accused is unable to qualify one of these persons as a dependent with the Defense Finance & Accounting Services, then there will normally be insufficient evidence of dependency to support an Article 58b waiver of mandatory forfeitures.

8.32. Service of Legal Review on the Accused. The Air Force Court of Criminal Appeals has addressed whether a Staff Judge Advocate’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. Legal advice pertaining to deferral requests need not be served on the accused. See paragraph 8.32.1. Legal advice pertaining to waiver requests must be served on the accused. See paragraph 8.32.2. In either case, legal offices should process requests promptly.

8.32.1. Article 57(a), UCMJ, Deferral of Forfeiture Requests. In United States v. Key, 55 M.J. 537 (A.F.C.C.A. 2001), the Court held that a Staff Judge Advocate 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 confinement, for which no Staff Judge Advocate recommendation is required and, when prepared, historically, is not served on the accused. The Staff Judge Advocate or designee ensures that any Staff Judge Advocate review and action by the convening authority on the request is included in the record of trial.

8.32.2. Article 58b, UCMJ, Waiver of Forfeiture Requests. In United States v. Spears, 48 M.J. 768 (A.F.C.C.A. 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 Staff Judge Advocates 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 Staff Judge Advocate for the convening authority prior to completion of the Staff Judge Advocate’s Recommendation should be attached to the Staff Judge Advocate’s Recommendation and become part of the completed record of trial. Any legal review that may be prepared after the Staff Judge Advocate’s Recommendation should be treated as an addendum to the Staff Judge Advocate’s Recommendation and served on the defense when it contains new matters. The Staff Judge Advocate or designee serves the legal review on the accused and defense counsel before submission to the convening authority and includes it in the completed record of trial.

8.33. Deferral and Waiver in 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 (C.A.A.F. 1997), held that application of Article 57(a) and 58b, UCMJ, violates the ex post facto clause of the Constitution.

8.33.1. For cases affected by the Gorski decision, any forfeitures collected pursuant to Article 58b, UCMJ (i.e., mandatory forfeitures); Article 57(a)(1)(A), UCMJ (i.e., adjudged forfeitures taken prior to convening authority action); and any pay and allowances withheld due to a reduction in grade pursuant to Article 57(a)(1)(A), UCMJ (i.e., reduction in grade prior to convening authority action), are without legal effect and will be restored.

8.33.2. For cases involving offenses committed both before and after 1 April 1996, the Court in United States v. Carter, 49 M.J. 392 (C.A.A.F. 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, UCMJ.

Table 8.1. Relationship between Adjudged and Mandatory Forfeitures

<table>
<thead>
<tr>
<th>FORFEITURE PERIOD</th>
<th>ADJUDGED FORFEITURES</th>
<th>MANDATORY FORFEITURES (See Note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)</td>
<td>Not in effect. Accused continues to be paid unless post expiration of term of service</td>
<td>Not in effect. Accused continues to be paid unless post expiration of term of service</td>
</tr>
<tr>
<td>14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED TO ACTION</td>
<td>In effect, except for any portion the convening authority defers. (See Note 2)</td>
<td>In effect, except for any portion the convening authority defers (See Note 2), and/or waives and directs payment to the accused’s qualifying dependents. (See Notes 3 &amp; 4)</td>
</tr>
<tr>
<td>ACTION TO END OF FORFEITURE PERIOD</td>
<td>The amount the convening authority approves is still in effect. The convening authority may approve, disapprove, commute or suspend the adjudged forfeitures in whole or in part.</td>
<td>Still in effect, except any portion the convening authority waives or has waived. (See Notes 4 &amp; 5)</td>
</tr>
</tbody>
</table>
NOTES:
1. Mandatory forfeitures only apply when the three conditions listed in paragraph 8.28.2.1. exist.
2. If the accused applies for deferment, the convening authority may defer all or a portion of the adjudged forfeitures and/or mandatory forfeitures 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 adjudged forfeitures, mandatory forfeitures, 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 entitled pay and allowances, minus any amounts forfeited (adjudged forfeitures and/or mandatory forfeitures not deferred). The convening authority may rescind a deferment (adjudged forfeitures and/or mandatory forfeitures) at any time.
3. The convening authority may waive available mandatory forfeitures with or without a request from the accused. The convening authority may waive mandatory forfeitures to the extent that the accused is entitled to pay and allowances (see Note 1 above).
4. Mandatory forfeitures 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 convening authority may waive all or a portion of the available mandatory forfeitures for the benefit of the accused’s dependents. The convening authority may

Section 8I—Contingent Confinement

8.34. Contingent Confinement. Contingent confinement is confinement authorized by a court-martial in the form of a fine-enforcement provision. See Rules for Courts-Martial 1003(b)(3) and 1113(e)(3). A fine-enforcement provision may be ordered executed in accordance with the procedures below.

8.34.1. Authority to Execute Contingent Confinement. A fine does not become effective, and the accused is not required to pay, until it is ordered executed. See Article 57(c), UCMJ. Fines may be ordered executed in the convening authority’s initial action. See Article 71(c)(2), UCMJ. The convening authority may not order an accused to serve contingent confinement until the fine is ordered executed and the requirements of paragraph 8.35 are met. If the accused fails to demonstrate good faith efforts to pay the fine, the convening authority may order the sentence of confinement by following the procedures outlined in paragraph 8.35.

8.34.2. 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 (C.M.A. 1973).
8.35. Procedures for Executing Contingent Confinement. Contingent confinement may be executed in accordance with the following procedures:

8.35.1. When the fine is ordered executed, the convening authority notifies the accused in writing that 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.

8.35.2. After the fine is considered due, the Staff Judge Advocate for the base where the accused was tried ascertains whether the accused has paid the fine. If it appears the fine has not been paid, the Staff Judge Advocate notifies 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, a successor in command, or the officer exercising General Court-Martial Convening Authority over the command to which the accused is assigned. If the accused is no longer a member of the Air Force, the Commander, Air Force District of Washington (General Court-Martial Convening Authority 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.

8.35.3. A military judge is detailed as hearing officer to conduct the contingent confinement hearing. This detailing is accomplished in the same manner as detailing a military judge to a court-martial.

8.35.4. The Staff Judge Advocate or designee provides the accused written notice of the time and place of the hearing. The convening authority provides the accused with temporary duty orders or invitational travel orders if the accused is not in confinement and the hearing is beyond reasonable commuting distance from the accused’s residence. See Table 6.1 for appropriate funding authority. The notice informs the accused of the following:

8.35.4.1. The accused’s alleged failure to pay the fine;
8.35.4.2. 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;
8.35.4.3. The accused’s right to present witnesses and documentary evidence;
8.35.4.4. The accused’s right to representation by military defense counsel; and
8.35.4.5. The evidence which was relied upon in issuing the notice of hearing and the options available to the convening authority.

8.35.5. 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.

8.35.6. Hearing Procedures.

8.35.6.1. 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.

8.35.6.2. 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:

8.35.6.2.1. The physical presence of the witness is critical to a fair determination of a material issue in dispute;
8.35.6.2.2. The witness is available to testify; and
8.35.6.2.3. There is no substitute for the live testimony of the prospective witness (e.g., written statements, affidavits, stipulations, or telephone conference).

8.35.6.3. The accused has a right to confront and cross-examine those witnesses testifying at the hearing.

8.35.6.4. 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 Area Defense Counsel 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.

8.35.6.5. 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.

8.35.6.6. The hearing officer submits a written report to the convening authority through the Staff Judge Advocate, 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.

8.35.6.7. 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 specifies the evidence relied upon and the reasons for the decision.

8.35.6.8. 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. A sample order executing contingent confinement is provided at Figure A8.15. If the convening authority determines the accused has made good faith
efforts to pay the fine, but cannot because of indigency, the sentence of confinement may not be executed unless the convening authority determines that there is no other punishment adequate to meet the Government’s interest in appropriate punishment. See Rule for Courts-Martial 1113(d)(3). When electing not to execute confinement, the convening authority signs a supplemental order remitting contingent confinement. This supplemental order is attached to the record of trial.

8.35.6.9. Forward a copy of the summarized record of the contingent confinement hearing for each copy of the record of trial required by AFMAN 51-203, Chapters 3 and 13, to AFLOA/JAJM.

Section 8J—Notification of Adjudged Sentence, Action of the Convening Authority, and Deferment or Waiver

8.36. Reporting by Base-Level Staff Judge Advocate. In all courts-martial with mandatory forfeitures under Article 58b, adjudged forfeitures, or reduction in grade (enlisted only), the Staff Judge Advocate of the office that prosecuted the case must send a memorandum by the most expeditious means available to the Air Force Personnel Center Enlisted Promotions Branch and the member’s finance office, with informational copies to AFSC/FC and DFAS-DE/FJPC. A template memorandum is at Figure A8.16. The referenced memorandum must be sent within twenty-four hours of the date the convening authority takes action under Rule for Courts-Martial 1107, or fourteen 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 memorandum must include the terms of such deferment or waiver. Notification can be made to Defense Finance & Accounting Services at afcourtmartials@dfas.mil; HQ AFPC/DPSOE at afpc.dpppwm@us.af.mil; and the Air Force Security Forces Center at afcorrections.appellateleave@us.af.mil.

8.37. Reporting by Convening Authority’s Staff Judge Advocate. If action is taken more than fourteen days after the sentence is adjudged, in any case where the approved sentence includes a reduction in grade or forfeitures (mandatory or adjudged), the Staff Judge Advocate of the convening authority must send a second memorandum within twenty-four hours after the convening authority’s action. If any portion of the punishment or mandatory forfeiture is deferred or if the convening authority waives any portion of the mandatory forfeiture prior to the date of the message, the second memorandum must include the terms of such deferment or waiver. The message should be sent to the same addressees listed in paragraph 8.36 and, if the accused is confined, to the confinement facility. A template may be found at Figure A8.16. For members who enter a prisoner status requiring a permanent change of station, the memorandum should also be sent to the gaining AFO.

8.38. Notification to Confinement Facility.

8.38.1. After action by the original convening authority, the Air Force District of Washington Commander exercises General Court-Martial Convening Authority over inmates transferred to Level II regional corrections facilities and long-term corrections facilities as defined in AFI 31-105, and over those Air Force members and former members paroled or placed on excess leave from such facilities.
8.38.2. When an inmate (with or without a punitive separation) is transferred into the Air Force Corrections System, the servicing Staff Judge Advocate or designee will send the following:

8.38.2.1. Four copies of the court-martial order to AFSFC/FC, and two copies of the court-martial order to the corrections officer of the facility housing the offender;

8.38.2.2. Two copies of any victim request to be notified of changes in the inmate’s status and of clemency hearings to both AFSFC/FC and the corrections officer; and

8.38.2.3. One copy of the Staff Judge Advocate’s Recommendation to both AFSFC/FC and the corrections officer;

8.38.3. If at the time the inmate is transferred to a corrections facility, the Court-Martial Order has not been published, the servicing Staff Judge Advocate or designee will send one copy of the Report of Result of Trial memorandum and the convening authority’s action to AFSFC/FC and two copies of each to the corrections officer. Email transmission in lieu of mailing is permissible.

Section 8K—Excess Leave

8.39. Involuntary (Required) and Voluntary Excess Leave.

8.39.1. The convening authority will place an accused that either had 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. After serving an approved sentence of confinement, 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. Headquarters AFRC/JA may be consulted for guidance on excess leave for members of Reserve Components.

8.39.2. 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, the accused’s voluntary excess leave status is terminated and the accused is placed on involuntary excess leave. If the convening authority disapproves the punitive separation, the accused is returned to duty.

8.39.3. When an approved sentence includes unsuspended confinement, the convening authority may not place the accused on either voluntary or involuntary excess leave unless the confinement has been served, remitted, or deferred.

8.39.4. An accused who has accrued leave when required to take excess leave may elect to either (1) receive pay and allowances during the period of accrued leave and continue on unpaid excess leave, or (2) receive payment for the accrued leave as of the day excess leave begins and serve the entire period on unpaid excess leave.

8.39.5. 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.
8.39.6. The convening authority may order the accused to begin involuntary excess leave in the initial 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 8.39.3. Such involuntary excess leave may continue until the date the discharge is executed, unless terminated at any earlier date.

8.40. **Excess Leave For Accused Assigned Outside The Continental United States.** When a convening authority directs excess leave for an accused serving in an overseas area, the convening authority will direct reassignment to the Force Support Squadron at the base nearest the appellate leave address provided by the accused.

8.40.1. An accused may go directly to a designated leave address without reporting into the gaining unit. The accused determines whether to physically report into the gaining unit before departure.

8.40.2. The losing commander, consistent with the accused’s election, directs 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 commences taking accrued leave, if so elected, and/or required excess leave.

8.40.3. The accused will be considered assigned to the Force 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 Force Support Squadron’s Personnel Relocations Element based upon the accused’s departure date and travel time.

8.40.4. Overseas members may provide a leave address in an outside the continental United States state or territory of the United States (e.g., Alaska, Hawaii, Guam) and HQ AFPC may assign the member to the Force Support Squadron nearest such leave address. Otherwise, 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 Force Support Squadron at the base nearest the leave address. Overseas members in foreign countries will be required to depart the foreign country.

8.41. **Excess Leave Procedures.**

8.41.1. When the convening authority orders an accused to take excess leave, the convening authority sends the accused a letter (Figure A8.17), 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 A8.12), the convening authority’s Staff Judge Advocate, or the person Acting as the Staff Judge Advocate, may sign and serve the letter on the accused. The Staff Judge Advocate 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 Force Support Squadron. A copy of all excess leave letters must be sent to AFLOA/IAJM. (T 1). In cases of an accused being reassigned from overseas, a copy of the letter must also be sent to the Staff Judge Advocates of the Special Court-Martial Convening Authority and General Court-Martial Convening Authority of the gaining unit and the gaining, or excess leave, FSS/CC. See Figure A8.17.
8.41.2. Action to place the accused on voluntary or involuntary excess leave must comply with Joint Travel Regulations, paragraph 7635, and AFI 36-3003, *Military Leave Program*, 36-2110, *Assignments*, 36-2102, *Base-Level Relocations Procedures* and 31-105. Ensure the Automated Military Justice Analysis and Management System is updated to reflect the accused’s appellate leave address.

8.42. **Travel of Personnel Awaiting Completion of Appellate Review.** An accused involuntarily placed on excess leave while awaiting completion of appellate review of a court-martial sentence to a punitive discharge or dismissal may be provided travel or transportation in kind, according to the Joint Travel Regulations. Ensure a special travel order is published in the “A” series if the court-martial convening authority directs involuntary appellate (excess) leave according to AFI 36-3003, *Military Leave Program*, 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 Joint Travel Regulations. In such cases, publish an “A” Series Travel Order in accordance with the publishing directive.
Chapter 9

COURT-MARTIAL ORDERS

9.1. Court-Martial Order. A court-martial order 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 Rule for Courts-Martial 1114, Appendix 17, and the samples included at Attachment 9 to prepare and issue court-martial orders. See AFMAN 51-203, paragraph 10.5, for guidance on convening authority action in summary courts-martial.

9.2. Separate Orders. Use a separate court-martial order to announce the results for each accused tried, whether or not they were tried jointly.

9.3. Authority to Publish Court Martial Order. This chapter is the sole authority for the publication of court-martial orders. The appropriate convening authority publishes court-martial orders, or AFLOA/JAJM may direct publication. Additionally, AFLOA/JAJ publishes final court-martial orders executing sentences in cases acted on by The Judge Advocate General, and AFLOA/JAJR publishes final court-martial orders in cases acted on by the Secretary of the Air Force and the President. In the event a convening authority’s command is deactivated, responsibility for publication of orders falls to:

9.3.1. The next higher level of command exercising General Court-Martial Convening Authority;

9.3.2. A re-designated unit, when the initial order was published under its old designation; or

9.3.3. A unit assuming the records, personnel, functions, etc., of an inactivated or transferred unit that published the initial order.

9.4. Authentication (Signature). The authority issuing the court-martial order signs it personally, or delegates such authority. 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 court-martial order signs it. The convening authority personally signs a supplemental order that comprises an action subsequent to the initial action. Rule for Courts-Martial 1114(b)(2). A digital signature using a Public Key Infrastructure certificate (typically via a Common Access Card) satisfying the requirements of AFI 33-321, Authentication of Air Force Records, may be substituted for a written signature.

9.5. Promulgation of Court Martial Order. See Attachment 9 for examples.

9.5.1. Promulgate court-martial orders as follows:

9.5.1.1. For general courts-martial, use a General Court-Martial Order. For special courts-martial, use a Special Court-Martial Order. For summary courts-martial, use a Summary Court-Martial Order.

9.5.1.2. Number consecutively, starting with number one for each fiscal year.

9.5.1.3. 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.
9.5.1.4. Continue court-martial orders 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.

9.5.1.5. For summary courts, court-martial orders are required for acquittals when the convening authority takes action after the initial action.

9.5.2. Orders Logs.

9.5.2.1. Have a separate court-martial order log for each type of court-martial and each convening authority. For example, a single-base General Court-Martial Convening Authority will have one log for special courts-martial and one log for general courts-martial. Each Special Court-Martial Convening Authority will have his/her own log for special courts-martial. A court-martial order log is in addition to the convening orders log.

9.5.2.2. The log should reflect the court-martial order number assigned to a particular case. Hard copies, as opposed to electronic copies, of the original court-martial orders are stored with the court-martial order log.

9.6. Court Martial Order Format. Use the following format and the Figures at Attachment 9.


9.6.2. 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 court-martial order (e.g., Special Court-Martial Order No. 3, Headquarters 71 Fighter Wing, Vance Air Force Base, Oklahoma, 6 May 2011).

9.6.3. Heading. Include “DEPARTMENT OF THE AIR FORCE,” the complete unit designation, the name of the major command abbreviated in parentheses, the mailing address, and the order number and date.

9.6.3.1. DNA Processing. In cases where DNA processing is required by DoD Directive 5505.14, Deoxyribonucleic Acid Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders, Staff Judge Advocates must ensure promulgating orders contain the annotation “DNA Processing Required. 10 U.S.C. § 1565 and 42 U.S.C. § 14135a.” in 14-point boldface type on the first page of the order. (T-0). The annotation must be one line, centered, and one inch from the top of the page. See Section 13M for additional discussion on DNA processing requirements.

9.6.3.2. Crimes of Domestic Violence. Staff Judge Advocates must ensure promulgating orders prepared for individuals convicted of a qualifying crime of domestic violence contain the annotation “Crime of Domestic Violence. 18 U.S.C. § 922(g)(9).” (T-0). The annotation must be one line, centered, in 14-point boldface type, and one inch from the top of the page. See Section 13N for additional discussion of requirements associated with domestic violence offenses.
9.6.4. Body. Do not number paragraphs in the body. Center the headings titled “SENTENCE” and “ACTION” and use subparagraphs under each.

9.6.5. 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.

9.6.6. Grade and 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).

9.6.7. Abbreviations. Abbreviations from a standard dictionary, or AFH 33-337, The Tongue and Quill, may be used if they make the order clearer.

9.6.8. 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 The Judge Advocate General 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 court-martial order. Paralegals in grade E-7 thru E-9 must include duty titles.


9.7.1. Unexpurgated and Expurgated Court-Martial Orders. When the content of a court-martial order includes classified or other matters unfit for publication, prepare both an expurgated and an unexpurgated copy. The version with the content replaced is called the expurgated order. Both carry the same order number and full distribution list, but only certain parties receive the unexpurgated version (see paragraph 9.7.2). Make the following substitutions in the expurgated order:

9.7.1.1. Names of children 16 years and under are replaced with initials, regardless of verdict (in both the expurgated and unexpurgated court-martial orders);

9.7.1.2. Names of adult sex offense victims are replaced with initials, regardless of verdict;

9.7.1.3. Obscene language and matters are replaced with asterisks; and

9.7.1.4. Classified information is replaced with asterisks.

9.7.2. Distribution.

9.7.2.1. Unexpurgated Orders. AFLOA/IAFM, the commanding officer responsible for the confinement facility where the accused is held, and the confinement officer or noncommissioned officer receive the unexpurgated court-martial order unless it contains classified information. Only distribute unexpurgated court martial orders containing classified information to AFLOA/IAFM as a part of the original record of trial, and maintain an unexpurgated version in the legal office’s copy of the record of trial.

9.7.2.2. Expurgated Orders. All other individuals or organizations required to receive a court-martial order are provided expurgated copies.
9.7.2.3. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list mark, “*Recipients of unexpurgated court-martial order.”

9.7.2.4. Refer to the Court-Martial Order Distribution Checklist on the AFLOA/JAJM Virtual Military Justice Deskbook for the most current guidance on distribution.

9.8. Initial Promulgating Order (Rule for Courts-Martial 1114). Initial court-martial orders promulgate the results of trial and any initial action taken under Article 60, UCMJ. Rule for Courts-Martial 1114. It is important they accurately reflect the proceedings of the court-martial.

9.8.1. Preparing Orders. Prepare initial court-martial orders when the convening authority takes action on a case where the court returned any finding of guilty and a sentence.

9.8.1.1. Orders in Cases without a Guilty Finding. Issue a court-martial order 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 court-martial order is the same date it is published. Do not issue a court-martial order in trials terminated without findings before arraignment.

9.8.1.2. Rehearing or New Trial. Indicate in an initial court-martial order whether a case is a rehearing or new trial as shown in Figure A9.5.

9.8.2. Form.

9.8.2.1. Date. The date of the court-martial order 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 court-martial order is the date it is published.

9.8.2.2. 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 using “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. 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.

9.8.2.2.1. Summarized Specifications. Rule for Courts-Martial 1114(c) requires the promulgating order to contain at least a summary of the charges and specifications on which the accused was arraigned. Because the accused’s personal information is contained in the introductory paragraph of the court-martial order, it need not be repeated in the specification subparagraph. However, the remainder of the specification on which the accused was arraigned should be verbatim.

9.8.2.2.1.1. Consider summarizing lengthy bad check specifications. Ensure any summarized specification includes factors such as value, amount, or other such circumstances affecting maximum punishment.

9.8.2.2.2. Lesser Included Offenses. The charge should reflect any plea or findings of guilt to a lesser included offense. If found not guilty of the greater offense, but
guilty of the lesser included offense, then annotate NG of Art. X, but guilty of Art. Y. See Figure A9.1.

9.8.2.2.3. Exceptions and Substitutions. 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. See Figure A9.1.

9.8.2.2.4. Amendments. Indicate, in parentheses and after the affected portion of the specification, an amendment to a charge or specification made after arraignment. See Figure A9.2.

9.8.2.2.5. Renumbering of Charges. Use care in proof reading court-martial orders involving charges and specifications withdrawn, dismissed, or severed that result in the renumbering of remaining charges and specifications. Charges and specifications withdrawn before arraignment do not appear in the court-martial order if the other charges were correctly renumbered. Charges and specifications withdrawn after arraignment do appear in the court-martial order. See paragraph 7.3.2 and Figure A9.4.

9.8.2.3. 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. Make sure the reprimand language is included in the convening authority action.

9.8.2.4. Action. Reflect the action taken by the convening authority under Article 60. On court-martial orders, 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 mitigates an action before publication or before the accused was notified of the action, the initial court martial order reflects only the mitigated action. The wording of the action in court-martial orders should follow the wording in the action memorandum verbatim, excluding the accused’s personal information. If an error occurs, court-martial orders should not be corrected, but rescinded and accomplished again.

9.9. Supplementary Order. 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 (Rule for Courts-Martial 1108), vacate an earlier suspension (Rule for Courts-Martial 1109), terminate deferment (Rule for Courts-Martial 1101(c)(7)), and take final action.

9.9.1. Form. All supplementary orders contain the following:

9.9.1.1. A cite to the initial court-martial order and any later court-martial orders modifying the findings, sentence or action.

9.9.1.2. The date the sentence was adjudged and the trial forum.

9.9.1.3. The AFLOA/JAJM court-martial reference number (ACM) assigned to the case.

9.9.2. Convening Authority Signature. The convening authority personally signs all supplementary orders. See Rule for Courts-Martial 1114(b)(2). A digital signature using a Public Key Infrastructure certificate (typically via a Common Access Card) satisfying the requirements of AFI 33-321 may be substituted for a written signature.
9.9.3. Order Vacating Suspension. If suspended confinement is later vacated, include in the court-martial order the information in Manual for Courts-Martial, 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.

9.9.4. Article 64, UCMJ, Review. When the General Court-Martial Convening Authority is required to take action under Rule for Courts-Martial 1112(e), in a non-bad conduct discharge special court-martial, ensure the court-martial order states the review is “Pursuant to the authority of Rule for Courts-Martial 1112(f).” Ensure the cover and all court-martial orders are typed or stamped “64(a) Review,” signed and dated. See paragraph 10.4.

9.9.5. 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, Secretary of the Air Force and The Judge Advocate General. Ensure that General Court-Martial Convening Authority final orders execute all dishonorable or bad conduct discharges, and Secretary of the Air Force final orders execute all dismissals. Rule for Courts-Martial 1113(c)(1)(B) and (c)(2). In cases involving re-hearings, the final order only reflects modifications of the findings and sentence.

9.9.6. International Hold Situations. When the accused is overseas and being retained in a foreign country because of pending foreign criminal proceedings, consult Air Force Joint Instruction 51-706, Status of Forces Policies, Procedures, and Information, before issuing a court-martial order. This includes any order executing the sentence; 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.

9.9.7. 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 discharged pursuant to General Court Martial Order No. 1, this headquarters, dated 1 June 2011).

9.10. Corrected Copy.
9.10.1. Do not amend court-martial orders. 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 court martial-order, 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 items, with the former lined out and the latter underscored. Identify it as a corrected copy in the heading by using “CORRECTED COPY – DESTROY ALL OTHERS.” NOTE: In cases involving a sex offense and/or child victims, if the corrected copy is expurgating an erroneously unexpurgated matter, do not include the previously unexpurgated text (see paragraph 9.7.1). 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 A9.4.

9.10.2. 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 court-martial order rescinding the initial order. See Figure A9.9.

9.11. Distribution and Number of Copies. List recipients of the court-martial order distribution and the number of copies beginning two spaces below the authentication signature element at the left margin. Include the complete mailing address. Refer to the Court-Martial Order Distribution Checklist on the AFLOA/JAJM Virtual Military Justice Deskbook for the most current guidance on distribution. NOTE: DO NOT mail additional copies of the court-martial order to AFLOA/JAJM; the copies inserted in the record of trial are sufficient for what is required.

9.12. Retention and Disposition of Original Court Martial Order. Staff Judge Advocates must retain the original of their Headquarters’ court-martial orders and retire them in accordance with Air Force Records Disposition Schedule, Table 51-3.

9.13. Disposition of Stamped Orders. When orders are examined and noted as legally sufficient under Article 64(a), UCMJ, permanently place four copies in the record of trial. Only the original must have an original signature. The others may be mechanically reproduced. Distribute in accordance with paragraph 9.11.
Chapter 10

APPEALS AND REVIEWS, REHEARINGS, RETRIALS, DUBAY HEARINGS AND CLEMENCY

Section 10A—Appellate Defense Counsel and Review

10.1. Request for Appellate Defense Counsel (Article 70, UCMJ).

10.1.1. Include an Air Force Form 304, Request for Appellate Defense Counsel, signed by the accused in every record of trial forwarded to the Air Force Court of Criminal Appeals or forwarded to The Judge Advocate General for review.

10.1.1.1. 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 Staff Judge Advocate as soon as practicable after sentence announcement.

10.1.1.2. If the accused waives appellate counsel, re-serve the Air Force Form 304 and obtain the member’s signature after the convening authority has taken action on the case. Both copies of the Air Force Form 304 are placed in the record of trial.

10.1.1.3. The Air Force 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 adequate address must be provided even if the accused waives appellate review. Do not use the Area Defense Counsel office or the base organization address. In those instances where an accused’s initial Air Force Form 304 indicates a waiver of appellate counsel but a second Air Force Form 304 is not part of the record of trial, the record will be returned to the servicing Staff Judge Advocate for execution of this requirement.

10.1.2. If an accused’s death sentence 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, the accused may request a military defense counsel from The Judge Advocate General. Upon receipt of the accused’s request, The Judge Advocate General will detail military counsel under Article 70(e), UCMJ, to represent the accused in such proceedings and any appeals there from.

10.2. Withdrawal of Request for Appellate Defense Counsel. Use the following format to withdraw a request for appellate defense counsel:

10.2.1. 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).

10.2.2. The accused may also decline appellate representation by checking the appropriate box on the Air Force Form 304.

10.2.3. If the accused initially declines appellate representation after sentence is announced, the accused must be given another opportunity to elect or decline appellate representation
after the convening authority’s action is served upon the accused. See United States v. Xu, 70 M.J. 140 (C.A.A.F. 2011) (Summary Disposition).

10.2.3.1. If the accused again declines appellate representation after receiving the action, include both versions of the Air Force Form 304 in the record of trial, and forward only the original record of trial to AFLOA/JAJM for appellate review.

10.2.3.2. In those instances where an accused’s initial Air Force Form 304 indicates a waiver of appellate counsel but a second Air Force Form 304 is not part of the record of trial, the record will be returned to the servicing Staff Judge Advocate for execution of this requirement.

10.3. Waiver or Withdrawal of Appellate Review (Article 61, UCMJ; Rule for Courts-Martial 1110).

10.3.1. If an accused wishes to waive or withdraw from appellate review, follow the procedures outlined in Rule for Courts-Martial 1110. The request to waive or withdraw must be filed after the convening authority takes action. The waiver or withdrawal should be accomplished on a DoD Form 2330, Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review, DoD Form 2331, Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General. Manual for Courts-Martial, Appendix 19 & 20. Waiver or withdrawal of appellate review bars review by the Air Force Court of Criminal Appeals and by The Judge Advocate General under Article 69(a), UCMJ. It does not prevent later submission of an Article 69(b), UCMJ application.

10.3.2. An Article 64(a), UCMJ, review is required for special and general courts-martial where an accused waives appellate review. See Rule for Courts-Martial 1112. A judge advocate appointed by the Staff Judge Advocate to the General Court-Martial Authority over the accused at the time of trial conducts the review. A memorandum must be prepared addressing issues in Rule for Courts-Martial 1112(d), inserted in the original and all copies of the record of trial, and served on the accused. The case will be forwarded to the General Court-Martial Convening Authority for a supplemental order if (1) the judge advocate who reviewed the case recommends corrective action; and (2) the sentence approved by the convening authority includes a dismissal, a dishonorable or bad conduct discharge, or more than six months confinement.

Section 10B—Judge Advocate Review (Article 64(a), UCMJ; Rule for Courts-Martial 1112)

10.4. Judge Advocate Review. An Article 64(a), UCMJ, review is required in three types of cases: (1) any general court-martial in which the accused has waived or withdrawn appellate review; (2) any special court-martial in which the accused has waived or withdrawn appellate review or in which the approved sentence does not include a bad conduct discharge or confinement for one year; and (3) in all summary courts-martial. A judge advocate appointed by the Staff Judge Advocate to the General Court-Martial Convening Authority 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.
10.4.1. 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 record of trial and on all copies of the court-martial order. Only the original cover and court-martial order has an original signature. The others may be mechanically reproduced.

10.4.2. If all judge advocates on the General Court-Martial Convening Authority’s staff are disqualified from conducting such a review or the General Court-Martial Convening Authority is disqualified from taking any required action on the case, the major command Staff Judge Advocate will select another General Court-Martial Convening Authority and Staff Judge Advocate 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 major command Staff Judge Advocate may request another major command to act or to designate another General Court-Martial Convening Authority within that other major command to take action on the case. If agreement cannot be reached between major commands, contact AFLOA/JAJM for assistance in identifying an officer exercising General Court-Martial Convening Authority to act on the case.

10.5. Form and Content of Judge Advocate Reviews.

10.5.1. Reviews of these courts-martial will contain only those matters required by Article 64(a). 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 record of trial, and on the back of the DoD Form 2329, Record of Trial by Summary Court-Martial, and on all the court-martial orders for non-bad conduct discharge special courts-martial. The entry shall be entitled, “Article 64(a), UCMJ, Review” and shall consist of the conclusions required in Article 64(a), the command of the reviewer, the date, signature of the reviewer, and the reviewer’s signature block.

10.5.2. In cases where the review does not require corrective action (even if it addresses allegations of error by the accused), the review is prepared in writing, dated, and signed by the reviewer; covers the matters required by Article 64(a), UCMJ; and includes a statement that the findings and sentence are correct in law and fact. The review is attached to the record of trial. The cover of volume one and all copies of the court-martial order are 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.

10.5.3. When the General Court-Martial Convening Authority at the time the court-martial was convened is required to take corrective or further action under Article 64, UCMJ, the judge advocate’s review will be in writing, dated and signed by the reviewer, and will address the matters required in Article 64(b), as well as determine whether the findings and sentence are correct in law and fact. After the convening authority takes action in accordance with Article 64(c), the review and action are included in the record of trial.

10.5.3.1. 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 record of trial, review, and action of the convening authority are transmitted to The Judge Advocate General through AFLOA/JAJM for review under Article 69(b), UCMJ. (T-1).
10.5.3.2. If the officer taking action under Article 64, UCMJ, orders a rehearing, the record of trial, action and court-martial order will be sent to the officer who convened the court-martial who determines whether a rehearing is practicable. See Section 10F. If a rehearing is to be held and the accused has been transferred to another command, the officer who convened the court-martial will coordinate with the officer presently exercising special court-martial jurisdiction over the accused.

10.5.4. Except cases requiring Article 69, UCMJ, review under Rule for Courts-Martial 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 General Court-Martial Convening Authority.

10.5.4.1. The General Court-Martial convening authority’s action may execute all unexecuted portions of the sentence except those portions requiring Secretarial approval under Article 71, UCMJ.

10.5.4.2. If the General Court-Martial Convening Authority orders a rehearing, forward the review, record of trial, action, and court-martial order to the convening authority that convened the court-martial. This convening authority determines whether a rehearing is practicable.

10.6. Distribution of Judge Advocate Reviews. After completing the Article 64(a) review and, when applicable, any action by the General Court-Martial Convening Authority under Rule for Courts-Martial 1112(f), forward the original record of trial and four copies of the court-martial order plus any supplementary orders to AFLOA/JAJM, indicating compliance with Article 64(a) as stated in paragraph 10.4.1. Provide one copy each of the court-martial order indicating compliance with Article 64(a) to each addressee as required by paragraph 9.11, as applicable.

Section 10C—Review by the Office of The Judge Advocate General (Article 69, UCMJ)

10.7. Article 69(a), UCMJ, Review (Rule for Courts-Martial 1201(b)(1)). The record of trial in each general court-martial that is not otherwise reviewed under Article 66, UCMJ, 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, UCMJ.

10.7.1. Submission of Matters by the Accused. The accused may submit matters for The Judge Advocate General’s consideration. Any matters must be submitted directly to AFLOA/JAJM on or before the thirtieth day after the date the General Court-Martial Convening Authority approved the sentence, unless the accused establishes good cause for not filing matters within that time. (T-1).

10.7.2. Notification of Article 69(a) Examination Results. AFLOA/JAJM notifies the convening authority’s Staff Judge Advocate of the examination results. If The Judge Advocate General does not direct a review by the Air Force Court of Criminal Appeals, AFLOA/JAJM forwards a copy of the initial promulgating order to the convening authority’s Staff Judge Advocate, reflecting the results of the review. AFLOA/JAJM serves one copy of the order upon the accused and obtains a receipt demonstrating service. If the defense counsel’s name and address is included in matters submitted by the accused, AFLOA/JAJM also sends a copy of the results to the defense counsel.
10.7.3. Other Action by The Judge Advocate General. If The Judge Advocate General orders a rehearing, the procedures in Section 10F will apply. If The Judge Advocate General forwards the case for review by the Air Force Court of Criminal Appeals, the General Court-Martial Convening Authority’s Staff Judge Advocate will, upon request, send two copies of the record of trial to AFLOA/JAJM.

10.8. Application for Relief under Article 69(b), UCMJ (Rule for Courts-Martial 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 or The Judge Advocate General. Rule for Courts-Martial 1201(b). This applies to general courts-martial, special courts-martial, and summary courts-martial, including those cases forwarded under Rule for Courts-Martial 1112(g)(1).

10.8.1. 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.

10.8.2. Submission of Application.

10.8.2.1. The application must be filed in the Office of the Judge Advocate General on or before the last day of the two-year period, beginning on the date the sentence is approved, unless the accused establishes good cause for failure to file within that time.

10.8.2.2. The accused sends the application directly to AFLOA/JAJM, and it is considered filed when received by that office.

10.8.3. Contents of Application. Figure A10.1 is a sample format for applications. In all cases, the application is written and signed by the accused or the applicant’s legal representative under oath or affirmation. Defense counsel does not receive a copy of The Judge Advocate General’s action unless counsel’s name is on the application. The application must contain the following:

10.8.3.1. The accused’s name, social security number, and present mailing address;
10.8.3.2. The date and place of trial and type of court-martial;
10.8.3.3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise;
10.8.3.4. 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
10.8.3.5. Any documentary or other evidence pertinent to the facts asserted under the specific grounds alleged, including copies of the court-martial order, if available.

Section 10D—Review by the Air Force Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court of the United States

10.9.1. The Air Force Court of Criminal Appeals reviews cases referred to it by The Judge Advocate General under Rule for Courts-Martial 1201(a) or (b)(1).

10.9.2. Notification of the Air Force Court of Criminal Appeals’s Decision. The decision is transmitted to the accused directly from AFLOA/JAJM via the officer exercising general court-martial convening authority over the accused.

10.10. The United States Court of Appeals for the Armed Forces Review (Article 67, UCMJ; Rule for Courts-Martial 1204). The United States Court of Appeals for the Armed Forces reviews the record in all cases: (1) in which the sentence, as affirmed by Air Force Court of Criminal Appeals, extends to death; (2) referred by The Judge Advocate General after review by the Air Force Court of Criminal Appeals; and reviewed by Air Force Court of Criminal Appeals, except those referred to it by The Judge Advocate General under Rule for Courts-Martial 1201(b)(1), in which, upon petition by the accused and on good cause shown, The United States Court of Appeals for the Armed Forces has granted a review.

10.11. Petition by Writ of Certiorari for Supreme Court Review (Article 67a, UCMJ). 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 Rule for Courts-Martial 1205(a). Such petitions are filed according to the rules of the Supreme Court of the United States.

10.11.1. 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.

10.11.2. When requested to do so by the Attorney General of the United States, The Judge Advocate General will appoint appellate government counsel to represent the United States.

Section 10E—Petition for New Trial (Article 73, UCMJ; Rule for Courts-Martial 1210).

10.12. Petition for New Trial. Petitions for new trial are prepared and processed under Rule for Courts-Martial 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.

10.12.1. The petition must be in writing and contain the matters required by Rule for Courts-Martial 1210(c). When practicable, the petition should be typewritten and double-spaced. The petition is 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 petitioner 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.

10.12.2. Forwarding the Petition.

10.12.2.1. If the petitioner’s case is pending before the Air Force Court of Criminal Appeals, AFLOA/JAJM forwards the following documents to the Court: the signed petition plus two copies, copies of each supporting document, and any prepared briefs.
AFLOA/JAJM also forwards a copy of the petition and all documents to appellate defense and appellate government counsel. Rule for Courts-Martial 1210(e).

10.12.2. If the petitioner’s case is pending before The United States Court of Appeals for the Armed Forces, AFLOA/JAJM forwards the following documents to the Court: the original petition plus seven copies, copies of each supporting document, and any prepared briefs. AFLOA/JAJM also forwards a copy of the petition and all documents to both appellate defense and appellate government counsel. Rule for Courts-Martial 1210(e).

10.13. The Judge Advocate General Review of the Petition. If the petitioner’s case is not pending before a court, AFLOA/JAJM, on behalf of The Judge Advocate General or an officer designated by The Judge Advocate General, shall review the petition. Upon request by the designated officer(s), The Judge Advocate General 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).


10.13.1.1. Form and Number of Briefs. Briefs are to be typewritten, double-spaced on letter size white paper, and in an original plus three copies. Counsel shall be limited to filing one brief per side unless The Judge Advocate General or the designated officer(s) reviewing the petition otherwise permits.

10.13.1.2. Time for Filing. The brief on behalf of the petitioner shall be filed with AFLOA/JAJM within twenty days after appellate defense counsel has been appointed by The Judge Advocate General and a copy of the petition and supporting documents have been provided counsel. Appellate government counsel may file a brief within the twenty day after petitioner’s brief has been filed. If counsel for the petitioner has filed no brief, appellate government counsel will file a brief within twenty 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 The Judge Advocate General or the designated officer(s) reviewing the petition.

10.13.2. Oral Arguments. If ordered by the designated officer(s) or granted upon the request of counsel, oral arguments shall be heard after written briefs are filed.

10.13.2.1. Notice. The designated officer(s) shall give appellate counsel at least 10 days notice of the time and place of oral arguments.

10.13.2.2. Time Limits. No more than thirty minutes on each side shall be allowed for oral arguments unless the time is extended by the designated officer(s).

10.13.2.3. 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.

10.13.2.4. Failure to Appear. Appellate counsel’s failure 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.

10.13.2.5. Presence of Petitioner. The petitioner does not have a right to be present at the time of oral arguments before the designated officer(s).

10.13.2.6. Opinion and Action. A memorandum opinion and an action shall be prepared by the designated officer(s) for consideration by The Judge Advocate General. 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 The Judge Advocate General as contained in the action.

Section 10F—Rehearing and Other Remedial Action (Article 63, UCMJ)


10.14.1. When a decision of the Supreme Court, The United States Court of Appeals for the Armed Forces, or the Air Force Court of Criminal Appeals directs or authorizes further proceedings, such as a rehearing, a limited hearing, or a new action by the convening authority, reasonable efforts must be made to locate the accused and provide the accused with a copy of the decision. Further proceedings in Air Force Court of Criminal Appeals cases need not be delayed 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 are to be transmitted by AFLOA/JAJM with the remanded record of trial.

10.14.2. Pursuant to Article 76(a), UCMJ, 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. See Figure A10.2.

10.15. Procedure When Rehearing is Authorized (Rule for Courts-Martial 810). When an order of a reviewing or convening authority, an order of The Judge Advocate General, a decision of Air Force Court of Criminal Appeals, a mandate issued by the United States Court of Appeals for the Armed Forces, or a judgment of the Supreme Court authorizes a rehearing on the findings or sentence, the following procedures apply:

10.15.1. Notification of the Court-Martial Convening Authority and Identification of the Responsible Court-Martial 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 court-martial convening authority’s Staff Judge Advocate (or the current court-martial convening authority if the original court-martial convening authority no longer exists). If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the accused’s current convening authority with jurisdiction to convene the type of court-martial involved.

10.15.1.1. The “original court-martial convening authority” is the convening authority who approved the accused’s sentence. The original court-martial convening authority is also the responsible convening authority if the accused is still under his or her jurisdiction.
10.15.1.2. If the accused is no longer under the jurisdiction of the original court-martial convening authority, the original convening authority decides whether to remain the responsible court-martial convening authority or to transfer responsibility for the case to the officer presently exercising authority over the accused to convene the type of court-martial involved.

10.15.1.2.1. If the original court-martial convening authority transfers responsibility, the current court-martial convening authority becomes the responsible court-martial convening authority.

10.15.1.2.2. If the original court-martial convening authority remains the responsible court-martial convening authority and determines that a rehearing should be held, the original court-martial convening authority requests that the accused be returned for the purpose of rehearing or reaches an understanding as to situs with the officer presently exercising court-martial convening authority over the accused for the type of court-martial involved.

10.15.1.3. If the original court-martial convening authority no longer exists, the person exercising authority over the accused to convene the type of courts-martial involved is the responsible court-martial convening authority.

10.15.2. Receipt of Decision and Speedy Trial Clock. Receipt of decision by the Staff Judge Advocate of the original convening authority (or the current convening authority if the original convening authority no longer exists) 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 39(a) session. United States v. Becker, 53 M.J. 229 (C.A.A.F. 2000); Rule for Courts-Martial 707(b)(3)(D).

10.15.3. Notification of the Accused and Counsel. When a post-trial review or action directs or authorizes further proceedings, the responsible court-martial convening authority’s Staff Judge Advocate 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.

10.15.4. Notification of the Victim(s). When a post-trial review or action directs or authorizes further proceedings and the case involved a named victim, the responsible court-martial convening authority’s Staff Judge Advocate must make reasonable efforts to locate and provide any named victim and counsel (if applicable) with a copy of the document requiring additional action. Ensure receipts are accomplished.

10.15.5. Action. The responsible convening authority should ensure action is taken consistent with the post-trial directions from the reviewing or appellate authority. The responsible convening authority publishes a supplementary court-martial order indicating either:

10.15.5.1. That a rehearing is ordered before another court-martial to be designated. See Figure A9.5 for sample language for rehearing on sentence; or

10.15.5.2. If a rehearing on sentence is impracticable, that the sentence has been set-aside and a sentence of no punishment is approved; or
10.15.5.3. If a rehearing on findings is impracticable, that the findings of guilt and the sentence have been set aside and the charges are dismissed.

10.15.6. Ensure appropriate coordination is made with all counsel and the military judge.

10.15.7. 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 the Air Force Court of Criminal Appeals or the Court of Appeals for the Armed Forces, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges, if any. Rule for Courts-Martial 1107(e)(1)(B)(iii), Discussion.

10.16. Referral. Whether re-referring the matter to a rehearing in full or for a limited purpose, the following actions shall be accomplished:

10.16.1. The responsible convening authority 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 temporary duty. See Table 6.1.

10.16.2. A military judge is detailed. The military judge may be the same as in the original trial or a new one may be detailed.

10.16.3. A new convening order is published with all new members.

10.16.4. A new referral indorsement in the same form as on page 2 of the Charge Sheet is completed following normal rules of referral.

10.16.4.1. The appropriate instructions concerning the rehearing are incorporated on the referral form.

10.16.4.2. The new referral is attached to the original referral. See paragraph 4.18.1.

10.17. Record of Trial and Post-Rehearing Concerns.

10.17.1. The original record of trial and any copies must remain intact, except for documents needed for reintroduction at rehearing, such as the charge sheet and exhibits, if required.

10.17.2. Any documents withdrawn from the original record of trial 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 preliminary hearing report.

10.17.3. 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.

10.17.4. The promulgating order must indicate the case is a rehearing. See Figure A9.5.

10.17.5. The record of the rehearing is a separate volume from the original record of trial. Place the record of rehearing on top of the original record of trial. Other volumes are renumbered as appropriate.
10.17.6. A verbatim transcript is required for a rehearing proceeding. Forward the original and two copies of the verbatim rehearing record, along with the original record of trial, to AFLOA/JAJM.

10.18. 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 Manual for Courts-Martial 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 Court of Appeals for the Armed Forces, Air Force Court of Criminal Appeals, convening and supervisory authorities, or the detailed military judge on his or her own motion prior to authentication of the record of trial, so long as the subject of the proceeding is “one that can be verified without material prejudice to the substantial rights of the accused.” United States v. Brickey, 16 M.J. 258 (C.M.A. 1983). The following procedures apply when a DuBay hearing is ordered:

10.18.1. Notification of Court-Martial Convening Authority. AFLOA/JAJM sends a letter of transmittal and a copy of the pertinent mandate or order to the Staff Judge Advocate of the convening authority at the time of the trial (or the current court-martial convening authority if the original no longer exists). If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the accused’s current convening authority, who has the authority to convene the type of court-martial involved. (T-1).

10.18.1.1. The responsible convening authority, as identified in paragraph 10.15.1, ensures action is taken consistent with the post-trial directions from the authority directing the DuBay hearing. The responsible Court-Martial Convening Authority publishes a supplementary court-martial order reflecting post-trial action on the case.

10.18.1.2. 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. 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. (T-1).

10.18.2. Notification of the Accused and Counsel. When a post-trial review or action directs a DuBay hearing, the responsible convening authority’s Staff Judge Advocate 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.

10.18.2.1. The accused should be returned to active duty status for the limited purpose of participating in the DuBay hearing. See Figure A10.3.

10.18.2.2. Appointment Letter. The Staff Judge Advocate prepares a letter for the responsible convening authority to direct the DuBay hearing. See Figure A10.4.

10.18.3. Detail of a Military Judge. After appropriate coordination, the Staff Judge Advocate 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.
10.18.4. DuBay hearings are conducted in accordance with Article 39(a), UCMJ.

10.18.5. Exhibits. Number items admitted as evidence at the hearing numerically, beginning with “Hearing Exhibit 1.”

10.18.6. 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 records of trial. Return the original record of trial, the original DuBay transcript, and two copies of the DuBay transcript to AFLOA/IAJM.

Section 10G—Remission and Suspension (Article 74, UCMJ)


10.19.1. After the action is published or the accused has been officially notified of the action, the Secretary of the Air Force 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 Secretary of the Air Force delegated such authority in this section.

10.19.2. 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).

10.20. Authority Reserved to Secretary of the Air Force. Only the Secretary of the Air Force 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 Rule for Courts-Martial 1107; Article 60, UCMJ.

10.20.1. Any sentence of a person convicted by a military tribunal, under the Secretary of the Air Force’s jurisdiction, resulting from the President’s commutation of a sentence of death to a lesser punishment (Rule for Courts-Martial 1206(b)(3));

10.20.2. Any sentence the Secretary of the Air Force approved and ordered into execution;

10.20.3. 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 Manual for Courts-Martial;

10.20.4. Those cases referred to the Secretary of the Air Force for action by commanders authorized to exercise Article 74, UCMJ, authority. Commanders are encouraged to forward cases involving issues most appropriate for resolution at the Air Force policy level to AFLOA/IAJR for Secretary of the Air Force decision.

10.21. Authority of The Judge Advocate General. The Judge Advocate General may exercise Secretary of the Air Force 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 paragraph 10.20. The Director, United States Air Force Judiciary, may act for The Judge Advocate General to remit or suspend up to 90 days of an approved sentence to confinement.

10.22. Authority of the Accused’s Commander. Except in cases listed in paragraph 10.17, and where The Judge Advocate General has not acted, 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 special court-martial, except for a bad conduct discharge, regardless of whether the person acting has previously approved the sentence.

10.22.1. A commander exercising only special court-martial convening authority over the command to which the accused is assigned may not remit a bad conduct discharge, but may suspend a bad conduct discharge only in the initial action.

10.22.2. A commander exercising general court-martial convening authority 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 10.20.

10.22.3. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFI 31-105, *Air Force Corrections System*, or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, this authority is exercised only by the Commander, Air Force District of Washington, or the officer exercising general court-martial convening authority over Air Force personnel in those institutions. (T-1)

10.23. **Publication of Secretary of the Air Force Actions under Article 74, UCMJ.** Promulgate actions taken by the Secretary of the Air Force in cases specified in paragraph 10.20 in appropriate general court-martial orders. Rule for Courts-Martial 1114(b). The Director, Air Force Personnel Council and The Judge Advocate General are authorized to announce the action taken by Secretary of the Air Force in all other cases.
Chapter 11

VICTIM AND WITNESS ASSISTANCE

Section 11A—Purpose and Objectives

11.1. Purpose. This chapter describes the Air Force Victim and Witness Assistance Program and implements the Victim and Witness Protection Act of 1982 (42 U.S.C. §§ 10601-10605), the Crime Victims’ Rights Act (18 U.S.C. § 3771), DoD Directive 1030.01, Victim and Witness Assistance, and DoD Instruction 1030.2, Victim and Witness Assistance Procedures. This chapter establishes responsibility for the Victim and Witness Assistance Program 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 A11 provides a list of program 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 program. The Victim and Witness Assistance Program places no limitations on the lawful prerogatives of Air Force personnel. Funding for the program is an operations and maintenance-type expense.

11.1.1. Victim And Witness Assistance Program Council. Each installation’s Local Responsible Official establishes a Victim and Witness Assistance Program council. (T 0). The following agencies or functions, when present on the installation, will designate program representatives: Sexual Assault Response Coordinator, Family Advocacy Program, Security Forces, Air Force Office of Special Investigations, Surgeon General, Airman and Family Readiness Center, Chaplain, and Staff Judge Advocate. In addition, the Local Responsible Official appoints a squadron commander and a first sergeant to the council and may appoint other representatives as appropriate. The Local Responsible Official chairs the council, which meets, at a minimum, annually.

11.1.2. Application of the Victim and Witness Assistance Program. The Victim and Witness Assistance Program 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 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. A victim or victims of an offense shall be identified at the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation. While various Air Force agencies have particular responsibility for the program, the provision of victim and witness assistance is to be a coordinated effort among all agencies providing services to individuals.

11.2. Objectives. Within available resources and in accordance with applicable law, the following are objectives of the Air Force Victim and Witness Assistance Program:
11.2.1. Mitigate the physical, psychological, and financial hardships suffered by victims and witnesses of offenses investigated by United States Air Force authorities;

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

11.2.3. Ensure best efforts are made to accord to victims of crime certain enumerated rights, including those described in Article 6b, UCMJ.

Section 11B—Definitions

11.3. Victim. A person who suffered direct physical, emotional, or financial harm as the result of an offense. An offense need not be proven in court for there to be a “victim” for purposes of the Victim and Witness Assistance Program. A person is to be identified as a “victim” at the earliest opportunity after the detection of a crime.

11.3.1. Incompetent, Incapacitated, Deceased, or Underage Victims.

11.3.1.1. 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):

11.3.1.1.1. Spouse;
11.3.1.1.2. Legal guardian;
11.3.1.1.3. Parent;
11.3.1.1.4. Child;
11.3.1.1.5. Sibling;
11.3.1.1.6. Another family member; or
11.3.1.1.7. Another person designated by a court.

11.3.1.2. When a victim is incompetent, incapacitated, deceased, or under 18 years of age (but not a member of the armed forces), once a military judge is detailed to the case in accordance with Rule for Courts-Martial 503(b) and paragraph 5.1 of this instruction, the military judge shall designate a representative of the estate of the victim, a family member, or another suitable person to assume the victim’s rights under the UCMJ. See Rule for Courts-Martial 801(6).

11.3.1.2.1. A “representative” means a person designated by the military judge for the sole purpose of exercising legal rights of the victim as they pertain to the victim’s status as a victim of any offense(s) properly before the court.

11.3.1.2.2. The military judge shall not designate the accused as the representative of the victim. See Rule for Courts-Martial 801(6)(B)(iv).

11.3.2. In the case of a victim that is an institutional entity, an authorized representative of the institutional entity may represent the institutional entity.

11.4. 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 paragraph 11.3.1.1. For purposes of the Victim
and Witness Assistance Program, the term “witness” does not include a defense witness or an individual allegedly involved in a crime as a conspirator, accomplice, or principal.

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


11.7. Local Responsible Official. The individual responsible for identifying victims and witnesses of crimes and providing the services required by the Victim and Witness Assistance Program. Each installation commander or Special Court-Martial Convening Authority, as appropriate, is the Local Responsible Official. Local responsible officials may delegate their official duties and responsibilities to the Staff Judge Advocate. The delegation must be in writing and addressed to the base Staff Judge Advocate by duty title rather than name. The Staff Judge Advocate may further delegate those duties and responsibilities in writing to a Victim and Witness Assistance Program coordinator while maintaining oversight and overall responsibility for the program. References in this chapter to the Local Responsible Official include the Staff Judge Advocate or Victim and Witness Assistance Program coordinator, if delegated local responsible official duties and responsibilities, and other individuals tasked by the Local Responsible Official to assist with the victim and witness assistance program. Refer to paragraph 2.5 when determining local responsible officials for members of a stand-alone Air Reserve or Air Reserve Base.

11.8. Victim and Witness Assistance Program Coordinator. The individual selected by the Staff Judge Advocate to implement and manage the Victim and Witness Assistance Program. Responsible for ensuring the accomplishment of required training by all local agencies. The victim and witness assistance program coordinator may also serve as victim liaison as appropriate under the circumstances of a particular case.

11.9. Victim Liaison. An individual appointed by the Local Responsible Official or delegate to assist a victim during the military justice process. The designation need not be in writing. The liaison may be a 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.

11.10. 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 United States Air Force central repository is the Air Force Security Forces Center (AFSFC/FC), Confinement and Corrections Directorate/ Victim and Witness Assistance Program Central Repository, 1517 Billy Mitchell Boulevard, Joint Base San Antonio-Lackland, Texas 78236-0119. COMM: (210) 925-5607, Toll Free (877) 273-3098.

Section 11C—Victim’s Rights

11.11. Victim’s Rights.

11.11.1. Victims of Any Offense. A victim has the following rights under Article 6b, UCMJ, DoD Instruction 1030.2, Victim and Witness Assistance Procedures, and other applicable rules, regardless of the nature of the offense:
11.11.1. The right to be reasonably protected from the accused;

11.11.1.2. The right to reasonable, accurate, and timely notice of any of the following:

11.11.1.2.1. A seven day review concerning the continuation of confinement prior to trial of the accused or any other public hearing concerning the continuation of confinement prior to trial of the accused;

11.11.1.2.2. A hearing under Article 32, UCMJ, relating to the offense;

11.11.1.2.3. A court-martial relating to the offense;

11.11.1.2.4. A proceeding of the Service clemency and parole board relating to the offense.

11.11.1.2.5. The release or escape of the accused, unless such notice may endanger the safety of any person.

11.11.1.3. The right to receive, upon request, a copy of, or access to, the recording of a preliminary hearing under Article 32, UCMJ, as soon as practicable following the conclusion of the hearing.

11.11.1.4. The right not to be excluded from any public hearing or proceeding described under paragraph 11.11.1.2 unless the military judge or preliminary hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under the UCMJ would be materially altered if the victim heard other testimony at that hearing or proceeding.

11.11.1.5. The right to be reasonably heard at any of the following:

11.11.1.5.1. A seven-day review concerning the continuation of confinement prior to trial of the accused or any other public hearing concerning continuation of confinement prior to trial of the accused.

11.11.1.5.2. A sentencing hearing relating to the offense(s).

11.11.1.5.3. A Military Department Clemency and Parole Board hearing relating to the offense(s). A victim may make a personal appearance before the Board or submit an audio, video, or written statement.

11.11.1.6. The right to reasonably confer with the counsel representing the government at any proceeding described in paragraph 11.11.1.2.

11.11.1.6.1. Prior to questioning a victim about a sexual offense, the counsel for the government or other designated official advises the victim of the right to seek the advice of an attorney and of the potential eligibility for Special Victims’ Counsel representation. (T O). See Fiscal Year 16 National Defense Authorization Act, Section 534.

11.11.1.6.2. Victims eligible for military legal assistance may also consult a legal assistance attorney in accordance with 10 U.S.C. § 1565b. All victims may also elect to seek the advice of a private attorney at their own expense.

11.11.1.7. The right to receive restitution as provided in law.

11.11.1.8. The right to proceedings free from unreasonable delay.
11.11.1.9. The right to be treated with fairness and with respect for the victim’s dignity and privacy.

11.11.1.10. If the offense was tried by any court-martial, the right to submit a written statement to the convening authority after the sentence is adjudged. See Rule for Courts-Martial 1105A.

11.11.2. Victims of a Sex Offense. Victims of an offense under Articles 120, 120a, 120b, 120c, or 125, UCMJ, and attempts thereof under Article 80, UCMJ, have the following additional rights:

11.11.2.1. In cases where the offense occurs in the United States, or any political subdivision, possession or territory, thereof, the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

11.11.2.2. Provided the victim is eligible for assistance under AFI 51-504, Legal Assistance, Notary, and Preventative Law Programs, the right to consult with a Special Victims’ Counsel in accordance with 10 U.S.C. § 1044e.

11.11.2.3. The right to have the victim’s counsel, including Special Victims’ Counsel, provided with reasonable, accurate, and timely notice of the following:

11.11.2.3.1. A seven-day review concerning the continuation of confinement prior to trial of the accused or any other public hearing concerning the continuation of confinement of the accused;

11.11.2.3.2. A hearing under Article 32, UCMJ, relating to the offense;

11.11.2.3.3. A court-martial relating to the offense;

11.11.2.3.4. A proceeding of the Air Force Clemency and Parole Board relating to the offense.

11.11.2.4. The right to receive a copy of the record of trial free of charge as soon as the records are authenticated. See Rule for Courts-Martial 1103(g)(3); paragraph 8.7.2.

11.11.2.5. Non-Participating Victims. If the victim declines to participate in an investigation or prosecution, commanders and Staff Judge Advocates should refer to AFI 90-6001, Sexual Assault Prevention and Response Program, paragraph 3.6.2.

11.12. Enforcement by the Air Force Court of Criminal Appeals. A victim may petition the Air Force Court of Criminal Appeals for a writ of mandamus contesting a ruling in an Article 32 hearing or court-martial if the victim believes the ruling violates the victim’s rights afforded by Military Rules of Evidence 412 (evidence of sexual history), Military Rules of Evidence 513 (psychotherapist-patient privilege), Military Rules of Evidence 514 (victim advocate privilege), or Military Rules of Evidence 615 (exclusion of witnesses). Article 6b(e), UCMJ.

Section 11D—Services Provided to Victims

11.13. Local Responsible Official Responsibilities. The Local Responsible Official or designee will:

11.13.1. Designate a victim liaison to assist individual victims when necessary.
11.13.2. 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.

11.13.3. Inform eligible victims of the availability of Special Victims’ Counsel in accordance with 10 U.S.C. § 1044e and legal assistance in accordance with 10 U.S.C. § 1565b if they are otherwise eligible for legal assistance under AFI 51-504. (T-0). If a victim requests a Special Victims’ Counsel, refer the request to AFLOA/CLSV.

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

11.13.4.1. Restitution may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement, during the sentencing process, as a part of post-trial mitigation (Rule for Courts-Martial 1105), or as a term or condition of parole or clemency. Local responsible officials or their designee should provide information on possible restitution from local, state or federal crime victims’ funds, including procedures for applying for such funds.

11.13.4.2. 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 AFI 51-502, Personnel and Government Recovery Claims, Chapter 6. Ensure an Article 139 investigation does not interfere with any criminal investigation or court-martial proceedings.

11.13.5. 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 member’s retirement benefits. See 10 U.S.C. §§ 1058, 1059, and 1408; DoD Instruction 1342.24, Transitional Compensation for Abused Dependents.

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

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

11.13.8. 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. See 18 U.S.C. §§ 1512 and 1513.

11.13.8.1. The victim should be instructed to immediately report any intimidation, harassment or similar conduct to military or civilian authorities.

11.13.8.2. In cases where a victim’s life, well-being or safety is jeopardized or threatened by participation in the reporting, investigation, or military justice process, the Local Responsible Official or designee 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. The Local Responsible Official or designee assists victims in obtaining restraining orders or similar protections available from civilian agencies.

11.14. Law Enforcement Responsibilities. In accordance with DoD Instruction 1030.2, Victim and Witness Assistance Procedures, during investigation of a crime, law enforcement investigators inform all victims as appropriate of the following:
11.14.1. The status of the investigation of the crime, to the extent it will not interfere with the investigation and is appropriate;

11.14.2. The arrest of the suspected offender; and

11.14.3. A decision not to pursue further investigation.

11.15. Commander’s Responsibilities.

11.15.1. The immediate commander of the subject of an investigation or the accused should take reasonable and necessary steps to ensure victims are adequately protected from the subject during the period of investigation and prosecution. In certain cases, this may require the commander to issue a military protective order or a “no contact” order.

11.15.2. In cases involving an unrestricted report of a sexual assault, the commander ensures the issuance of any military protective order complies with DoD Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures. (T-0). Commanders issuing a protective order use the DoD Form 2873, Military Protective Order, and provide the victim and subject with copies of the completed form. A commander may issue a verbal protective order but must subsequently document such verbal orders with a DoD Form 2873 as soon as possible. If electing to deny a victim’s request for a protective order, the commander documents in writing the basis for denial and forwards the request and basis for denial to the installation commander or equivalent.

11.16. Staff Judge Advocate Responsibilities.

11.16.1. Notification. The Staff Judge Advocate or designee ensures the victim is provided with the earliest possible notification of the following, if applicable:

11.16.1.1. In cases involving a member of the armed forces or dependent who is victim of an offense under Articles 120, 120a, 120b, 120c, or 125, UCMJ, and attempts thereof under Article 80, UCMJ, the availability of Special Victims’ Counsel under 10 U.S.C. § 1044e before any military criminal investigator or trial counsel interviews or requests any statement from, the member or dependent regarding the alleged sexual assault.

11.16.1.2. The accused’s pretrial status and any subsequent changes 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;

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

11.16.1.4. A pretrial confinement hearing and/or Article 32 preliminary hearing, including introduction of any evidence implicating Military Rules of Evidence 412, 513, or 514.

11.16.1.5. The scheduling, including changes and delays, of each court-martial proceeding the victim is entitled or required to attend. In cases involving a victim of an offense under Articles 120, 120a, 120b, 120c, or 125, and attempts thereof under Article 80, the servicing Staff Judge Advocate or designee shall ensure any counsel of the victim, including a Special Victims’ Counsel, is provided reasonable, accurate, and timely notice of proceedings listed in paragraph 11.11.1.2, to permit the opportunity to prepare for such proceeding. A template for this notification is included at Figure A11.2.
11.16.1.6. The disposition of the case, to include the acceptance of a guilty plea, the rendering of a verdict, or the withdrawal or dismissal of charges;

11.16.1.7. The opportunity to present to the court at sentencing, in compliance with applicable law and regulations, a statement of the impact of the crime on the victim, including financial, social, psychological, and physical harm suffered by the victim;

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

11.16.1.9. In a general or special court-martial involving victims of crimes punishable under Articles 120, 120b, 120c, 125, or any attempt to commit such offenses in violation of Article 80, the right to receive a copy of the record of trial free of charge as soon as the records are authenticated. See Rule for Courts-Martial 1103(g)(3) and paragraph 8.7.2. The Staff Judge Advocate or designee ensures any declination of the record of trial is documented in writing and attached to the original record.

11.16.1.10. The opportunity to submit a written statement to the convening authority after the sentence is adjudged. See Rule for Courts-Martial 1105A. Section 8D provides additional guidance on victim impact statements.

11.16.2. Consultation. Under ordinary circumstances, the Staff Judge Advocate or designee ensures the victim is consulted on the following:

11.16.2.1. For cases involving a victim of an offense under Articles 120, 120a, 120b, 120c, or 125, and attempts thereof under Article 80, that occurs in the United States, or any political subdivision, possession or territory, thereof, the victim’s preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. See Rule for Courts-Martial 306(e) and paragraph 11.1.1.2.1. The Special Court-Martial Convening Authority, through the servicing Staff Judge Advocate or designee, requests and considers the victim’s views, if any. Under no circumstances will the victim’s Special Victims’ Counsel be the Staff Judge Advocate’s designee.

11.16.2.1.1. The preference expressed by the victim, while not binding, should be considered by any convening authority in making a decision whether to refer or forward a recommendation to refer the charge(s) or specification(s) for the offense to a court-martial for trial. See Figure A3.9. A Special Victims’ Counsel or other counsel representing the victim may provide the victim’s views on behalf of the client.

11.16.2.1.2. The convening authority, through the servicing Staff Judge Advocate, ensures the civilian authority with jurisdiction over the offense is notified of the victim’s preference for civilian prosecution. See Figure A3.2.

11.16.2.1.3. The convening authority, through the servicing Staff Judge Advocate, ensures the victim is notified of any decision by the civilian jurisdiction to prosecute or not prosecute the offense in a civilian court. See Figure A3.3.

11.16.2.2. Decisions not to prefer charges or disposition of the offense by means other than court-martial;
11.16.2.2.1. Consultation should provide the victim with a meaningful opportunity to communicate the victim’s views to the disposition authority. The victim’s views may be solicited in writing and/or through verbal (e.g., telephonic, video teleconference, or in person) communication. When the victim requests verbal consultation with the disposition authority, the Staff Judge Advocate or designee shall ensure the disposition authority is notified of this request prior to the disposition decision.

11.16.2.2.2. In cases where initial disposition decisions are required to be forwarded to the General Court-Martial Convening Authority under paragraph 3.7.5, the Staff Judge Advocate ensures that any statements solicited from the victim with regards to disposition are made available to the General Court-Martial Convening Authority. Additionally, if the victim in such a case makes any oral statements to the disposition authority, the Staff Judge Advocate or designee ensures said statements are summarized in writing.

11.16.2.3. Dismissal of charges or referral decisions;

11.16.2.3.1. Consultation should provide the victim with a meaningful opportunity to communicate the victim’s views to the authority who intends to dismiss the case or make the referral decision. The victim’s views may be solicited in writing and/or through verbal (e.g., telephonic, video teleconference, or in person) communication. When the victim requests verbal consultation with the appropriate authority, the Staff Judge Advocate or designee ensures the appropriate authority is notified of this request prior to the decision being rendered.

11.16.2.3.2. In cases where a decision not to refer charges requires review by Secretary of the Air Force or the next superior General Court-Martial Convening Authority, refer to the procedures set forth in paragraph 4.22. If the victim in such a case makes any oral statements to the disposition authority, the Staff Judge Advocate or designee ensures the oral statements are summarized in writing.

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

11.16.2.5. Pretrial agreement negotiations, including pretrial agreement terms;

11.16.2.6. Plea negotiations;

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

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

11.16.2.8.1. If requested by the victim, the Staff Judge Advocate or designee takes reasonable steps to inform the victim’s employer of the reasons for the victim’s absence from work. In appropriate cases, the Staff Judge Advocate or designee assists 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 non-eligible victims to formal legal assistance. See AFI 51-504.

11.16.3. Consultation as required by paragraph 11.16.2 may be limited if 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 Victim and Witness Assistance Program 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.

11.16.4. Upon receiving a written request from the victim or victim’s counsel for a copy of the recording of a preliminary hearing under Article 32, UCMJ, the Staff Judge Advocate, through trial counsel or other designee, provides the victim with a copy of, or access to, the recording upon completion of the preliminary hearing report. See paragraph 4.5.4.

11.16.5. During trial proceedings, the Staff Judge Advocate or designee provides the victim with:

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

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

11.16.6. After trial proceedings, the Staff Judge Advocate or designee takes appropriate action to 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 or required to be retained by law.

11.16.7. A victim’s request for additional information, other than that provided above, relating to the investigation and prosecution of a crime, is processed in accordance with DoD 5400.7-R_AFMAN 33-302, Department of Defense Freedom of Information Act Program.

11.17. Interview of the Victim of a Sex Offense (Article 46(b), UCMJ). For cases involving a victim of an offense under Articles 120, 120a, 120b, 120c, or 125, and attempts thereof under Article 80, there are requirements related to interview of the victim.

11.17.1. Staff Judge Advocates should assign trial counsel as soon as practicable.


11.17.2.1. Once legal office personnel are aware the accused is represented by defense counsel, trial counsel notifies defense counsel of the name of a victim of an alleged sex offense whom trial counsel intends to call to testify at an Article 32 hearing or a court-martial, and informs defense counsel that any request to interview the alleged victim must be directed to the victim’s counsel, if any. If there is no victim’s counsel, the request is directed to trial counsel. The trial counsel may provide this notice to defense counsel once the decision to attempt to call the victim as a witness has been made, even if prior to preferral of charges and even if the alleged victim has elected not to testify at an Article 32 preliminary hearing.

11.17.2.2. Upon trial counsel providing this notice to defense counsel, defense counsel must make any request to interview the victim through the Special Victims’ Counsel or other victim counsel. (T-0). If there is no Special Victims’ Counsel or other victim counsel, the request is made through trial counsel.
11.17.3. If requested by a victim of an alleged sex-related offense who is subject to a request for interview under paragraph 11.17.2, any interview of the victim by defense counsel takes place in the presence of trial counsel, counsel for the victim, or a victim advocate. (T-0).

11.17.3.1. If the victim elects to have trial counsel present during an interview with the defense counsel, the trial counsel should explain to the victim that the trial counsel does not represent the victim in an attorney-client relationship.

11.17.3.2. At all defense counsel interviews of the victim that the trial counsel attends, an additional person other than the trial counsel should be present.

11.18. Confinement Facility Responsibilities. If applicable, the Victim and Witness Assistance Program coordinator at the military confinement facility provides the victim the earliest possible notice of:

11.18.1. Consideration of the accused by the Secretary of the Air Force Clemency and Parole Board for clemency or parole;

11.18.2. The transfer of the inmate from one facility to another;

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

11.18.4. The death of the accused if the accused dies while in custody.

11.19. Airman and Family Readiness Center Responsibilities.

11.19.1. The Airman and Family Readiness Center maintains information on available treatment, counseling, and support programs, acting as the focal point between victims and those programs. The Airman and Family Readiness Center 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 Airman and Family Readiness Center provides information to victims on available medical, financial, legal, and other social services, and assists victims in obtaining those services. At installations without an Airman and Family Readiness Center, the local responsible official appoints an individual to provide information to victims.

11.19.2. In cases where referring a victim to the Airman and Family Readiness Center for information may potentially cause undue embarrassment for the victim, local responsible officials are encouraged to provide victim and witness assistance program information directly to the victim.

11.20. Sexual Assault Prevention and Response Program. It is Air Force and DoD policy to combat sexual assault within the DoD 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 receive timely access to appropriate treatment and services.

11.20.1. Within the Air Force, the Sexual Assault Response Coordinator implements and manages the installation level Sexual Assault Prevention and Response Program. In addition to assisting commanders in meeting annual sexual assault prevention and response training
requirements, the Sexual Assault Response Coordinator 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.

11.20.2. Victim Advocates are appointed by the Sexual Assault Response Coordinator 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. Victim Advocate services will continue until the victim states support is no longer needed. Victim Advocates 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. Victim Advocates may accompany the victim, at the victim’s request, during investigative interviews and medical examinations.

11.20.3. The Victim and Witness Assistance Program and Sexual Assault Prevention and Response Programs are distinct but complementary programs providing support and services to the victims as required by their governing directives. The Local Responsible Official, or other officials appointed in this chapter, and the Sexual Assault Response Coordinator and Victim Advocate, 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 Local Responsible Official, or any other official appointed in this chapter, remains responsible for the delivery of victim and witness assistance program services.

Section 11E—Services Provided to Witnesses and Others


11.21.1. The Local Responsible Official or designee informs eligible witnesses about protection from intimidation or similar threats, and, if appropriate, arranges for a witness to receive reasonable protection from an accused and from individuals acting in concert the accused. The Local Responsible Official or designee further advises witnesses to report immediately any intimidation, harassment, or similar conduct to military authorities.

11.21.2. In a case where a witness’s life, well-being, or safety is jeopardized or threatened by participation in the military justice process, the Local Responsible Official 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 an accused’s pretrial status, including, the accused being placed in pretrial confinement, being released from pretrial confinement, or escaping from pretrial confinement.

11.22. Staff Judge Advocate Responsibilities. The Staff Judge Advocate or designee will:

11.22.1. If requested by a witness, take reasonable steps to inform the witness’s employer of the reasons for the witness’s absence from work. In appropriate cases, the Staff Judge Advocate assists 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 non-eligible witness to formal legal assistance under AFI 51-504.

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

11.22.3. 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.

11.22.4. 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.

11.22.5. Determine the extent to which each individual witness is provided services or information under this paragraph. For example, Regular Air Force, expert, or character witnesses ordinarily do not require all these services.

11.22.6. Provide information and services to witnesses for a suspect or accused, if requested by defense counsel, and authorized by the local responsible official.

11.23. Local Responsible Official Responsibilities to Others Entitled to Notice. Relatives of minor victims and witnesses and relatives of homicide victims are entitled to receive prompt notification of information concerning cases. If requested, the Local Responsible Official or other officials designated in this chapter shall notify the individuals of the following:

11.23.1. Apprehension of a suspect or an accused.

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

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

11.23.4. Court-martial proceedings, including any pleas by the accused, findings, and the sentence imposed, including the date on which the accused becomes eligible for release from confinement, or parole, if applicable.

Section 11F—Notifications, Form Processing, and Miscellaneous Information

11.24. 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 provide to each victim and witness DoD Form 2701, Initial Information for Victims and Witnesses of Crime. (T-0). Annotate on incident reports the date of distribution of the DoD Form 2701. When circumstances dictate, law enforcement and investigative personnel promptly inform victims about the availability of emergency medical care and applicable social services. As appropriate, coordinate with the Airman and Family Readiness Center or victim liaison to make availability victim support service. Record and report to the base Staff Judge Advocate or equivalent the number of DoD Form 2701s distributed annually. (T-0).

11.25. Staff Judge Advocate and Trial Counsel.

11.25.1. Prior to trial, the trial counsel or victim liaison provides the victim with a DoD Form 2702, Court-Martial Information for Victims and Witnesses of Crime, explaining
victims’ rights and access to services. Record and report the number of DoD Form 2702s distributed annually. (T-0).

11.25.2. Witnesses requested or ordered to appear at Article 32, UCMJ, preliminary hearings or courts-martial may be entitled to reimbursement for their expenses under Articles 46 and 47, UCMJ, and Rule for Courts-Martial 405(g). The Staff Judge Advocate or designee provides victims and witnesses assistance in obtaining prompt payment of witness fees and related costs. When possible, the Staff Judge Advocate should establish local procedures for paying vouchers after normal duty hours when necessary to avoid undue hardship.

11.25.3. When required by DoD Instruction 1030.2, Victim and Witness Assistance Procedures, the trial counsel or victim liaison provides the victim with a DoD Form 2703, Post-Trial Information for Victims and Witnesses of Crime, explaining the victim’s post-trial rights. Record and report the number of DoD Form 2703s distributed annually. (T-0).

11.25.4. For all cases resulting in a sentence to confinement, the trial counsel or victim liaison completes a DoD Form 2704, Victim/Witness Certification and Election Concerning Prisoner Status. Record and report the number of DoD Form 2704s distributed annually. (T-0).

11.25.4.1. One copy of the DoD Form 2704 is sent to the Central Repository, Air Force Security Forces Center (AFSFC/FC), 1517 Billy Mitchell Boulevard, Joint Base San Antonio-Lackland, Texas, 78236-0119; one copy to the confinement facility where the accused is in post-trial confinement; and a redacted copy to each of the appropriate victims and witnesses. A victim’s or witness’s copy must not contain the accused’s personal information or any information concerning other victims or witnesses.

11.25.4.2. The Staff Judge Advocate ensures the DoD Form 2704 is not included in any portion of any record to which the convicted member has access, including the record of trial. The DoD Form 2704 is exempt from Freedom of Information Act release.


11.26.1. If the sentence includes confinement, the Staff Judge Advocate or victim liaison 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.

11.26.2. Upon an offender’s entry into confinement, the Victim and Witness Assistance Program coordinator at the military confinement facility obtains the DoD Form 2704 to determine victim or witness notification requirements. If the form is unavailable, the Victim and Witness Assistance Program coordinator at the military confinement facility asks the Staff Judge Advocate about the form. The Victim and Witness Assistance Program coordinator ensures the accused’s confinement records are clearly marked to indicate that the case involves a victim who wants to be informed of the inmate’s status.

11.26.3. If an accused is confined at or near the installation where tried, the installation Security Forces commander notifies the victim of an accused’s escape, any form of release from custody, or death.

11.26.4. When a victim or witness has requested notification of changes in confinee status on the DoD Form 2704, and that status changes as listed below, the DoD Form 2705, Victim
and Witness Notification of Inmate Status, is used to notify the victim or witness. (T-0). The Victim and Witness Assistance Program coordinator at the military confinement facility records the date notifications are made and reports the number of DoD Form 2705s distributed annually to the central repository AFSFC/FC. Provide the earliest possible notice of:

11.26.4.1. The scheduling of a clemency or parole hearing for the inmate.
11.26.4.2. The transfer of the inmate from one facility to another.
11.26.4.3. The escape (and subsequent return to custody), work release, furlough, or any other form of release of the inmate from custody, including release into parole supervision.
11.26.4.4. The death of the inmate if the inmate dies while in custody.
11.26.4.5. Changes in confinee status for any emergency or special temporary home release granted the inmate.

11.26.5. On transfer of a confinee to another military confinement facility, forward the DoD Form 2704 to the gaining facility, with an informational copy to the Central Repository, AFSFC/FC.

11.26.6. Report the status of victim and witness notification requests to the Central Repository, AFSFC/FC, annually.

11.26.7. 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/FC informed of the victim’s current address.

11.27. Local Civilian Agencies. Local responsible officials are encouraged to enter into agreements with local civilian agencies to ensure cooperative relationships in identifying, reporting, investigating, and providing services and treatment to victims and witnesses.

Section 11G—Victim and Witness Assistance Program Training and Inspections

11.28. Victim and Witness Assistance Program Training.

11.28.1. 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 victim and witness assistance program. The Local Responsible Official is responsible for developing and implementing a program at each installation. The Local Responsible Official is also responsible for ensuring the completion of annual training by local agencies. (T-0).

11.28.2. Development of Training. Together, the installation Staff Judge Advocate, Security Forces Defense Force Commander, Air Force Office of Special Investigations detachment commander, Sexual Assault Response Coordinator, Family Advocacy program, Airman and Family Readiness Center, Installation Chaplain, commanders, and first sergeants develop local training to ensure compliance with the Victim and Witness Assistance Program. A list of references for use in developing a training program is located on the AFLOA/JAJM Virtual Military Justice Deskbook.
11.28.3. Accomplishment of Training. Each individual agency is responsible for training the agency’s personnel on their responsibilities under this chapter annually. The Staff Judge Advocate trains commanders and first sergeants annually. The Local Responsible Official 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.

11.28.4. Preparation of Victim Information Packet. Prepare a victim information packet at each installation through the coordinated efforts of the Staff Judge Advocate, Security Forces, Air Force Office of Special Investigations, Sexual Assault Response Coordinator, Family Advocacy Program, Airman and Family Readiness Center, Installation Chaplain, commanders and first sergeants. Provide the packet to each identified victim or witness. AFLOA/JAJM publishes a model packet on its online Deskbook, which may be used as a starting point for a victim or witness handout depending on local circumstances. Legal offices should consult with AFLOA/JAJM for additional comprehensive guidance in this area.

11.28.5. 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 their 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:

11.28.5.1. Identify the victim of a crime.

11.28.5.2. Inform the victim of the name, title, business address and telephone number of the Airman and Family Readiness Center director or the victim liaison (or, when applicable, the Sexual Assault Response Coordinator and the Family Advocacy Program) to whom a request for services should be addressed and assist the victim in making contact with those individuals when necessary.

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

11.28.5.4. 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.

11.29. Sexual Assault Prevention and Response Program First Responder Training for Legal Personnel. The Air Force Judge Advocate General’s School provides training to satisfy the annual requirement for Sexual Assault Prevention and Response Program first responder training for certain legal personnel (judge advocates, victim and witness assistance program personnel, legal assistance attorneys, and trial counsel in accordance with DoD Instruction 6495.02, Enclosure 10, paragraph 7, Responder Training Requirements.)

11.29.1. Sexual Assault Prevention and Response Program First Responder training is mandatory for the following:

11.29.1.1. Regular Air Force and Air Reserve Component judge advocates who practice in military justice (including Article 32 Preliminary Hearing Officers) or legal assistance (this may include Special Victims’ Counsel and defense counsel) or who serve as trial counsel;
11.29.1.2. Regular Air Force and Air Reserve Component paralegals who provide legal assistance support or directly contribute to a Victim and Witness Assistance Program;

11.29.1.3. Any civilian attorney whose core document or position description references, or who through assigned duties, directly contributes to military justice, legal assistance, or a Victim and Witness Assistance Program; and

11.29.1.4. Any other civilian personnel (including volunteers) assigned to a legal office whose core document or position description references, or who through assigned duties, contributes to a Victim and Witness Assistance Program.

11.29.2. Training must be completed initially upon assuming a position or duties requiring the training as described above and annually thereafter. (T-0).

11.29.3. AFLOA/JAJ is responsible for tracking, in coordination with the Air Force Judge Advocate General’s School, compliance with the annual training requirement for legal personnel.

11.30. Inspections.

11.30.1. Responsible Officials should employ a system to assess the effectiveness of their Victim and Witness Assistance Program. Procedures should include creating and maintaining a record of each case involving victim(s), witness(es), or others entitled to notice that documents completion dates of notifications and issuance of DoD Forms 2701-2704. Responsible Officials should use the Victim and Witness Assistance Program Self-Inspection Checklist available on the AFLOA/JAJM Virtual Military Justice Deskbook.

11.30.2. Staff assistance visits and other inspections examine the effectiveness of victim and witness assistance program and compliance victim and witness assistance program requirements.

Section 11H—Reporting Requirements


11.31.1. Each base Staff Judge Advocate or equivalent reports the information listed below through functional channels to the major command or equivalent. Major commands, field operating agencies and direct reporting units consolidate the reports and each command forwards one consolidated DoD Form 2706 to AFLOA/JAJM to arrive no later than 15 February of each year. The report includes the following:

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

11.31.1.2. The number of victims and witnesses who received a DoD Form 2702 from the government trial counsel or designee.
11.31.1.3. The number of victims and witnesses who received a DoD Form 2703 from the government trial counsel or designee.

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

11.31.2. Each confinement facility reports the information listed below to the Central Repository, Headquarters AFSFC/FC. AFSFC/FC forwards a consolidated report to AFLOA/RAJM to arrive no later than 15 February of each year. The report includes the following:

11.31.2.1. The number of victims and witnesses who were notified by confinement facility Victim and Witness Assistance Program coordinators, via the DoD Form 2705, of changes in confinee status.

11.31.2.2. The cumulative number of confinees for whom victim or witness notifications must be made by each confinement facility. This number is obtained by totaling the number of confinees with victim or witness notifications requirements as of 1 July 1995, adding the number of new confinees with the requirement, and subtracting the number of those confinees who were released, deceased, or transferred to another facility (federal, state, or sister service) during the reporting year.

11.31.3. AFLOA/RAJM consolidates the numbers from the major commands, field operating agencies, direct reporting units and AFSFC/FC, records them on the DoD Form 2706, and forwards the DoD Form 2706 to The Judge Advocate General.
Section 12A—General Information

12.1. Purpose. The purpose of the Automated Military Justice Analysis and Management System 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 DoD concerning military justice;

12.1.4. To provide raw data to the Defense Incident Based Reporting System; and,

12.1.5. To reply to inquiries concerning military justice.

12.2. Uses. The Automated Military Justice Analysis and Management System collects detailed information on offenses and processing timelines as well as demographic information on the participants in the judicial and nonjudicial punishment process. The information from the Management System provides effective management tools for use by Headquarters, 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. Release. AFLOA/JAJM is the release authority for data collected and stored in the Automated Military Justice Analysis and Management System and the reports it generates. Generally, the Management System data and products are protected as attorney-work product. Requests for release of Management System data and products will be considered in light of applicable direction and guidance on release of information for official use or in accordance with the Freedom of Information Act and Privacy Act.

12.4. Policy. The Automated Military Justice Analysis and Management System 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 ordinarily completed within one duty day of a military justice “event” in a case, beginning with the Investigation module. For the purpose of this instruction, “events” include but are not limited to investigation, preferral, referral, etc. If the data field is applicable to a case, an input should be made as soon as the data is available and updated as the need arises.

12.5. Responsibilities.

12.5.1. Special Court-Martial Convening Authority and General Court-Martial Convening Authority legal office personnel have primary responsibility for Automated Military Justice
Analysis and Management System data entry except appellate information. The Management System data should be complete, accurate, and timely.

12.5.2. General Court-Martial Convening Authority legal office personnel have primary responsibility for reviewing the Automated Military Justice Analysis and Management System inputs with regard to cases in the command.

12.5.3. AFLOA/IAJM and appellate personnel have primary responsibility for the Automated Military Justice Analysis and Management System data entry of appellate information.

Section 12B—Case Processing

12.6. Investigation. New cases should be opened in the Automated Military Justice Analysis and Management System as investigations within one duty day of becoming aware of a potential Article 15, court-martial, or circumstances reportable as a special interest case. When Air National Guard members are the subject of an investigation, NGB/JA will be notified. When data entry would potentially compromise an investigation, delayed data entry is authorized. Report circumstances of incident via email to AFLOA/IAJM and document rationale of the delayed entry in the Management System case notes.

12.6.1. Member data. This section has six tabs: Member, Race, Career/Pay, 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 pulled into the Management System from a file that is loaded from the Air Force Personnel Center monthly. These fields should be edited or manually entered if changes have occurred in personal data since the Air Force Personnel Center update or if an area is left blank by the Air Force Personnel Center. Fields not populated by Air Force Personnel Center data may require user inputs. Manual input of Reserve members will likely be required.

12.6.2. 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.

12.6.2.1. Case Status. Enter data describing the current status of the case.

12.6.2.2. Case Notes. Legal offices may enter day-to-day notes in this field that provide useful information in the administrative processing of the case. Text fields, if applicable, should be entered in reverse chronological order (i.e. current information on top). Valid data for this field may include information regarding situations that may delay or otherwise affect the processing of the case, i.e. “Commander temporary duty until ______________; Accused hospitalized until ______________; Defense counsel unavailable until ______________;” Enter a “Current as of” date each time this field is updated. This field should be updated as significant events occur. Major command and Numbered Air Force Staff Judge Advocates may impose additional requirements for case notes.

12.6.2.3. Narrative Description.

12.6.2.3.1. 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.

12.6.2.3.2. Examples of “significant events” include but are not limited to discovery of the following: additional violations of the UCMJ, an accessory or accomplice, additional victims, or additional details that significantly change the scope or severity of the previously reported offense (e.g., the victim of an alleged assault dies as a result of injuries sustained, or additional evidence reveals the accused’s committed housebreaking with an intent to commit rape or arson).

12.6.3. Special Interest Cases. If the case contains one of the qualifying criteria listed in Section 13G of this Instruction, designate the case as a special interest case by selecting “YES,” Numbered Air Force/major command reporting required. Report the case to AFLOA/JAJM by Special Interest Report until the case is disposed of whether by court-martial, nonjudicial punishment, or through some other administrative means (to include no action).

12.6.3.1. If the case does not qualify for special interest reporting to AFLOA/JAJM but does meet major command or Numbered Air Force special interest reporting requirements, select “YES” Numbered Air Force/major command reporting required on the Numbered Air Force/major command Reporting pane.

12.6.4. Investigative Info. Add the appropriate investigating agency, jurisdiction, date of the report of investigation, and date the offense was discovered.

12.6.5. Pending Offenses. All offenses and violations being investigated must be entered in this module regardless of jurisdiction. Each offense entered must be entered using the proper specification code. For civilian investigations, input offenses that closely coincide with the civilian code violations. Offenses should not be deleted from this area once the case has been disposed.

12.6.5.1. Case Information. Complete each field to include the Senior Trial Counsel Consultation on Sexual Assault Cases. Consultation with Senior Trial Counsel/JAJG is encouraged prior to the preferral or disposition of the allegation in sexual assault cases. If Other/No contact reason is marked, enter the reason in the text field.

12.6.6. Investigation Personnel. The folder has three tabs – Defense Counsel, Investigation Point of Contact, and Base Point of Contact. 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. Do not delete personnel from this folder if they had any involvement in the case. If personnel are later replaced, add new personnel and indicate on the tab that they are the current point of contact.

12.6.7. Restraint. If restraint is imposed on the member (military or civilian) during the investigation phase, add this folder and enter the type of restraint imposed, dates imposed, and date of the pretrial hearing if applicable. Keep in mind that restriction imposed as a result of an investigation is considered a form of restraint.
12.6.8. Case Disposition. Cases must 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.

12.7. Pretrial. All folders and corresponding fields that apply to a particular case must be completed in their entirety. The Automated Military Justice Analysis and Management System report criteria and logic may be dependent upon any number of fields in the Management System, and not necessarily those used at base or Numbered Air Force level. It is imperative for database integrity that the fields within the area of control at base and Numbered Air Force level be completed if applicable to the case.

12.7.1. Folders. Add folders to the Automated Military Justice Analysis and Management System 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 individual military defense counsel, 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. It also calculates the speedy trial date. Input fields that recalculate the speedy trial date are located in the Trial Delay folder.

12.7.1.2. Discharge Request. Annotate whether the member requested discharge in lieu of trial or, for officers, resignation for the good of the service (RILO). This field is mandatory even if the member does not request discharge. If the member initially does not request discharge, but later changes his option, the discharge fields are updated using the same discharge folder to reflect the request and the action taken.

12.7.1.3. 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 is entered automatically.

12.7.1.4. Charges Preferred.

12.7.1.4.1. 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 system 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) directly from the Management System.

12.7.1.4.2. Accuser. Enter data on the accuser (individual causing charges to be preferred) and the officer that administered the oath.

12.7.1.5. Special Offense Identifiers. Offenses requiring separate, individualized tracking have been assigned special offense identifiers. If the case involves offenses falling within the special offense category, 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.

12.7.1.6. Trial Personnel. Enter data pertaining to all trial participants in their respective categories (e.g., 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. The Central Docketing Office will complete the judge’s information. 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.

12.7.1.7. Judge. This input is normally completed by the Central Docketing Office.

12.7.1.8. Article 32 Preliminary Hearings (if applicable). 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 Preliminary Hearing Officer is appointed to the date the report was completed. If additional charges are later preferred and a second Article 32 is convened, add a separate Article 32 folder. In cases where an Article 32 is reopened, change the date completed on the original Article 32 folder.

12.7.1.8.1. Referral Package. Enter the date the referral package was forwarded to the General Court-Martial Convening Authority Staff Judge Advocate and the date the referral package was received by the General Court-Martial Convening Authority Staff Judge Advocate. Enter the date the Staff Judge Advocate completed the pretrial advice.

12.7.1.8.2. Preliminary Hearing Officer. Enter data pertaining to the Preliminary Hearing Officer appointed by the convening authority on this tab.

12.7.1.9. Charges Referred. Convening Order. Enter data for the convening order number, date and major command issuing the order.

12.7.1.9.1. 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 for each specification. The date of service is a mandatory field.

12.7.1.9.2. Convening Authority. Enter court-martial convening authority data.

12.7.1.9.3. Special Instructions. Any special instructions from the convening authority concerning referral to a court should be reflected in this module (e.g., charges referred as capital or none.).

12.7.1.10. Circuit Information. Central Docketing Office inputs the entries in this folder.

12.7.1.11. 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).
12.7.1.12. Request for Individual Military Defense Counsel. Add this folder only if the accused requests an individual military defense counsel. Input whether the request was granted or denied.

12.7.1.13. Additional Charges Preferred. If additional charges are preferred, they should be added in this folder. Do not attempt to add them to the original preferral. Ensure all fields are completed to include the specification text. Again, fill in accuser data as you would in the original preferral.

12.7.1.14. Special Court-Martial Convening Authority 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.

12.7.1.15. General Court-Martial Convening Authority 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.

12.7.1.16. 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.

12.7.1.17. Referral Withdrawn. 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.

12.7.1.18. 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.

12.7.1.19. 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.

12.8. Trial. All folders that apply to your case must be added as the event occurs (e.g., Article 39(a) 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 Management System reports.

12.8.1. Article 39(a) Session. Record the arraignment 39(a) session convened in courts-martial. If motions occur during the arraignment session, there is no need to add an additional Article 39(a). These sessions are recorded and reflected as arraignment sessions. If the military judge has arraignment sessions and motions sessions that result in separate temporary duties, add another Article 39(a) folder to reflect the separate sessions. (For summary courts-martial add the preliminary proceedings folder to indicate the date of arraignment.)

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 charges dropped” link 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 charges dismissed or finding of not guilty granted” link 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.

12.8.2.1. 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, officers, or a panel with enlisted members.

12.8.2.2. Conditional Pleas. With the approval of the military judge and the consent of the Government, an accused may enter a conditional plea of guilty, reserving the right, on further review or appeal, to review of the adverse determination of any specified pretrial motion. If the accused prevails on further review or appeal, the accused shall be allowed to withdraw the plea of guilty. Note: a conditional plea should not be confused with a pretrial agreement.

12.8.3. Adjudged Sentence.

12.8.3.1. Pleas and Findings. Enter pleas and adjudged findings in this section. Any charges dismissed or withdrawn subsequent to pleas will automatically be included in this section with the applicable result.

12.8.3.1.1. Lesser Included Offenses. If the accused entered a plea to a lesser included offense, select the “Guilty of lesser included offense” in the plea drop down box and enter the offense code, level of involvement, and completed or attempted for the offense to which they pled. 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.

12.8.3.1.2. Not Guilty by Reason of Insanity. If the accused pled and/or was found guilty by reason of insanity (NG-Ins), indicate the plea and findings to the applicable offense.

12.8.3.1.3. Deletions and Substitutions. If the pleas or findings included deletions and substitutions, check the D&S box at the bottom of the screen. Enter the deletions and substitutions verbatim from the transcript for the specific specifications and in the appropriate plea or finding field.

12.8.3.2. Adjudged sentence. Enter the sentenced adjudged by the court in this section.

12.8.4. Defense Incident Based Reporting System. In 1996, the DoD established a comprehensive database called the Defense Incident-Based Reporting System to track criminal and other high interest incidents involving personnel from cradle to grave. The authority for this system is DoD Instruction 7730.47, Defense Incident-Based Reporting
System, and its implementing guidance is DoD 7730.47-M, *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.

12.8.4.1. Defense Incident-Based Reporting System/Victim and Witness Assistance Program Reporting. Within the Defense Incident-Based Reporting System there are eight reporting segments: administrative, offense, property, victim, offender/arrestee, commander’s action, results of trial, and corrections. Security Forces and the Air Force Office of Special Investigations 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. Judge advocate is only responsible for the “Results of Trial” segment. The data for this segment is gathered through the use of the Automated Military Justice Analysis and Management System. There is also data that is required for Victim and Witness Assistance Program reporting.

12.8.4.1.1. Defense Incident-Based Reporting System Data Entry. Enter the Originating Agency Identifier (ORI) number used by the FBI to identify the base responsible for investigating the incident, the incident number, offender ID, and the Federal Identifier (FID) that designates the investigating activity. Data for these fields may be obtained from the lead agency investigating the case. If more than one incident occurred and was investigated separately, add another incident. (T-0).

12.8.4.1.2. Victim and Witness Assistance Program.

12.8.4.1.2.1. Trial Results Details. Enter the Unit Identification Code (UIC) that corresponds with the location of the court-martial and the Unit Identification Code 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 of judicially ordered credit for pretrial confinement and enter the number of pretrial confinement days.

12.8.4.1.2.2. Enter the number of victims and witnesses electing to be notified before and after trial.

12.8.5. Article 62, UCMJ 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/JAJG.

12.8.6. 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.).

12.9. Post-Trial. All Automated Military Justice Analysis and Management System entries for a court-martial case must be complete, accurate, and timely through the entire trial process prior to forwarding the record of trial to AFLOA/JAJM. (T-1).

12.9.1. Submission of Matters. Enter the legal office representative and address.

12.9.2. Record of Trial Authentication. The record of trial complete date is the date the court reporter completes the transcription of the Record of Trial or the date signed in block 12 of the DoD Form 2329 for summary courts-martial. The base office enters the date the
record of trial is complete, the number of pages in the transcript, the number of volumes, the
date the record of trial is authenticated and whether the case was authenticated by military
judge. The Central Docketing Office will complete the remaining fields.

12.9.3. Post-Trial Action. Enter applicable data in all fields on this tab including whether or
not the sentence was mitigated by the convening authority. The modified field is used at the
appeal level only. Ensure the convening authority action text is entered verbatim.

12.9.3.1. Suspension. If the convening authority suspends any portion of the
punishment, enter the suspension data and when the suspension ends in this section.

12.9.3.2. 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.

12.9.3.3. 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 any portion of the sentence, the mitigated portion of the
sentence will be entered here.

12.9.4. The 14-Day Letters. Enter the date notification was sent to the Finance and
Personnel Office of cases with adjudged forfeitures or reductions.

12.9.5. Post-Trial Progress. If the accused waives appellate review or appellate counsel,
enter the selection in this section. Enter the date the record of trial was reviewed for
accuracy and completeness. Enter the date the Automated Military Justice Analysis and
Management System inputs on the case were reviewed for accuracy and completeness. Enter
the date the record of trial was forwarded to AFLOA/JAJM for appellate review and/or
filing.

12.9.6. Member Addresses. Enter the accused’s address as annotated on the court-martial
order in the Court-Martial Order Address section, and when the accused is required to take
excess leave, enter the excess leave address in the Excess Leave section. The recipient (base,
Numbered Air Force, or appellate divisions), of updated leave address information is
responsible for updating the folder.

12.9.7. Article 64 (a) Review. Enter the date the record of trial was forwarded to the
General Court-Martial Staff Judge Advocate for the supervisory review (Article 64(a),
UCMJ). Numbered Air Force personnel will enter the date received by the General Court-
Martial Staff Judge Advocate, the date of the review, and indicate if the court-
martial was
found legally sufficient.

12.9.8. Article 64(b) Review. Enter the date the record of trial was forwarded to the court-
martial convening authority for an Article 64(b) review. Numbered Air Force personnel will
enter the date of the General Court-Martial Convening Authority action, order number, and
indicate if the convening authority mitigated or modified the adjudged sentence.

Section 12C—Appellate Processing

12.10. Appellate Inputs. AFLOA/JAJM is the disposition authority for all records of trial. The
record of trial is assigned an AFLOA/JAJM court-martial reference number (ACM number)
upon receipt of the completed record of trial. The AFLOA/JAJM court-martial reference number is displayed in the case window of the Automated Military Justice Analysis and Management System.

12.11. Appellate Process. The approved sentence determines the level of appellate review. Each appellate office inputs appellate case data into the Automated Military Justice Analysis and Management System. The base legal office may check the status of appellate review for a case at any time during the appellate process.


12.12.1. Record of Trial Information. This folder contains the AFLOA/JAJM court-martial reference number (ACM number) assigned to the record of trial, date the record of trial was received, date the record was forwarded to the Air Force Court of Criminal Appeals, number of volumes, transcript pages, audio and/or video tapes, and DVDs. 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.

12.12.2. Subsequent Record of Trial Information. If the record of trial 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.

12.12.3. 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 point of contact. All appellate divisions are responsible for entries in this folder.

12.12.4. Article 69(a), UCMJ Review. If the record of trial is subject to Article 69(a) 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.

12.12.5. Article 69(b), UCMJ Review. If the record of trial is subject to Article 69(b) 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.

12.12.6. Article 73, UCMJ Review. 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 The Judge Advocate General. The Appellate Records division is responsible for adding this folder. Each appellate division is responsible for entries on briefs and enlargements.

12.12.7. Rehearings. If the case is sent back for a rehearing from the appellate courts, the appellate records personnel will add a Rehearing folder.

12.12.7.1. 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.

12.12.7.2. 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 preferral using the original preferral date. A new referral folder should be added to reflect the new referral data.

12.12.8. 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.

12.12.9. 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.).

12.12.10. Air Force Court of Criminal Appeals. This folder is added by appellate personnel.

12.12.11. United States Court of Appeals for the Armed Forces. This folder is added by appellate personnel.

12.12.12. United States Supreme Court. This folder is added by appellate personnel.

12.12.13. The Judge Advocate General. This folder is added by appellate personnel.

12.12.14. Clemency. This folder is added by AFLOA/JAJR personnel.

Section 12D—Reports and Other Products

12.13. Reports. Reports generated by the Automated Military Justice Analysis and Management System reports can be accessed through the Management System itself, or from FLITE.

12.13.1. In the Automated Military Justice Analysis and Management System, go to the “Reports” drop-down menu and select “Reports.”

12.13.2. In FLITE, go to the “Reports” drop-down menu and select “Automated Military Justice Analysis and Management System.”

12.14. Queries. Generate queries via the Automated Military Justice Analysis and Management System by going to the “Reports” drop-down menu and selecting “Reports” or “Query.” Then select the type of query and its parameters.

12.15. Slides. Generate data slides via the Automated Military Justice Analysis and Management System by going to the “Reports” drop-down menu and selecting “Reports” or “Query” then select “Slides.”
Chapter 13

MISCELLANEOUS MILITARY JUSTICE MATTERS

Section 13A—Court-Martial Checklists

13.1. Mandatory Use of Court-Martial Checklists. The use of AFLOA/JAJM court-martial checklists is mandatory. The court-martial checklists are available on AFLOA/JAJM’s Virtual Military Justice Deskbook. Supplemented checklists may be used if reviewed and approved by AFLOA/JAJM. Checklists used for an individual court-martial case are maintained and disposed of in accordance with the disposition schedule for the record of trial.

Section 13B—Title of Staff Judge Advocate

13.2. Title of Staff Judge Advocate. Unless otherwise specified by The Judge Advocate General, the senior judge advocate on a commander’s staff is designated the “Staff Judge Advocate” of that command. All other judge advocates assigned to a command are designated “Assistant Staff Judge Advocates” for the purpose of pretrial advice, post-trial recommendations and court-martial orders.

13.2.1. The Deputy or other Assistant Staff Judge Advocate signs “Acting as the Staff Judge Advocate” when the Staff Judge Advocate is absent or ineligible to act in a particular case. (T-1). In all other matters, titles such as “Deputy Staff Judge Advocate” or “Chief, Military Justice Section,” may be used.

13.2.2. Convening authorities may delegate military justice administrative duties to the Staff Judge Advocate or any other attorney assigned to the servicing Staff Judge Advocate’s office. Figure A12.1 is a sample delegation letter. In addition to the duties listed in Figure A12.1, 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.” (T-1).

Section 13C—Explanation of the UCMJ (Article 137, UCMJ)

13.3. Required Explanation of Specified UCMJ Articles.

13.3.1. The Staff Judge Advocate, in coordination with unit commanders, must ensure that base personnel are briefed on the UCMJ, as required by Article 137, UCMJ. (T-0).

13.3.2. Unit Responsibilities. Upon receipt of the monthly list of personnel required to receive training, the unit commander or designated representative contacts the Staff Judge Advocate’s office to schedule personnel for the briefing and ensures each person scheduled attends.

13.3.3. Staff Judge Advocate Responsibilities:

13.3.3.1. A judge advocate, a Department of the Air Force civilian attorney, or a 5-level or higher paralegal, shall brief personnel on the requirements of Article 137, UCMJ. Instructional aids may be used, provided a qualified briefer is present to answer questions. Members should receive the briefing in person when practicable.
13.3.3.1.1. If it is not practicable for a member to receive the briefing in person, the member may be briefed by a qualified briefer via telephone, video teleconference, or other remote means.

13.3.3.1.2. For the purposes of this provision, a “5-level or higher paralegal” includes a civilian paralegal who (1) carries a 5-level paralegal certification as a Reservist, or (2) prior to entering civilian service served as a Regular Air Force paralegal with a 5-level or higher certification.

13.3.3.2. The Staff Judge Advocate for the 502 ISG, Joint Base San Antonio-Lackland, ensures trainees receive the required briefing from regular instructors at the Air Force Military Training Center within fourteen calendar days of entry on active duty. (T-1). The Staff Judge Advocate for the United States Air Force Academy ensures cadets receive the required briefing from instructors at the United States Air Force Academy within fourteen calendar days of entry on active duty. (T-1).

13.3.3.3. Record attendance through sign-in sheets or other means to allow for verification that specific individuals received the mandatory training.

13.3.4. Frequency, Content and Duration. The Staff Judge Advocate determines the frequency and content of training sessions to meet the following requirements:

13.3.4.1. Complete the initial explanation within fourteen calendar days of entry on active duty;

13.3.4.2. Complete the six-month explanation within thirty calendar days of the last day of the month in which the individual completed six months of active duty; and

13.3.4.3. Complete the reenlistment explanation within thirty calendar days of an individual’s reenlistment.

13.3.4.4. Members the Reserve or Air National Guard receive the initial explanation within fourteen calendar days of initial entrance on a duty status with an air reserve component, again after completing basic training, and at the time of reenlistment.

13.3.5. The Article 137 briefing covers the following topics:

13.3.5.1. Articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139 (T-0);

13.3.5.2. Types of punitive and administrative discharges;

13.3.5.3. Bases for characterizing service;

13.3.5.4. The benefits, disadvantages, and possible future effects of each type of service characterization;

13.3.5.5. 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

13.3.5.6. A detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces.
Section 13D—Status of Discipline Briefings

13.4. Status of Discipline Briefings. A Status of Discipline (SOD) briefing will be conducted by the legal office on behalf of the wing commander or equivalent installation authority on at least a quarterly basis. (T-1)

13.4.1. The Staff Judge Advocate facilitates the Status of Discipline briefing and invites host and tenant commanders and first sergeants to attend. Pursuant to the direction of the wing commander, the Staff Judge Advocate may invite additional personnel to all or specific Status of Discipline briefings. For example, vice and deputy commanders, superintendents, and the Air Force Office of Special Investigations and Security Forces senior investigators may be invited to all Status of Discipline briefings while the Sexual Assault Response Coordinator or Area Defense Counsel may be invited to participate in a portion of a specific Status of Discipline briefing. The Staff Judge Advocate and legal office staff will create the Status of Discipline briefing materials and coordinate as necessary and appropriate.

13.4.2. The following items will be discussed at the Status of Discipline briefing (T-1):

13.4.2.1. Results of trial for courts-martial tried in the quarter. Do not disclose the name of an accused who was acquitted of all charges and specifications.

13.4.2.2. Court-martial processing times for courts-martial completed through Record of Trial forwarding in the quarter and for the wing, Numbered Air Force if applicable, major command, and Air Force for the year-to-date.

13.4.2.3. Information on nonjudicial punishment actions completed through Staff Judge Advocate review in the quarter. Do not disclose any names of individuals who were offered or received nonjudicial punishment. The Staff Judge Advocate should consider having the responsible commander brief his or her squadron’s nonjudicial punishment actions.

13.4.2.4. Nonjudicial punishment processing times for nonjudicial punishment actions completed through Staff Judge Advocate review by squadron, wing, Numbered Air Force if applicable, major command, and Air Force for year-to-date.

13.4.2.5. Information on involuntary discharge cases completed through discharge or retention in the quarter. Do not disclose any names of individuals notified of discharge, discharged, or retained. The Staff Judge Advocate should consider having the responsible commander brief his or her squadron’s discharge cases.

13.4.2.6. Discharge processing times for enlisted notification and board cases for discharge cases completed through discharge by squadron, wing, Numbered Air Force if applicable, major command, and Air Force for year-to-date.

13.4.2.7. At least once per calendar year, rates per thousand overall and by officer/enlisted, gender, and race for courts-martial and Nonjudicial Punishment by wing, Numbered Air Force if applicable, major command, and Air Force for the year.

13.4.2.8. Special interest items identified by the wing commander or equivalent authority or the Staff Judge Advocate, such as alcohol-related incidents, drug offenses, and the fitness program.
13.4.3. The Automated Military Justice Analysis and Management System and Web-Based Administrative Separation Program (WASP) are used to generate Status of Discipline briefing slides. In addition, a Status of Discipline slide tool is available on AFLOA/JAJM’s Virtual Military Justice Deskbook.

Section 13E—Extrajudicial Statements and Release of Information

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, and the Victim and Witness Protection Act. Paragraph 13.6.1 discusses the Freedom of Information Act’s required balancing test concerning the privacy rights of an accused.

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.

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 comply with the requirements and restrictions of the Freedom of Information Act and the Privacy Act with respect to the release of Air Force records. (T-0).

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.

13.6.1. Under the Privacy Act, information from a system of records, such as a court-martial file maintained in a judge advocate 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. (T 0). Freedom of Information Act 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 U.S.C. § 552a(b) and 5 U.S.C. §§ 552(b)(6) and 552(b)(7)(C).

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 is defined by 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.

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.

13.6.2. Extrajudicial Statements After Disposition. Employing the Freedom of Information Act balancing test described above, the information release authority may normally release the following information after the convening authority has disposed of preferred charges by directing an Article 32 preliminary hearing or has referred the charges to a court-martial:

13.6.2.1. The accused’s name, unit and assignment;
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 social security number of the accused);
13.6.2.3. The scheduling or result of any stage in the judicial process;
13.6.2.4. Date and place of trial and other proceedings, or anticipated dates, if known;
13.6.2.5. Identity and qualifications of appointed counsel;
13.6.2.6. Identities of convening and reviewing authorities;
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
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.

13.6.2.9. Exceptional cases may warrant earlier release of information but, prior to any earlier release, the relevant authority should apply a public interest balancing test; assess the reasonable expectation of privacy factors; and exercise due caution.
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 Staff Judge Advocate 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.

13.6.4. 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.

13.6.5. 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:

13.6.5.1. General information to educate or inform the public concerning military law and the military justice system;

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

13.6.5.3. Requests for assistance in obtaining evidence and information necessary to obtain evidence;

13.6.5.4. When requested or otherwise in the best interest of the Air Force, after applying Freedom of Information Act exemption principles, as appropriate: facts and circumstances of an accused’s apprehension, including the time and place of apprehension;

13.6.5.5. 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;

13.6.5.6. Information contained in a public record, without further comment; and

13.6.5.7. 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, UCMJ preliminary hearing or an open session of a court-martial. Unless The Judge Advocate General has withheld the authority to coordinate on command release of this information for individual cases or types of cases, the major command Staff Judge Advocate (or equivalent) coordinates on release of this information by the appropriate command authority. If The Judge Advocate General has withheld the authority to coordinate on release of extrajudicial statements, requests for The Judge Advocate General coordination are forwarded through the major command Staff Judge Advocate to AFLOA/JAJM by the most expeditious means appropriate to the sensitivity of the information. (T-1).
13.6.6. Impermissible Extrajudicial Statements. Extrajudicial statements relating to the following matters ordinarily have a substantial likelihood of prejudicing a criminal proceeding and should not be made:

13.6.6.1. The existence or contents of any confession, admission or statement by the accused or the accused’s refusal or failure to make a statement;

13.6.6.2. Observations about the accused’s character and reputation;

13.6.6.3. Opinions regarding the accused’s guilt or innocence;

13.6.6.4. Opinions regarding the merits of the case or the merits of the evidence;

13.6.6.5. 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;

13.6.6.6. Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

13.6.6.7. The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

13.6.6.8. 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

13.6.6.9. Information that trial counsel knows or has reason to know would be inadmissible as evidence in a trial.

13.6.7. 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. Major command (or equivalent) commanders may withhold release authority from subordinate commanders.

13.6.7.1. The installation Staff Judge Advocate and the installation Public Affairs officer must work closely together to provide informed advice to the commander. Staff Judge Advocates should consult with their major command Staff Judge Advocates 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 office of primary responsibility for the record should also coordinate on the extrajudicial statement prior to release. In high interest cases, the Staff Judge Advocate and the public affairs officer should consult with their major command representatives, and AFLOA/JAJM and AFLOA/JAA as necessary.

13.6.7.2. The Staff Judge Advocate, trial counsel and defense counsel ensure investigators, law enforcement personnel, employees and other persons assisting or
associated with the respective counsel do not make extrajudicial statements that counsel are prohibited from making.

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., Air Force Office of Special Investigations reports). The disclosure authority for such documents and records is the office of primary responsibility (OPR) for those records under the provisions of the, AFI 33-332, Privacy Act and Civil Liberties Program, and/or DoD 5400.7-R_AFMAN 33-302, Freedom of Information Act Program.

13.7.1. Release of Record of Trial. Rule for Courts-Martial 1103(b)(2) defines a court-martial record of trial. A record of trial is subject to release determination under the Freedom of Information Act and Privacy 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 Privacy Act protected data and other sensitive information, to include the names of victims of sex offenses, the names of children (under the age of 18), and the identity of victims who could be harmed by disclosure of their identity. (T-0).

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 Rule for Courts-Martial 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. (T-0). 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 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. (T-0).

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. See ACLU v. Dep’t of Justice, 750 F.3d 927, 933 (D.C.C. 2014). Less serious misconduct, which is handled administratively rather than judicially, is usually not considered of sufficient public interest to outweigh the privacy interest of the individual.

13.7.4. 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/Privacy/DODComponentArticleList/tabid/6799/Catego
Section 13F—Direct Communications and Reports

13.8. AFLOA/JAJM Requests for Information.

13.8.1. AFLOA/JAJM routinely receives inquiries concerning military justice cases and relies on information from base-level legal offices to answer the inquiries. Complete, accurate and timely responses to requests for information are critical. To that end, AFLOA/JAJM may communicate directly with any legal office at any level of command. It is incumbent on the contacted Staff Judge Advocate or designee to coordinate with intermediate levels of command. (T-1). Contact or requests from AFLOA/JAJM to a legal office should not be construed as criticism of case handling or as a mandate for any particular action in a case.

13.8.2. Responses. Generally, the Staff Judge Advocate or designee respond to AFLOA/JAJM via e-mail directly to the requestor or to usaf.pentagon.af-j.a.mb.xafloa-jajm-workflow@mail.mil. All responses should include:

13.8.2.1. Detailed answers to any specific questions asked.

13.8.2.2. Case information, including details about the subject or accused and any relevant incidents and allegations.

13.8.2.3. Case background and any unique or significant aspects of the case.

13.8.2.4. As necessary and appropriate, mark and protect information as Privacy Act-protected or For Official Use Only (FOUO).

13.8.3. Responses Involving Courts-Martial. In addition to the information described in paragraph 13.8.2, include the following information for courts-martial:

13.8.3.1. Dates and nature of pretrial restraint or confinement and associated proceedings;

13.8.3.2. Type of court-martial and summary of charges and specifications;

13.8.3.3. Dates of preferral, referral and trial;

13.8.3.4. Information about the Article 32 preliminary hearing, including who directed it, identity of accused’s counsel and victim’s counsel, if any, names of government and defense witnesses, summary of witness testimony and evidence presented, and the Preliminary Hearing Officer’s findings and recommendations;

13.8.3.5. Summary of witness testimony and evidence;

13.8.3.6. Pleas, findings, sentence, and court composition;

13.8.3.7. Any history of misconduct of the accused;

13.8.3.8. Date and action of the convening authority;

13.8.3.9. Date and outcome of Article 64, UCMJ, review;

13.8.3.10. Date record of trial forwarded to AFLOA/JAJM;
13.8.3.11. Information concerning post-trial confinement, excess leave, and other post-trial matters.

13.8.4. Responses Involving Nonjudicial Punishment. In addition to the information described in paragraph 13.8.2, include the following information for nonjudicial punishment: names, dates, and elections for the nonjudicial punishment action; summary of charged misconduct; imposing commander's findings; imposed nonjudicial punishment; appeal outcome; and information on related matters, such as Unfavorable Information File (UIF), Officer Selection Record (OSR), and discharge.

13.8.5. Responses Involving Civilian Jurisdiction. In addition to the information described in paragraph 13.8.2, include the following information for cases involving civilian jurisdiction:

13.8.5.1. Jurisdiction involved and status of waiver request;
13.8.5.2. Charges;
13.8.5.3. Detention or confinement;
13.8.5.4. Place and dates of civilian proceedings;
13.8.5.5. Name of defense counsel, if any;
13.8.5.6. Summary of the evidence;
13.8.5.7. Maximum authorized punishment;
13.8.5.8. Pleas, findings, and sentence;
13.8.5.9. Appeal;
13.8.5.10. Administrative or disciplinary action taken or contemplated by military authorities.

13.9. Field Response to High-Level Inquiry. When a legal office receives and responds directly to a high-level inquiry, such as a congressional inquiry, concerning a military justice case or matter, retain a copy of the inquiry and response. (T-1). AFI 90-401, Air Force Relations with Congress, Chapter 3, provides additional guidance.

Section 13G—Special Interest Reports

13.10. Reporting Special Interest Cases. Certain cases involving Air Force members generate interest within Headquarters Air Force, whether because of the nature of the offense, the subject’s grade, or some other reason. Staff Judge Advocates must be sensitive to Special Interest Report requirements and make accurate and timely reports.

13.11. Responsibilities. Reporting special interest cases is a base-level responsibility. Reports should be prepared and forwarded to AFLOA/ JAJM within twenty-four hours of learning of the incident by the base legal office responsible for the case or supporting the subject’s unit of assignment. (T-1). If a base legal office learns of a Special Interest Report case but another office is responsible for it, the base legal office with knowledge of the case should promptly inform the responsible legal office. Legal office reporting responsibilities do not preclude or pre-empt and should not precede commanders’ reporting responsibilities or command
authorities. The Staff Judge Advocate should coordinate Special Interest Report reporting, especially initial reports, with the wing commander or equivalent authority.

13.12. Requirements. Special Interest Reports are created in the following circumstances:

13.12.1. Officer, CMSgt and SMSgt Cases. Regardless of offense, report all allegations and investigations involving officers, CMSgts, and SMSgts.

13.12.2. Serious Crimes. Regardless of the subject’s grade, report all cases involving the following crimes, including attempts, conspiracies, and solicitations to commit these crimes:

13.12.2.1. Homicide;

13.12.2.2. Violations of Article 120, Article 120a, Article 120b, Article 120c, Article 125 (Forcible Sodomy), or Article 134 (Child Pornography), UCMJ;

13.12.2.3. Domestic violence, including violations of Article 120, Article 120a, Article 120c, Article 128, or Article 134 (Threat, communicating), UCMJ; Note: A Special Interest Report is required for domestic violence involving an offense 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, guardian, or other directly related family member; or by a person similarly situated to a spouse, parent or guardian of the victim.

13.12.2.4. Retaliation, including ostracism, maltreatment, and reprisal as defined in AFI 36-2909, Professional and Unprofessional Relationships, and 10 U.S.C. § 1034, Military Whistleblower Protection Act;

13.12.2.5. 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;

13.12.2.6. Environmental crimes, including civilian felony prosecution;

13.12.2.7. Fraternization and unprofessional relationships (with the exception of those fraternization/unprofessional relationships strictly between United States Air Force Academy cadets);

13.12.2.8. Anthrax or smallpox refusals;

13.12.2.9. Other circumstances if required by the relevant major command or Numbered Air Force, e.g., recruiter misconduct (coordinated with Air Force Recruiting Service Staff Staff Judge Advocate, AFRS/JA) or misconduct by a military training leader or technical training leader (coordinated with 2 AF/JA) or Academy Military Trainer and Air Officer Commanding at the United States Air Force Academy.

13.12.3. Cases Involving Command or Media Interest.

13.12.3.1. Any case where the chain of command is required or likely to report the case. Staff Judge Advocates should work with the Command Post to ensure it is aware of criminal activity and other legal-related events reported to higher headquarters via Operational Event/Incident Report (OPREP3) per AFI 10-206, Operational Reporting.

13.12.3.2. Any case with potential or actual community or local concerns or potential or actual media interest.
13.13. What to Report. Use the Automated Military Justice Analysis and Management System (AMJAMS) to generate the Special Interest Report, which should include case details, including a description of the alleged offenses, dates and locations, UCMJ articles and specifications, media interest, investigating agency, next steps, and any unusual or significant features of the case. Identify missing information and follow up as soon as possible.

13.13.1. If at the time of an incident, the alleged perpetrator is unidentified, report the case to AFLOA/JAJM via email.

13.13.2. Ensure law enforcement-sensitive investigative information is not included in the Special Interest Report without concurrence of the Air Force Office of Special Investigations Detachment Commander/Special Agent-in-Charge or investigating agency. See paragraph 13.37 for examples of sensitive information.

13.13.3. For matters investigated by commander-directed investigation (CDI), Inspector General (IG), or Military Equal Opportunity (MEO), summarize the allegations and, when the investigation is done, identify substantiated and not-substantiated findings.

13.13.4. For cases disposed of by nonjudicial punishment or administrative action (e.g., letter of reprimand (LOR) or letter of counseling (LOC)), identify the wrongdoing or offenses alleged (e.g., “On (date), Subject received nonjudicial punishment/Letter of Reprimand for…”).

13.13.5. For cases handled by civilian authorities, include information that identifies the investigative and prosecutorial authorities and court and jurisdiction and summarize the charges, pleas, findings and sentence.

13.13.6. For sexual assault cases, indicate whether a Senior Trial Counsel was consulted under the “Pending Offense” subfolder, “Case Information” tab.

13.13.7. If a case was closed without action, explain why.


13.14.1. Within twenty-four hours of learning of an incident that requires a Special Interest Report. If the Automated Military Justice Analysis and Management System cannot be accessed in a timely fashion, submit case information using the most expeditious means possible, which will likely be email, and input the case into the Automated Military Justice Analysis and Management System as soon as possible.

13.14.2. When a significant event in a reported case occurs. Significant events include disposition of investigation, response to a request for jurisdiction from civilian authorities; preferral of charges, referral of charges, results of trial, convening authority action, dismissal of any charges; nonjudicial punishment offer, imposition; and media interest.

13.14.3. Continue to submit reports until completion of the court-martial, nonjudicial punishment or administrative action, including the decision whether to file nonjudicial punishment action in an Officer Selection Record or Senior Noncommissioned Officer Selection Record, or as directed.


13.15.1. Use Automated Military Justice Analysis and Management System to generate the Special Interest Report. Secretary of the Air Force and Numbered Air Force/major command
Special Interest Report buttons are located in the Special Interest Folder of the Management System. Click the “Special Interest reporting required” button for cases requiring special interest reporting as directed in this Section. The “Numbered Air Force/major command Special Interest Report” button is selected when a Numbered Air Force or major command requires additional reporting not required by this Instruction. Once a case is marked as a Special Interest Report, it remains a Special Interest Report for the life of the case. Also, the “Numbered Air Force/major command Special Interest Report” button, once selected, remains selected unless otherwise directed by the Numbered Air Force or major command.

13.15.2. Transmitting Special Interest Reports to AFLOA/JAJM. Go to the Automated Military Justice Analysis and Management System Reports page and select Special Interest Report. Enter the case ID, select case notes and run the Special Interest Report. Save a .pdf copy of the Special Interest Report and upload it to the following SharePoint® site:


Further instructions for transmitting Special Interest Reports to AFLOA/JAJM via SharePoint® are available on the AFLOA/JAJM Virtual Military Justice Deskbook.

13.15.3. When submitting an initial Special Interest Report, use the following subject line: For Official Use Only (FOUO) NEW Special Interest Report: CASE ID # - RANK SURNAME – BASE. When submitting an updated Special Interest Report, use the following subject line: For Official Use Only (FOUO) UPDATED Special Interest Report: CASE ID # - RANK SURNAME – BASE.

Section 13H—Reporting Referral of Additional Charges in Cases Pending Review

13.16. Reporting Referral of Additional Charges in Cases Pending Review. If a case is pending review under Articles 66, 67 or 69, UCMJ, the legal office processing the referral of additional charges must contact AFLOA/JAJM. (T-3).

Section 13I—Reporting Cases Involving Foreign-National USAF Members

13.17. Foreign-National USAF Member. A foreign-national United States Air Force member is a member of the United States Air Force 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 Air Force member who claims to be a foreign national shall be considered so. This 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. Air Force Joint Instruction 51-707, Consular Protection of Foreign National Subject to the UCMJ.

13.18. When to Report. Notify Headquarters USAF/JAO when a foreign-national United States Air Force member is (T 1):

13.18.1. Apprehended under circumstances likely to result in confinement or trial by court-martial, and states that he or she is a foreign national;

13.18.2. Ordered into arrest or confinement;

13.18.3. Held for trial with or without any form of restraint; or
13.18.4. Pending court-martial charges that have been referred for trial.

13.19. **What to Report.** Include in the notification the following:

13.19.1. The name, grade, social security number, organization and station of the member;

13.19.2. Any evidence, including information from the member’s military record, that is inconsistent with a claim of foreign nationality;

13.19.3. A thorough description of the offenses, including dates, UCMJ articles allegedly violated, the number of specifications under each offense, sufficient detail to provide clear understanding of the facts and circumstances involved, and any other unusual or significant features of the case;

13.19.4. The name of defense counsel, if any; and

13.19.5. The exact and current location of the member (e.g., Joint Base Andrews confinement facility).

13.20. **Examination of Member’s Records.** Whenever charges against a foreign national United States Air Force member are referred for trial, the Special Court-Martial Convening Authority’s Staff Judge Advocate has the member’s military records examined to ascertain the member’s nationality, even if the member has not entered a claim of foreign nationality.

13.21. **Notification Not Required.** Notification is not required:

13.21.1. For issues resulting in nonjudicial punishment or administrative action, or

13.21.2. If the foreign national United States Air Force member is apprehended or confined in anticipation that only nonjudicial punishment or administration action is contemplated.

**Section 13J—Time Management of Case Processing**

13.22. **Case Processing Time.**

13.22.1. The Air Force must account for resource investments, system and program effectiveness, and personnel impacts of military justice in an enterprise environment. An increase in processing time stands in contrast to the decrease in number of cases tried in recent years. Our separate system of military justice provides different or diminished constitutional rights to account for military requirements, including efficiency and effectiveness of the military justice system. It follows that an even greater emphasis on diligence and timeliness should be pursued under the UCMJ than in the civilian system. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). This is not to say that fairness, due process, or accused or victim considerations are forfeited in the name of promptness, but it does recognize that diligence and timeliness are entirely consistent with good order and discipline and necessary for fairness and justice.

13.22.2. Coordination with Investigators. Staff Judge Advocates should develop local procedures with the servicing Air Force Office of Special Investigations detachment commander to coordinate with agents as early as possible in the investigative stage of a case.

13.22.3. Time Management. Staff Judge Advocates and chiefs and noncommissioned officers in charge of military justice, at all levels of command, should regularly analyze available Automated Military Justice Analysis and Management System data relating to each
stage of court processing over which they have significant control to determine specific areas for improvement to maximize effectiveness and efficiency. The 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. Metrics and milestones provide a framework by which we can maintain healthy military justice processes while also remaining faithful to legal requirements of diligence and timeliness. Decisions on how to address disciplinary matters should not be made solely to produce seemingly quick results, but decision-makers and practitioners must be cognizant of the negative impacts generated by unnecessary delays. Metrics and milestones are offered to help calibrate military justice processes; the goals are derived from historical data and from legal requirements. Airmen are cautioned against dismissing military justice goals as a career field-driven interest item; good order and discipline, and the health of the processes and protections that accompany it, are a common pursuit for all who swear to support and defend the Constitution.

13.22.4. Metrics. Metrics are standards of measurement by which certain requirements can be assessed. Metrics for courts-martial assess compliance with time-based, legal requirements. Compliance with the legal requirement is presented as a percentage of times actions were in compliance with the targeted, measurement standard. The law and practicality recognize that there can be valid exceptions to compliance; therefore, explanations for such exceptions must be captured and documented to demonstrate applicability of an exception. The below metrics ensure focus is appropriately dedicated to time requirements established by law. The metric is 100% compliance. (T-1).

13.22.4.1. Speedy Trial. Bring an accused to trial within 120 days of preferral, imposition of pretrial restraint, or entry onto active duty. Rule for Courts-Martial 707. Arraignment will toll the speedy trial clock. United States v. Doty, 51 M.J. 464 (C.A.A.F. 1999). Practitioners who seek to stop the speedy trial clock through arraignment should first attempt to meet all relevant discovery obligations and charge sheet modifications. NOTE: Separate from the metric, practitioners should also consider speedy trial considerations under the 6th Amendment and Article 10, UCMJ, whenever pretrial restraint is imposed, as these standards are different from Rule for Courts-Martial 707.

13.22.4.2. Action and Moreno. Action or publication of the final order, whichever is earlier, must be completed within 120 days of completion of a trial. See United States v. Moreno, 63 M.J. 129 (C.A.A.F. 2006).

13.22.4.3. Forwarding and Moreno. A complete and accurate record of trial must be forwarded to the appropriate office for processing appellate review within fourteen days of action. The appropriate office for processing cases wherein the accused has an opportunity for Article 66, UCMJ, review is AFLOA/JAJM. The appropriate processing office for cases wherein the accused has an opportunity for Article 64a, UCMJ, review is the Staff Judge Advocate for the General Court-Martial Convening Authority. NOTE: While not an enumerated metric, healthy military justice processes should ensure a complete and accurate record of trial in all cases wherein the accused has an opportunity for Article 64a review is forwarded to AFLOA/JAJM within 7 days of completion of the review.
13.22.5.1. Milestones. Milestones are time-based goals to assist in expediting the administration of justice. The goals are displayed as benchmarks for certain stages of the trial process and the process in its entirety. The goals are established through an analysis of past case processing times and they reflect analysis of the historical median of the number of calendar days it has previously taken to complete phases of the court-martial process. Milestones provide a destination marker and a piece of an entire, collective processing effort.

13.22.5.2. General Court-Martial Milestones.

13.22.5.2.1. Staff Judge Advocates are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and report of investigations. In cases in which a report of investigation (or similar product) is published, complete the report of investigation within 75 days of the date of discovery of the offense.

13.22.5.2.2. Prefer charge(s) within 40 days of the date the Air Force Office of Special Investigations or Commander-Directed Investigation report of investigation is published.

13.22.5.2.2.1. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the report of investigation, the Automated Military Justice Analysis and Management System should reflect “0” days between publication of the report of investigation and preferral.

13.22.5.2.3. Complete the Article 32, UCMJ, hearing and report within 36 days of the date of preferral of charge(s).

13.22.5.2.4. Refer the charge(s) within 21 days of the date of the completion of the Article 32, UCMJ, hearing and report.

13.22.5.2.5. Complete the trial (sentence/acquittal) within 75 days of the date of referral.

13.22.5.2.6. Complete a record of trial within 15 days of the date of trial completion (sentence/acquittal).

13.22.5.2.7. Complete action (or in the case of an acquittal, the promulgating order) within 49 days of the date of record of trial completion.

13.22.5.2.8. Forward a complete and accurate record of trial to the appropriate office for processing post-trial review per paragraph 8.8 (or in the case of an acquittal,
forward a complete and accurate record of trial to AFLOA/JAJM), within 14 days of action.

13.22.5.2.9. Forward the record of trial to the appropriate office for post-trial review within 250 days of the date the Air Force Office of Special Investigations or Commander-Directed Investigation report of investigation is published.

13.22.5.3. Special Court Martial Milestones.

13.22.5.3.1. Staff Judge Advocates are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and report of investigations. In cases in which a report of investigation (or similar product) is published, complete the report of investigation within 75 days of the date of discovery of the offense.

13.22.5.3.2. Prefer charge(s) within 24 days of the date the Air Force Office of Special Investigations or Commander-Directed Investigation (CDI) report of investigation is published.

13.22.5.3.2.1. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the report of investigation, the Automated Military Justice Analysis and Management System should reflect “0” days between publication of the report of investigation and preferral.

13.22.5.3.3. Refer the charge(s) within 4 days of the date of preferral of charge(s).

13.22.5.3.4. Complete the trial (sentence/acquittal) within 40 days of the date of referral.

13.22.5.3.5. Complete a record of trial within 11 days of the date of trial completion (sentence/acquittal).

13.22.5.3.6. Complete action (or in the case of an acquittal, the promulgating order) within 27 days of the date of record of trial completion.

13.22.5.3.7. Forward a complete and accurate record of trial to the appropriate office for processing post-trial review per paragraph 8.8 (or in the case of an acquittal, forward a complete and accurate record of trial to AFLOA/JAJM), within 14 days of action.

13.22.5.3.8. Forward the record of trial to the appropriate office for post trial review within 120 days of the date the Air Force Office of Special Investigations or Commander-Directed Investigation report of investigation is published.

13.22.5.4. Summary Court-Martial Measures.

13.22.5.4.1. Staff Judge Advocates are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate investigative assistance to agencies is essential in
helping to foster efficient processes while ensuring sufficient investigative results. Prefer charge(s) within 40 days of the date of discovery.

13.22.5.4.2. Complete action within 21 days of preferral of charge(s).

13.22.5.4.3. Forward a complete and accurate record of trial to the appropriate office for processing post-trial review per paragraph 8.8, within 14 days of action.

13.22.5.4.4. Complete forwarding of record of trial to the appropriate office for post trial review within 75 days of the date the Air Force Office of Special Investigations, S21, or commander directed investigation report of investigation is published.

13.22.6. The date of discovery of the offense is defined as the date when an investigative agency (e.g., Air Force Office of Special Investigations, Security Forces, Inspector General), 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, 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 Commander-Directed Investigation 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 Commander-Directed Investigation. In all cases where additional allegations against an identified subject are discovered, use the earliest date of discovery of all offenses (e.g. allegation one is uncovered on 1 January and allegation two is uncovered on 1 March, the date of discovery is 1 January).

Section 13K—Appointment of Judges to the Air Force Court of Criminal Appeals


Section 13L—Crimes Against Children and Sexually Violent Offender Registration


13.25. Responsibilities upon Conviction.
13.25.1. State sex offender registry and United States Marshals Service National Sex Offender Targeting Center notifications for service members convicted as sex offenders, subsequent to conviction under the UCMJ, and incarceration in a DoD Component confinement facility, will be carried out in accordance with procedures in DoD Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority. (T-0). See also AFI 31-105, Air Force Corrections System, paragraph 7.2.

13.25.2. If a member is convicted of an offense that triggers the sex offender notification requirement (with or without confinement), the Staff Judge Advocate or designee ensures the Report of Result of Trial memorandum indicates that compliance with this section is required. (T 1). See paragraph 8.2.1.4.4.

13.25.2.1. A determination that a member committed a qualifying offense has important consequences. DoD Instruction 1325.07, Appendix 4 to Enclosure 2, 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 Enclosure 2. 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.

13.25.2.2. When a question arises whether a conviction triggers notification requirements, Staff Judge Advocates 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.

13.25.3. The Security Forces Confinement Officer, or designee responsible for custody of the inmate, ensures compliance with federal and state laws with regards to sex offender registration and notifications to civilian agencies. See DoD Instruction 5525.20, Registered Sex Offender Management in Department of Defense, and AFI 31-105. This responsibility includes:

13.25.3.1. Notifying appropriate state and local law enforcement officials and state sex offender registration officials using the DoD Form 2791, Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements;

13.25.3.2. Notifying the member about registration responsibilities and obtaining the member’s acknowledgment of these responsibilities; and

13.25.3.3. Notifying the United States Marshals Service National Sex Offender Targeting Center of the conviction and pending separation. The State registry and National Sex Offender Targeting Center notifications are made through the Department of Justice’s Sex Offender Registration and Notification Act Exchange Portal at https://portal.nsopr.gov. Use is available at AWA-Request@iir.com.

13.25.4. No Post-trial Confinement. When compliance with Section 13L 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):

13.25.4.1. The Staff Judge Advocate notifies the appropriate corrections officer (or the Security Forces commander, if there is no corrections officer), in writing, within twenty-
four hours of the member’s conviction. (T-1). For purposes of this section, conviction includes announcement of the sentence.

13.25.4.2. The corrections officer, or the Security Forces commander, as appropriate, ensures that the notifications required in paragraph 13.25.3, and AFI 31-105 are made.

13.25.5. Convictions by a Host Country. Service members, military dependents, DoD contractors, and DoD civilians can be convicted of a sex offense outside normal DoD channels by the host nation while assigned overseas. When compliance with Section 13L is required in these cases, the Staff Judge Advocate notifies the appropriate individuals. It is the Staff Judge Advocate’s responsibility to ensure the offender completes the DoD Form 2791 (or equivalent document) upon release from the host nation. Furthermore, the DoD Form 2791 and copies of the record of trial should be provided to federal, state, and local law enforcement by DoD.

Section 13M—DNA Collection


13.27. Responsibilities for Collecting DNA In cases involving an offense for which DNA collection is mandated, the following guidelines apply:

13.27.1. Command-Directed Investigation. When the commander conducts or directs a command-level investigation or inquiry for a qualifying offense when no criminal investigation was conducted by the Air Force Office of Special Investigations, Security Forces, or equivalent DoD investigatory agency, the commander is responsible for ensuring a DNA sample is obtained. In such cases, the commander will coordinate with the servicing Staff Judge Advocate and Security Forces.

13.27.2. Investigation by the Air Force Office of Special Investigations or Security Forces. The Air Force Office of Special Investigations or Security Forces investigator, as applicable, will ensure the DNA sample is obtained and submitted to the U.S. Army Criminal Investigative Laboratory when a person subject to the UCMJ has been apprehended or detained for a qualifying offense, and where the investigator concludes there is probable cause that the subject committed the offense.

13.27.2.1. The investigator must consult with a judge advocate before making a probable cause determination.

13.27.2.2. The investigator will not take DNA from a suspect solely for simple possession or use of a controlled substance, unless charges are preferred for or the suspect is convicted at special or general court-martial of simple possession or use.

13.27.3. Preferral, Pre-trial Confinement, and Conviction. The suspect’s commander is responsible for coordinating with Security Forces as appropriate to ensure DNA is collected during stages of the military justice process described below. Base-level Staff Judge Advocates will brief their commanders about DNA processing requirements and notify commanders when DNA samples must be collected. A sample notification is provided at Figure A12.2. The suspect’s commander will coordinate with Security Forces to ensure the
DNA sample is obtained and submitted to the U.S. Army Criminal Investigative Laboratory in the following instances:

13.27.3.1. Charges are preferred for a qualifying offense (if a DNA sample has not already been submitted);

13.27.3.2. After completion of the 72-hour commander’s memorandum approving a member’s continued pretrial confinement for a qualifying offense (if a DNA sample has not already been submitted);

13.27.3.3. In cases resulting in a conviction for a qualifying offense as a result of a general or special court-martial, upon an accused’s entry into confinement if confinement was adjudged, or within a reasonable time after an accused’s sentence is announced if confinement was not adjudged (if a DNA sample has not already been submitted);

13.27.3.3.1. If an accused is convicted of a qualifying offense at a general or special court-martial, the Staff Judge Advocate will ensure “DNA PROCESSING REQUIRED” is indicated in the SENTENCE block of the Report of Result of Trial memorandum. See paragraph 8.2.1.4.4.

13.27.3.3.2. Staff Judge Advocates must similarly ensure promulgating orders are properly annotated when DNA processing is required. See paragraph 9.6.3.1.

13.27.4. Acquittal. If the Accused’s DNA has not yet been collected at the conclusion of court-martial proceedings, the commander or Security Forces will not collect DNA if the case results in acquittal for all charged offenses for which DNA collection is mandated.

13.27.5. Expungement. If a suspect’s DNA was collected and the case results in acquittal for all charged offenses for which DNA collection is mandated; findings of guilty are disapproved or set aside for all offenses for which DNA collection is mandated; or the case is disposed of by referral to summary court-martial, nonjudicial punishment, or administrative action, the Staff Judge Advocate will advise commanders and military criminal investigators whether expungement is authorized, if a member submits a request for expungement.

Section 13N—Domestic Violence Amendment to the Gun Control Act of 1968

13.28. General Provision. The Domestic Violence Amendment to the Gun Control Act of 1968, commonly referred to as the Lautenberg Amendment, makes it a felony for any person to sell or otherwise dispose of firearms or ammunition to any person who 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.

13.28.1. 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 those 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 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.

13.28.2. 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). The term “qualifying conviction” does not include summary courts-martial or the imposition of nonjudicial punishment under Article 15, UCMJ.

13.29. Responsibilities upon Conviction.

13.29.1. If an accused is convicted at a special or general court-martial of an offense constituting a crime of domestic violence, the Staff Judge Advocate or designee ensure this fact is annotated on the Report of Result of Trial memorandum. (T 1). See paragraph 8.2.1.4.4.

13.29.2. The Staff Judge Advocate or designee ensures promulgating orders prepared for individuals convicted of a qualifying offense are properly annotated. (T 0). See paragraph 9.6.3.2.

13.29.3. The Staff Judge Advocate or designee must inform 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. (T-1).

13.29.4. For additional guidance addressing qualifying offenses, as well as substantive and procedural requirements under the Act, see 18 U.S.C. §§ 921 and 922.

Section 13O—Staff Judge Advocate’s Responsibilities to Defense Counsel

13.30. The Area Defense Counsel Program. The Area Defense Counsel Program is one of the great strengths of the Air Force military justice system and will continue to be so as long as the defense function is, and is perceived to be, independent. A critical responsibility of the Staff Judge Advocate is to foster that independence in words and actions and to treat the Area Defense Counsel as an equal at the bar of justice with the prosecution function.

13.31. Staff Judge Advocate Responsibilities.

13.31.1. It is a primary role of a Staff Judge Advocate to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands Staff Judge Advocate's protect and promote all facets of the military justice process. Staff Judge Advocates are charged with providing commanders candid and objective advice on all legal matters, especially in regard to military justice. A Staff Judge Advocate is responsible for ensuring the government is well represented and its personnel are properly trained to execute their various military justice responsibilities. In executing their duties, Staff Judge Advocates are expected to execute multiple roles and responsibilities in safeguarding the justice process and in enhancing good order and discipline, to include properly preparing counsel and effectively providing command with an unbiased perspective and legal advice on
the full range of military justice options, which take into account the needs of all the parties involved, the mission, and the Air Force.

13.31.2. The Staff Judge Advocate's position and seniority demands that he or she set the tone for how military justice is viewed across the installation by maintaining open lines of communication with defense counsel, promoting civility in practice, and maintaining a productive relationship within the legal community. The Staff Judge Advocate must never make denigrating, demeaning, or hostile comments about the Area Defense Counsel, especially in public, nor condone such comments by others. Instead, when the Staff Judge Advocate considers it necessary to question or criticize the actions of the Area Defense Counsel, the Staff Judge Advocate will raise such matters through the Area Defense Counsel’s supervisory and command chain. At all times, the Staff Judge Advocate must remember that professionalism requires civility, a continuous, cordial relationship with the defense bar, vigorous promotion of defense independence, and appropriate recognition of the Area Defense Counsel’s achievements.

13.31.3. The quality of the Area Defense Counsel’s facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit Area Defense Counsel offices will not perceive that the system is operating on a level playing field unless defense facilities and equipment achieve this standard. Staff Judge Advocates are responsible for assisting Area Defense Counsels in obtaining and maintaining suitable facilities and equipment.

Section 13P—Facilitating Investigation and Disposition

13.32. General Provision. An effective military justice process starts with a timely, thorough, and accurate investigation. Judge advocate and investigative personnel, particularly the Air Force Office of Special Investigations, must develop a collaborative relationship focused on integrating investigative efforts and the legal process. The goal is thorough, case-ready reports of investigation, robust litigation preparation, and timely resolution of military justice cases. Although the remainder of this Section applies primarily to the Air Force Office of Special Investigations and Judge Advocate procedures, Staff Judge Advocates will establish local procedures to implement these goals for all investigations.

13.33. 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 may apply, the Air Force Office of Special Investigations detachment will notify the local judge advocate when substantive criminal investigations are initiated. At a minimum, the Staff Judge Advocate will designate an attorney to provide initial counsel to the Air Force Office of Special Investigations case agent on the new investigation.

13.34. Investigative Support Team. The Staff Judge Advocate will designate an investigative support team as early as practicable in the investigative process.

13.34.1. 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 Air Force Office of Special Investigations case agent(s) during the investigation to provide legal support. Members of the investigative support team are not investigators and they should be careful not to depart from their role. The team should properly safeguard all attorney work-

13.34.2. If the investigation involves a potential violation of Articles 120, 120a, 120b, 120c, 125, UCMJ, or attempts of any of these offenses under Article 80, UCMJ, the Staff Judge Advocate should appoint a trial counsel as soon as practicable.

13.35. Investigative Plan Development. The attorney designated by the Staff Judge Advocate and 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 Air Force Office of Special Investigations case agent in identifying potential criminal offenses for investigation, and comparing the evidence in the case with the elements of proof for a given offense. Judge advocates will coordinate with the case agents on subject interviews.

13.36. Case Development.

13.36.1. The investigative support team and the case agents will continue their collaborative efforts as the investigation proceeds. As appropriate, designated investigative support team members or judge advocate staff members will attend Air Force Office of Special Investigations case review meetings. Likewise, Air Force Office of Special Investigations personnel are encouraged to attend relevant judge advocate military justice meetings.

13.36.2. 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. Judge advocates will discuss the results of the analysis with the Air Force Office of Special Investigations. A final proof analysis is typically attorney work-product material, and will be completed contemporaneously with the publication of the report of investigation. This will also assist in pre-trial preparation efforts.

13.36.3. In accordance with AFI 51-1001, Delivery of Personnel to United States Civilian Authorities for Trial, the Staff Judge Advocate initiates the coordination process as early as possible for cases falling under the Military Extraterritorial Jurisdiction Act.

13.37. Disclosure and Reporting of Sensitive Case Information. As a case develops, both the Staff Judge Advocate and the Air Force Office of Special Investigations are required to provide case information and status to higher commands through their respective reporting channels. To avoid compromising an on-going investigation, the Staff Judge Advocate will not allow disclosure of sensitive investigative information without the Air Force Office of Special Investigations Detachment Commander’s/Special Agent-in-Charge’s concurrence. Some examples of sensitive investigative information would include 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. In addition, Air Force Office of Special Investigations Form 40s should not be released outside legal office channels without detachment concurrence.

13.38. Lessons Learned. Within thirty calendar days of the conclusion of trial, the legal office trying the case and the detachment responsible for the investigation of the case conduct a “hot wash.” The “hot wash” should include the Staff Judge Advocate or Deputy Staff Judge Advocate, Chief of Military Justice, and trial team from the legal office, as well as the
detachment commander or lead criminal investigations agent, and the case agent(s) from the Air Force Office of Special Investigations detachment. Other legal office and Air Force Office of Special Investigations personnel may attend. Lessons learned may be captured in an after action report, but an after action report is not required.

Section 13Q—Support of Defense Sexual Assault Incident Database

13.39. Defense Sexual Assault Incident Database. The Defense Sexual Assault Incident Database is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoD Directive 6495.01, Sexual Assault Prevention and Response Program, and DoD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures. The Defense Sexual Assault Incident Database captures available information, not limited by restricted reporting or otherwise prohibited by law, about the nature of the assault, the victim, the offender, and the disposition of reports associated with the assault. The Defense Sexual Assault Incident Database is intended to implement Congressional reporting requirements. The Defense Sexual Assault Incident Database is maintained at base level by the installation Sexual Assault Response Coordinator and requires information, as necessary, from appropriate base agencies to complete designated data fields.

13.39.1. The base Staff Judge Advocate provides the Sexual Assault Response Coordinator with disposition data on cases entered into the Defense Sexual Assault Incident Database. (T-3). Data to be provided includes information on pretrial confinement, whether the case was substantiated as defined in DoD Instruction 6495.02, command action, and the relevant dates. Other Defense Sexual Assault Incident Database data may also be required as necessary.

13.39.2. The requested Defense Sexual Assault Incident Database data will be accurate and complete and provided to the Sexual Assault Response Coordinator as soon as possible after the triggering event occurs.

Section 13R—Special Victim Investigation and Prosecution Capability

13.40. Applicability. This section applies to the following types of investigations: (1) all unrestricted reports of adult sexual assault, (2) all unrestricted reports of domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, and (3) child abuse involving sexual assault and/or aggravated assault with grievous bodily harm. See Fiscal Year 2013 National Defense Authorization Act, Section 573.

13.41. General Provision. Specially trained prosecutors, paralegals, and victim witness assistance personnel (collectively referred to as “Special Victim Investigation and Prosecution Capability personnel”) will collaboratively work with specially trained Air Force Office of Special Investigations investigators to provide advice, guidance, and support during the investigative and military justice process. (T-0). These designated personnel will collaborate with Sexual Assault Response Coordinators, victim advocates, family advocacy program managers, and domestic abuse victim advocates during all stages of the investigative and military justice process to ensure an integrated capability, to the greatest extent possible.

13.42. Training. All personnel detailed as members of the Special Victim Investigation and Prosecution Capability are required to have completed the Sexual Assault Prevention and
Response Program training requirements listed in DoD Instruction 6495.02, Enclosure 10, to include annual training and responder training requirements. Additionally, all judge advocates must have completed the judge advocate training requirements detailed in Enclosure 10, paragraph 7, of DoD Instruction 6495.02.

13.43. Initial Process. The Special Victim Investigation and Prosecution Capability will be composed of four personnel: (1) Air Force Office of Special Investigations case agent, (2) judge advocate, (3) paralegal, and (4) victim liaison.

13.43.1. The Air Force Office of Special Investigations will notify the responsible legal office within twenty-four hours of determining that an allegation meets the criteria in Section 13R for activation of the Special Victim Investigation and Prosecution Capability.

13.43.2. The Staff Judge Advocate designates an investigative support team composed of a judge advocate and paralegal, who will work with the Air Force Office of Special Investigations case agent during the investigation to provide legal support. The designated judge advocate will meet or consult with the Air Force Office of Special Investigations case agent within forty-eight hours of the determination that the allegation meets the criteria for activating the Special Victim Investigation and Prosecution Capability.

13.43.2.1. The Staff Judge Advocate assigns judge advocates who have been certified according to Article 27(b), UCMJ, and AFI 51-103, Judge Advocate Professional Development, to the Special Victim Investigation and Prosecution Capability. If upon appointment, an uncertified judge advocate is the only judge advocate assigned, said counsel is required to consult with a Senior Trial Counsel or Special Victims Unit Senior Trial Counsel whenever practicable.

13.43.2.2. The Staff Judge Advocate assigns the appropriate paralegals to the Special Victim Investigation and Prosecution Capability. At least one of the paralegals designated should have completed the Paralegal Craftsman Course.

13.43.3. The Staff Judge Advocate or local responsible official’s delegate designates a victim liaison to provide support to the victim through the victim and witness assistance program (see Chapter 11). The Staff Judge Advocate or local responsible official’s delegate certifies that the victim liaison possesses the necessary level of military justice experience and victim and witness assistance program training to support the victim.

13.44. Case Development. Members of the Special Victim Investigation and Prosecution Capability will comply with the requirements of the investigative support team above in Section 13P. In addition, the locally designated judge advocate will consult with the assigned case agent at least monthly to assess progress in the investigation or prosecution, including ensuring any matter raised by the victim (or their Special Victims’ Counsel, Sexual Assault Response Coordinator, victim advocate, family advocacy program managers, domestic abuse victim advocates, or other person designated to assist or represent the victim) is properly addressed.

13.45. Special Victim Investigation and Prosecution Prosecutors. Senior Trial Counsel designated as members of the Special Victims Unit by the Chief, Government Trial and Appellate Division (AFLOA/JAJG) will serve as Special Victim Investigation and Prosecution Capability prosecutors.
13.45.1. The Chief, Government Trial and Appellate Division, must certify that each Special Victims Unit-Senior Trial Counsel possesses the requisite litigation skills, professionalism, and leadership to provide the highest quality of legal representation for the government and support to victims. Special Victims Unit-Senior Trial Counsel must be capable of supervising, mentoring, and training junior counsel while providing candid, independent legal advice and expert prosecutorial support to responsible legal offices.

13.45.2. Prior to being designated as a member of the Special Victims Unit, a Senior Trial Counsel will generally have completed one year as either Senior Trial Counsel or Senior Defense Counsel, attended two or more advanced litigation skills courses, received specialized training in prosecuting or defending sexual assaults, and demonstrated an ability to prosecute or defend a variety of sexual assault and/or complex cases.

13.45.3. Based upon the severity of the case, as determined by the Chief, Government Trial and Appellate Division or Chief, Senior Trial Counsel, Special Victims Unit-Senior Trial Counsels will be detailed to Special Victim Capability cases. If a determination is made that the case does not warrant detailing a Special Victims Unit-Senior Trial Counsel, the Special Victims Unit-Senior Trial Counsel will be available to consult and provide litigation support to local trial counsel remotely.

13.45.4. When possible, Special Victims Unit-Senior Trial Counsels will be detailed in the early stages of the investigation to provide support to local trial counsel and Air Force Office of Special Investigations case agents.

13.45.5. If a Special Victims Unit-Senior Trial Counsel is detailed to the case, the legal office should consult with the Special Victims Unit-Senior Trial Counsel prior to the first legal office interview of the victim and prior to preferral of charges in the case.

13.46. Legal Assistance. The trial counsel, victim liaison, and Special Victims Unit-Senior Trial Counsel, ensure that victims of crime under this section entitled to military legal assistance are notified of the opportunity to consult with a legal assistance attorney or Special Victims’ Counsel in accordance with AFI 51-504, Legal Assistance Notary, and Preventative Law Programs.

13.47. Victim’s Rights and Information. The victim liaison ensures that victims of crime under this section are afforded the rights and entitlements described below. This requirement extends to trial counsel and the Special Victims Unit-Senior Trial Counsel for unrepresented victims. For victims represented by counsel, the trial counsel and Special Victims Unit-Senior Trial Counsel coordinate with the victim’s counsel to ensure the victim is:

13.47.1. Informed of their rights as a crime victim under Article 6b, UCMJ and Section 11C.

13.47.2. Provided with a comprehensive explanation of the military justice process.

13.47.3. Provided with regular case updates, including notifications under Section 11D.

13.47.4. Consulted on the matters set forth under Section 11D.

13.48. Victim’s Rights in Certain Sex Related Offenses. A comprehensive listing of rights provided to victims of sex related offenses, to include required notifications to the victim and victim’s counsel, is provided in Chapter 11.
13.49. **Pediatric Forensic Interviewers**. Legal offices will request specially trained pediatric forensic interviewers to support the investigation and prosecution of complex child abuse and child sexual abuse cases, when appropriate.

13.50. **Coordination with Key Organizations and Victim Support Services.** Legal offices will establish active liaisons with the following organizations and key individuals, if available or present, to ensure victim care:

13.50.1. Local Air Force Office of Special Investigations detachment.

13.50.2. Local civilian law enforcement agencies and prosecutor offices.

13.50.3. Local civilian victim advocacy organizations.

13.50.4. Sexual Assault Response Coordinators and Sexual Assault Prevention and Response Program Victim Advocates.

13.50.5. Special Victims’ Counsel.

13.50.6. Family advocacy program clinicians, family advocacy program managers, and domestic abuse victim advocates,

13.50.7. Military chaplain offices.

13.50.8. Medical and mental health care providers.

13.50.9. Commanders and First Sergeants.

13.51. **Review Measures for Special Victim Investigation and Prosecution Capability.** AFLOA/JAJ will be responsible for compiling the review measures below on an annual basis.

13.51.1. Percentage of all preferred court-martial cases that involve Special Victim Capability offenses in each fiscal year.

13.51.2. Percentage of Special Victim Investigation and Prosecution Capability offense courts-martial tried by, or with the direct advice and assistance of, a Special Victims Unit-Senior Trial Counsel.

13.51.3. Compliance with DoD victim and witness assistance program reporting requirements to ensure that victims are consulted with and regularly updated by Special Victim Investigation and Prosecution Capability legal personnel.

13.51.4. Percentage of Special Victims Unit-Senior Trial Counsels, judge advocates, paralegals, and victim liaisons that have received additional and advanced training in Special Victim Investigation and Prosecution Capability topical areas.

13.51.5. Victim feedback on effectiveness of Special Victim Investigation and Prosecution Capability prosecution, and legal support services and recommendations for possible improvements. AFLOA/JAJ will compile this information from applicable surveys (e.g., those fielded by DoD Sexual Assault Prevention and Response Office, AF/CVS, and AFLOA/JAJM if necessary). Legal offices should not conduct their own survey or formal victim feedback mechanism to gather this information. Participation by all victims is voluntary.
CHRISTOPHER F. BURNE
Lieutenant General, USAF
The Judge Advocate General
Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

AFPD 51-2, Administration of Military Justice, 4 November 2011
AFPD 51-6, Command and Administrative Proceedings, 13 November 2015
AFPD 51-10, Making Military Personnel, Employees and Dependents Available to Civilian Authorities, 19 October 2006
AFI 10-206, Operational Reporting, 5 June 2017
AFI 31-105, Air Force Corrections System, 28 June 2017
AFI 33-328, Administrative Orders, 16 January 2007
AFI 33-332, Air Force Privacy and Civil Liberties Program, 12 January 2015
AFI 33-360, Publications and Forms Management, 30 November 2016
AFI 36-2102, Base-Level Relocations Procedures, 18 September 2006
AFI 36-2110, Assignments, 22 September 2009
AFI 36-2134, Air Force Strength Accounting Duty Status Program, 4 August 2014
AFI 36-2604, Service Dates and Dates of Rank, 5 October 2012
AFI 36-2909, Professional and Unprofessional Relationships, 13 March 2017
AFI 36-3003, Military Leave Program, 11 May 2016
AFI 36-3203, Service Retirements, 18 September 2015
AFI 36-3206, Administrative Discharge Procedures for Commissioned Officers, IC 7, 2 July 2013
AFI 36-3208, Administrative Separation of Airmen, IC 7, 2 July 2013
AFI 44-172, Mental Health, 13 November 2015
AFI 51-103, Judge Advocate Professional Development, 3 September 2013
AFI 51-110, Professional Responsibility Program, 26 May 2017
AFI 51-501, Tort Claims, 13 September 2016
AFI 51-504, Legal Assistance, Notary and Preventive Law Programs, 15 December 2016
AFI 51-703, Foreign Criminal Jurisdiction, 30 January 2017


AFI 90-401, *Air Force Relations with Congress*, 14 June 2012


AFJI 51-707, *Consular Protection of Foreign Nationals Subject to the UCMJ*, 5 November 1968

AFMAN 33-363, *Management of Records*, 2 June 2017

AFMAN 51-203, *Records of Trial*, 3 August 2016


DA PAM 27-9, *Military Judge’s Benchbook*, 10 September 2014


DoD Directive 1030.01, *Victim and Witness Assistance*, 13 April 2004


DoD Instruction 1030.2, *Victim and Witness Assistance Procedures*, 4 June 2004


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, 3 March 2005

DoD Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures, 28 March 2013

DoD Instruction 7730.47, Defense Incident-Based Reporting System, 23 January 2014


DoD Manual 5200.01, Vol. 1, Department of Defense Information Security Program: Overview, Classification, and Declassification, 24 February 2012

DoD Manual 7730.47-M, Defense Incident-Based Reporting System, 7 December 2010

Joint Travel Regulations, 1 July 2017


Uniform Code of Military Justice

Prescribed Forms

Air Force Form 304, Request for Appellate Defense Counsel

Air Force Form 835, Sentence Worksheet (General Court-Martial)

Air Force Form 1092, Court-Martial Findings Worksheet

Air Force Form 1093, Sentence Worksheet (Special Court-Martial)

Air Force Form 3226, Authority to Apprehend in Private Dwelling

Adopted Forms

AF IMT 366, Record of Proceedings of Vacation of Suspended Nonjudicial Punishment

Air Force Form 444, Advisement of Rights for Pretrial Confinement

Air Force Form 847, Recommendation for Change of Publication

DoD Form 453, Subpoena

DoD Form 453-1, Travel Order

DoD Form 454, Warrant of Attachment

DoD 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 Rule for Courts-Martial 1109

DoD Form 456, Interrogatories and Depositions

DoD Form 457, Preliminary Hearing Officer’s Report

DoD Form 458, Charge Sheet

DoD Form 490, Record of Trial

DoD Form 493, Extract of Military Records of Previous Convictions
DoD Form 553, *Deserter/Absentee Wanted by the Armed Forces*

DoD Form 1351, *Travel Voucher*

DoD Form 1351-2, *Travel Voucher or Subvoucher*

DoD Form 1610, *Request and Authorization for temporary duty Travel of Department of Defense Personnel*

DoD Form 1722, *Request for Trial Before Military Judge Alone*

DoD Form 2701, *Initial Information for Victims and Witnesses of Crime*

DoD Form 2702, *Court-Martial Information for Victims and Witnesses of Crime*

DoD Form 2703, *Post-Trial Information for Victims and Witnesses of Crime*

DoD Form 2704, *Victim/Witness Certification and Election Concerning Prisoner Status*

DoD Form 2705, *Victim and Witness Notification of Prisoner Status*

DoD Form 2706, *Annual Report on Victim and Witness Assistance*

DoD Form 2707, *Confinement Order*

DoD Form 2329, *Record of Trial by Summary Court-Martial*

DoD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review*

DoD Form 2331, *Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General*

DoD Form 2791, *Notice or Release/Acknowledgement of Convicted Sex Offender Registration Requirements*

Standard Form 1034, *Public Voucher for Purchases and Services Other than Personal*

Standard Form 1164, *Claim for Reimbursement for Expenditures on Official Business*

**Abbreviations and Acronyms**

**ACM**—AFLOA/ JAJM General Court-Martial Reference Number

**AFI**—Air Force Instruction

**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

**AFSFC**—Air Force Security Forces Center

**AFRC**—Air Force Reserve Command

**ANG**—Air National Guard
CAAF—United States Court of Appeals for the Armed Forces
CFR—Code of Federal Regulations
CMO—Court Martial Order
CMR—Court Martial Reporter
DFAS—Defense Finance & Accounting Services
DNA—Deoxyribonucleic Acid
DoD—Department of Defense
ETS—Expiration of Term of Service
FLITE—Federal Legal Information Through Electronics
JAC—Civil Law and Litigation Directorate
JAGC—Judge Advocate General’s Corps
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
PCRO—Pretrial Confinement Review Officer
PDS—Personal Data Sheet
SSN—Social Security Number
UCMJ—Uniform Code of Military Justice
USAFA—United States Air Force Academy
USC—United States Code
VC—Victim’s Counsel
VWAP—Victim and Witness Assistance Program
Attachment 2

POLICY AND PROCEDURES APPLICABLE TO DEPARTMENT OF DEFENSE AND UNITED STATES COAST GUARD (USCG) CIVILIAN PERSONNEL SUBJECT TO UCMJ (UCMJ) JURISDICTION IN TIME OF DECLARED WAR OR A CONTINGENCY OPERATION

MEMORANDUM FOR (SEE DISTRIBUTION)

SUBJECT: Policy and Procedures Applicable to DoD and United States Coast Guard (USCG) Civilian Personnel Subject to Uniform Code of Military Justice (UCMJ) Jurisdiction in Time of Declared War or a Contingency Operation

References: See Attachment 1

Purpose. This memorandum:

- Replaces Directive Type Memorandum 09-015 on the same subject.
- Clarifies when “covered civilian employees” are subject to military jurisdiction pursuant to section 552 of Public Law 109-364 (Reference (a)) and Article 2(a)(10) of sections 801 – 846 of title 10, United States Code (U.S.C.) (also known as “The Uniform Code of Military Justice” and hereafter referred to as “UCMJ”) (Reference (b)).
- By authority granted by Secretary of Defense Memorandum (Reference (c)), establishes additional implementing guidance applicable to cases involving covered civilian employees.
- Is effective immediately; it shall be incorporated into the next revision of DoD Instruction 5525.11 (Reference (d)). DoD regulations and other guidance, the regulations and other guidance of the Military Departments (including the USCG), and the publications and other guidance of the Joint Chiefs of Staff shall incorporate this memorandum’s guidance and its attachments.

Applicability. This memorandum:

- Applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security (DHS) by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter collectively referred to as the “DoD Components”).
• Applies to all DoD Component civilian employees and, in particular, those DoD Component civilian employees who constitute covered civilian employees, as defined in the Glossary.

• Does not provide guidance regarding the exercise of UCMJ jurisdiction over DoD Component civilian employees on any basis other for reasons other than Article 2(a)(10) of the UCMJ.

Definitions. See Glossary.

Policy. This memorandum clarifies DoD policy and provides additional guidance with respect to covered civilian employees, consistent with References (a) through (c), the Manual for Courts-Martial (MCM) (Reference (e)), and chapter 75 of title 5, U.S.C. (Reference (f)).

• DoD Component civilian employees, at specified times and under specific circumstances, become covered civilian employees who are subject to military jurisdiction under Article 2(a)(10) of the UCMJ. Effective October 16, 2006, section 552 of Reference (a) amended Article 2(a)(10) of the UCMJ and extends UCMJ jurisdiction in time of declared war or a contingency operation over persons who serve with or accompany an armed force in the field. Reference (e) implements the UCMJ.

• Those specified times when DoD Component civilian employees are subject to Article 2(a)(10), UCMJ, jurisdiction are during time of declared war or a contingency operation, as defined in the Glossary.

• Those certain circumstances required for Article 2(a)(10), UCMJ, jurisdiction over DoD Component civilian employees are when the employees are serving with or accompanying the Armed Forces in the field, as those terms are defined in the Glossary. Only military contingency operations that constitute being in the field are considered qualifying contingency operations for the purpose of Article 2(a)(10), UCMJ, jurisdiction.

• Reference (c) established general policies and procedures applicable to DoD and USCG contractor personnel and civilian employees subject to Article 2(a)(10), UCMJ, jurisdiction. In so doing, the Secretary of Defense premised those policies and procedures on the unique nature of the Article 2(a)(10) extension of UCMJ jurisdiction over civilians and
the Secretary's assessment that this jurisdiction will require sound management over when, where, and by whom such jurisdiction is exercised.

- Consistent with the Secretary's policies and guidance in reference (c), it is appropriate that additional guidance now be given that is tailored for DoD Component civilian employees.

  o Each of the offenses enacted within the UCMJ and listed as "Punitive Articles" within Part IV of Reference (e) is written in one of three ways and directed toward a specified population. Depending on the offense at issue and to whom the offense applies, as enacted, an act may constitute an offense if it is committed by: "any person"; "any member of the armed forces"; or "any person subject to this chapter" (meaning the UCMJ). In addition, the offense's specified terms or elements may further limit its applicability to misconduct committed by military personnel (e.g., commissioned officers, warrant officers, enlisted members). Consultation with staff judge advocates, or their designated representatives, is necessary to determine if a specific UCMJ offense applies to a covered civilian employee.

  o Other than a limitation resulting from the language of the particular UCMJ or "Punitive Article" regarding who may be punished for committing the offense, neither reference (b) nor (e) renders a UCMJ offense inapplicable to a covered civilian employee.

- The guidance in Attachment 3 to Reference (c), and the definitions of terms in the Glossary of this memorandum, provide additional considerations on when and whether to apply the Article 2(a)(10), UCMJ, provisions to DoD and USCG civilian employees who are serving with the Armed Forces during a declared war or a qualifying contingency operation.

- The exercise of UCMJ jurisdiction for crimes committed by covered civilian employees does not preclude appropriate adverse action that may normally be applicable under the provisions of Reference (f) or other applicable law or regulations.

- It is imperative when addressing a situation involving a covered civilian employee's misconduct that may be subject to Article 2(a)(10), UCMJ, jurisdiction that, to the extent practicable, combatant command theater
commanders and their servicing staff judge advocates promptly notify and consult available combatant command civilian human resources (HR) officials to assess possible options and applicable procedures of Reference (f) or other applicable law or regulations as an administrative action consideration under Rule for Courts-Martial 306(c) of Reference (e). Consulting HR officials affords the commander the opportunity to obtain information before the commander exercises his or her discretion in disposing of an offense in accordance with Rule for Courts-Martial 306(a) and (b) of Reference (e).

- Commanders, supervisors, staff judge advocates, and all others who are required to complete documentation associated with UCMJ actions as applied to covered civilian employees shall use existing forms and requirements for documenting UCMJ actions in accordance with Reference (e).

- As stated in Reference (c), only the commanders of geographic combatant commands and those commanders assigned or attached to the combatant command who possess general court-martial convening authority, may exercise Article 2(a)(10), UCMJ, court-martial jurisdiction over covered civilian employees. Such authority has been withheld from all other commanders and commanders who do not possess general court-martial convening authority in accordance with Reference (c). The power to convene courts-martial may not be delegated (Rule for Courts-Martial 504(b)(4) of Reference (e)).

- Only persons occupying positions designated in Article 22(a), UCMJ, and commanders designated by the Secretary concerned or empowered by the President may convene courts-martial in accordance with the Rule for Courts-Martial 504(b) of Reference (e). Civilian supervisors do not possess such authority and are precluded from exercising UCMJ authority.

- In accordance with Reference (c), within the Department of Defense, the Secretary of Defense has withheld authority to exercise Article 2(a)(10), UCMJ, jurisdiction as a court-martial convening authority over, and withheld authority to initiate nonjudicial punishment pursuant to Article 15, UCMJ against, a covered civilian employee:
  - When the alleged offense is committed, in whole or in part, within the United States, as defined in the Glossary;
Who is not at all times during the alleged misconduct located outside the United States, as defined in the Glossary; or

Who is, at the time court-martial charges are preferred pursuant to RCM 307 of reference (e) or notice of proposed nonjudicial punishment proceedings pursuant to Article 15, UCMJ is given, located within the United States, as defined in the Glossary.

- Before combatant command theater commanders intending to exercise Article 2(a)(10), UCMJ, jurisdiction prefer UCMJ charges pursuant to RCM 307 of reference (e) against a covered civilian employee, notice of the alleged offense shall be given to the Department of Justice (DoJ), in accordance with the procedures established by References (c) and (d). By agreement between the two departments, DoJ shall be afforded 14 days to determine whether Federal criminal jurisdiction will be exercised pursuant to sections 3261-3267 of title 18, U.S.C. (also known at the Military Extraterritorial Jurisdiction Act of 2000 (MEJA) (Reference (g)) or another Federal statute.

Releasability. UNLIMITED. This memorandum is approved for public release and is a military justice document maintained within the Office of the Deputy General Counsel (Personnel and Health Policy) and is available on the Internet from the OGC Web Site at www.dod/mil/dodge.

Jeh Charles Johnson
General Counsel of the Department of Defense

Attachments:
As stated
DISTRIBUTION:
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDANT OF THE UNITED STATES COAST GUARD
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

ATTACHMENT 1

REFERENCES

(b) Sections 101(a)(13), 101(a)(4), 801-946 of title 10, United States Code (also known as the “Uniform Code of Military Justice” (UCMJ))
(c) Secretary of Defense Memorandum, “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,” March 10, 2008
(d) 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,” March 3, 2005
(f) Chapter 75 of title 5, United States Code
(g) Sections 3261-3267 of title 18, United States Code (also known as the “Military Extraterritorial Jurisdiction Act of 2000” (MEJA))
(h) Sections 3371-3375 of title 5, United States Code (also known as the “Intergovernmental Personnel Act”)
ATTACHMENT 2

RESPONSIBILITIES

1. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC, DoD). The GC, DoD shall:

   a. Transmit, as appropriate, to DoJ cases subject to Article 2(a)(10), UCMJ, jurisdiction that may also be subject to Federal criminal jurisdiction under Reference (g) or other Federal statutes.

   b. Provide notice to the Combatant Commands of DoJ determinations of Federal criminal jurisdiction over such cases pursuant to Reference (g) and other Federal criminal statutes, as applicable, in accordance with the procedures of References (c) and (d).

   c. Advise the Secretary of Defense regarding the withholding of Article 2(a)(10), UCMJ, authority pursuant to this memorandum and References (c) and (e).

   d. Incorporate policies and guidance provided in Reference (c) and this memorandum into the next revision of Reference (d).

2. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall:

   a. Establish and oversee the implementation of the policy and guidance for the exercise of UCMJ authority as it applies to DoD Component civilian employees.

   b. Ensure that servicing DoD civilian HR officials are adequately trained on the requirements of this memorandum and prepared to appropriately advise DoD Component civilian employees and management officials.

   c. Establish policy to ensure that DoD Components document position descriptions and vacancy announcements when DoD Component civilian employees are in positions that they may potentially be deployed in support of a contingency operation and become covered civilian employees subject to UCMJ jurisdiction. Include this statement on the position descriptions and vacancy announcements: “This position may require deployment in support of a contingency operation where such deployment may subject the incumbent to Uniform Code of Military Justice jurisdiction.”
d. Establish policy to ensure that, prior to departing on the deployment from the home station and upon arrival in the deployed location, DoD Component civilian employees who are subject to deployment as a covered civilian employee in support of a qualifying contingency operation are notified that they may be subject to UCMJ jurisdiction. At the time this memorandum is issued, take immediate action to notify those deployed DoD Component civilian employees who are a covered civilian employees and who may be unaware that they are subject to Article 2(a)(10), UCMJ, jurisdiction.

e. Establish policy to ensure that DOD Components document travel orders of deploying DoD Component civilian employees when their deployment potentially subjects them to UCMJ jurisdiction as a covered civilian employee. Include this statement on the official travel orders: “Employee is required to deploy to, serve, or accompany an Armed Force in the field in support of a contingency operation, and may be subject to UCMJ jurisdiction while deployed. Employee is under the command of [insert appropriate Combatant Commander] for purpose of UCMJ jurisdiction while deployed.”

f. Ensure that procedures enable DoD and USCG civilian HR officials to file in a covered civilian employee’s official personnel file a record of any UCMJ action that is taken against the employee.

g. Ensure compliance with this memorandum and incorporate, as applicable, its policy and guidance into DoD issuances applicable to DoD Component civilian employees.

3. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

a. Ensure compliance with this memorandum and incorporate, as applicable, its policy and guidance into DoD Component issuances that are applicable to DoD Component civilian employees.

b. Ensure documentation of position descriptions and vacancy announcements when DoD Component civilian employees are in positions that they may potentially be deployed in support of a contingency operation and become covered civilian employees subject to UCMJ jurisdiction. Include this statement on the position descriptions and vacancy announcements: “This position may require deployment in support of a contingency operation where such deployment may subject the incumbent to Uniform Code of Military Justice jurisdiction.”

c. Provide notice of Article 2(a)(10), UCMJ, jurisdiction over covered civilian employees and provide any necessary training to DoD Component civilian employees,
supervisors, and commanders regarding DoD policy and guidance, as provided in this DTM, Reference (c), and applicable provisions of the UCMJ and Reference (e).

d. Provide commanders, supervisors, and civilian HR officials training, by a judge advocate or DoD civilian attorney experienced in military justice and military law and who has a substantive knowledge of the UCMJ, regarding the UCMJ provisions applicable to covered civilian employees in accordance with References (b), (c) and (e).

e. Require civilian HR officials to ensure that DoD Component civilian employees who are subject to deployment as a covered civilian employee in support of DoD contingency operations receive training regarding the provisions of this memorandum, the UCMJ, and References (c) and (e) that are applicable to covered civilian employees. Such training shall include the UCMJ offenses potentially applicable to covered civilian employees and those that are not, and the rights afforded covered civilian employees during UCMJ proceedings, including any associated apprehension, detention, or investigative activities.

f. Ensure travel orders of deploying DoD Component civilian employees document that their deployment potentially subjects them to UCMJ jurisdiction as a covered civilian employee. Include this statement on the official travel orders: “Employee is required to deploy to, serve, or accompany an Armed Force in the field in support of a contingency operation, and may be subject to UCMJ jurisdiction while deployed. Employee is under the command of [insert appropriate Combatant Commander] for purpose of UCMJ jurisdiction while deployed.”

g. Provide commanders with information on possible adverse actions and procedures applicable to covered civilian employees, and other authorities and requirements applicable to disciplinary actions pursuant to Reference (f) or other applicable laws or regulations.

h. When deploying HR officials as resources to combatant command theater commanders, ensure the HR officials are trained and prepared to consult with combatant command theater commanders and their servicing staff judge advocates on possible options and applicable procedures of Reference (f) or other applicable laws or regulations as an administrative action for consideration under Rule for Courts-Martial 306(c) of Reference (e). Consulting HR officials affords the commander the opportunity to obtain information before the commander exercises his or her discretion in disposing of an offense in accordance with Rule for Courts-Martial 306(a) and (b) of Reference (e).

4. COMMANDERS OF THE GEOGRAPHIC COMBATANT COMMANDS. The Commanders of the Geographic Combatant Commands, in addition to the responsibilities in section 3 of this attachment, shall ensure that theater commanders and servicing staff judge advocates:
a. When addressing a situation involving a covered civilian employee's misconduct that may be subject to Article 2(a)(10), UCMJ, jurisdiction, to the extent practicable, promptly notify and consult available combatant command civilian HR officials to assess possible options and applicable procedures of Reference (f) or other applicable laws or regulations as an administrative action for consideration under Rule for Courts-Martial 306(e) of Reference (e). Consulting HR officials affords the commander the opportunity to obtain information before the commander exercises his or her discretion in disposing of an offense in accordance with Rule for Courts-Martial 306(a) and (b) of Reference (e).

b. If the covered civilian employee is also a member of a Reserve Component of the Armed Forces, or a member of the Army or Air National Guard of the United States, the convening authority initiating Article 2(a)(10), UCMJ, jurisdiction shall notify the member’s reserve or National Guard commander for further action as may be appropriate.

5. Failure to provide any notifications required by this memorandum (including, but not limited to, statements in position descriptions, vacancy announcements, or travel orders) that a person, group of people, or position may be subject to UCMJ jurisdiction shall not affect or preclude the exercise of UCMJ jurisdiction over any person.

6. COMMANDANT, UNITED STATES COAST GUARD. By agreement of the DHS and consistent with the applicability of References (c) and (d) to the United States Coast Guard, the Commandant, United States Coast Guard, shall, to the extent practicable, comply with this memorandum and incorporate its provisions in applicable United States Coast Guard regulations.
GLOSSARY

DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this memorandum.

**Armed Forces.** Defined in section 101(4) of Reference (b).

**contingency operation.** Defined in section 101(a)(13)(A) or 101(a)(13)(B) of Reference (b).

**covered civilian employee.** A DoD Component civilian employee who, pursuant to References (a) and (b), becomes subject to military UCMJ jurisdiction during a declared war or a qualifying contingency operation, when serving with or accompanying the Armed Forces in the field.

**declared war.** A term that has been judicially construed to mean a congressionally-declared war. (See Analysis to Rule 202, Appendix 21, “Analysis of Rules for Courts-Martial,” of Reference (e).)

**DoD Component civilian employee.** DoD and USCG civilian employees (including the Coast Guard at all times, including when it is a Service in the DHS by agreement with that Department), including civilians paid with non-appropriated funds, direct and indirect hire foreign national employees, other U.S. Government personnel assigned or detailed under an Intergovernmental Personnel Act (Reference (h)) arrangement, and military technicians if working in their civilian capacity.

**in the field.** A term judicially construed to mean a military operation with a view toward engaging the enemy or a hostile force. It is not determined by the locality in which the Armed Force is found, but rather by the activity in which the Armed Force is engaged. (See Analysis to Rule 202, Appendix 21, “Analysis of Rules for Courts-Martial,” of Reference (e).)

**qualifying contingency operation.** For the purposes of Article 2(a)(10), UCMJ, jurisdiction, a contingency operation, which by its purpose meets the Glossary definition of “in the field.”

**serving with or accompanying an Armed Force.** Terms judicially construed, as explained in the Analysis to Rule 202, Appendix 21, of Reference (e), to mean a connection with or dependence upon the activities of the Armed Forces or its personnel. A person’s presence must be more than merely incidental. A person may be “accompanying” an
Armed Force although not directly employed by it or the Government. A person 
“accompanying” an Armed Force may be “serving with” it as well, but the distinction is 
important because even though a civilian’s contract with the Government ended before 
the commission of an offense, and hence the person is no longer “serving with” an Armed 
Force, jurisdiction may remain on the basis that the person is “accompanying” an Armed 
Force because of his or her continued connection with the military.

subject to this chapter. A general term used in the UCMJ and Reference (e) to refer to 
persons who are subject to UCMJ jurisdiction (Reference (b)).

United States. As defined in Reference (c), the several States of the United States, the 
District of Columbia, and the commonwealths, territories, and possessions of the United 
States.
Attachment 3

TEMPLATES, SAMPLES, AND AUTHORITIES FOR PREFERENCES, INITIAL DISPOSITION, AND RELATED MATTERS

Figure A3.1. Template Victim Notification of Opportunity to Express Views on Jurisdiction.

LETTERHEAD

(Date)

MEMORANDUM FOR (Rank and Name of Victim)
(Victim’s Mailing Address)

FROM: (Rank and Name of Base-Level Staff Judge Advocate)
(Staff Judge Advocate’s Office Mailing Address)

SUBJECT: Notice of Opportunity to Express Views as to Jurisdiction

1. I am writing to notify you of the opportunity to express your views whether the alleged offense in which you were a victim should be prosecuted by the Air Force in a court-martial or by civilian authorities in a civilian criminal court with jurisdiction over the offense.

2. If you choose to express your views, you may do so through counsel, including victim’s counsel if you have one. Your views are not binding but will be considered by the Air Force convening authority when determining whether to refer the charge for trial by court-martial. If you express a preference for prosecution by civilian authorities, the civilian authority with jurisdiction over the offense will be notified of your preference. If the Air Force learns of a decision by the civilian authority whether or not to prosecute the offense in a civilian court, you will be notified.

3. Expressing your views on jurisdiction is separate from your right to express your preference as to disposition of the case, such as a criminal prosecution by any authority with jurisdiction. At any time until disposition of the case, you may express your views on disposition, including whether you are willing to participate in investigative and legal proceedings and testify in person, under oath, at a court-martial.

4. In order to facilitate timely processing of the case, I ask that you respond to this notice by (date). You may decline to express any views by so indicating and signing the 1st Indorsement below and returning a copy of this document. You may express any views by so indicating and signing below, attaching your views, and returning a copy of this document. You may direct any questions or concerns and your response to my point of contact, (POC Rank and Name, email address, phone number, office mailing address).

(NAME), (Rank), USAF
Staff Judge Advocate
MEMORANDUM FOR (Office Symbol/Rank and Name of Base-Level Staff Judge Advocate)

1. I have received and understand this notice of the opportunity to express my views whether the alleged offense in which I was a victim should be prosecuted by the Air Force in a court-martial or by civilian authorities in a civilian criminal court with jurisdiction over the offense. I also understand I may express my preference through counsel if I have one. I have initialed below and (am) (am not) submitting additional matters for consideration.

    __ I prefer the Air Force exercise jurisdiction over the offense, including potential prosecution of the offense in a court-martial.

    __ I prefer (office of civilian authority with jurisdiction) exercise jurisdiction over the offense, including potential prosecution of the offense in a civilian court. I understand the Air Force will notify this office of my preference and the Air Force will notify me if the Air Force learns of a decision by this office whether or not to prosecute.

    __ I have no preference or choose not to express a preference on military or civilian jurisdiction.

2. I understand my preference, if any, is not binding but will be considered by the Air Force convening authority when determining whether to refer any charge for trial by court-martial.

(Signature Block of Victim or Victim’s Counsel)
Figure A3.2. Staff Judge Advocate Notification to Civilian Authority Regarding Victim Jurisdiction and Venue Preference

(Date)

MEMORANDUM FOR (Name of Prosecutor for Civilian Jurisdiction with Jurisdiction over Applicable Offense(s))

FROM: (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

SUBJECT: Notice of Victim Preference of Jurisdiction and Venue in the Matter Against (Name of Accused)

1. [Rank and Name of Accused] is alleged to have committed [list offenses] against [Insert Initials of Victim(s)]. Section 534 of the National Defense Authorization Act for Fiscal Year 2015, P.L. 113-291, requires the Air Force to notify you of the victim's preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

2. (Initials of Victim(s)) has expressed the preference that your jurisdiction have primary jurisdiction of the offense(s).

[3. (Include if there is another victim in the case who has expressed the preference for the military to retain jurisdiction) Please note that (Initials of Victim(s)) is also the victim of an alleged sex-related offense committed by (Rank and Name of Accused) and that (Initials of Victim(s)) has expressed a preference that the Air Force retain primary jurisdiction over the offense(s) and prosecute the offense(s) in a court-martial.]

4. Section 534 also requires the Air Force to notify the victim if you make a decision to prosecute or not prosecute the alleged sex-related offense(s) committed by (Rank and Name of the Accused). Please notify (Name of judge advocate POC) when you make that decision.

(Judge Advocate Office Rank, Name of Base level Staff Judge Advocate)

Attachment:
Victim’s Preference for Primary Jurisdiction

cc:
Rank, if applicable, and Initials of Victim
Rank and Name of Special Victim’s Counsel (if applicable)
Name of Counsel representing the Victim (if applicable)
Figure A3.3. Notification to Victim of Civilian Authority’s Response to Victim’s Jurisdiction and Venue Preference.

(Date)

MEMORANDUM FOR (Rank (if applicable) and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

SUBJECT: Notice of Civilian Authority’s Response to Victim Preference of Jurisdiction and Venue in the Matter Against (Name of Accused)

1. After notifying [insert name of civilian authority] of your prosecution preference on [INSERT DATE], we received the following response: ([insert name of civilian authority] decided to retain jurisdiction) [insert name of civilian authority] decided to defer jurisdiction to the military for handling under the UCMJ).

2. Please do not hesitate to contact us if you have any further questions.

(NAME and Rank of Staff Judge Advocate)

cc:
Rank (if applicable) and Name of Victim
Rank and Name of Special Victims’ Counsel (if applicable)
Name of Civilian Victims’ Counsel (if applicable)
Figure A3.4. Template 48-Hour Probable Cause Determination for Continued Pretrial Confinement.

MEMORANDUM FOR (Judge advocate Office)
(Squadron CC)
PCRO
IN TURN

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

SUBJECT: Probable Cause Determination - (RANK, NAME)

1. In accordance with Rule for Courts-Martial 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 (RANK, NAME) committed [(it)(them)]:

<table>
<thead>
<tr>
<th>Article</th>
<th>Date of Offense</th>
<th>Description of Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>_______</td>
<td>_______________</td>
</tr>
<tr>
<td>b.</td>
<td>_______</td>
<td>_______________</td>
</tr>
</tbody>
</table>

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 preliminary hearing] 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), (Rank), USAF
(Duty Title)
Figure A3.5. Template 72-Hour Commander’s Decision for Continued Pretrial Confinement

MEMORANDUM FOR (Judge Advocate Office)
          (Convening Authority)
          Pretrial Confinement Review Officer
          IN TURN

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

SUBJECT: Pretrial Confinement of (Rank)(Name)

1. In accordance with Rule for Courts-Martial 305(h)(2), I approve the continued pretrial confinement of (RANK, 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 Rule for Courts-Martial 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)]:

<table>
<thead>
<tr>
<th>Article</th>
<th>Date of Offense</th>
<th>Description of Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 preliminary hearing], 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 Rule for Courts-Martial 305(h)(2)(B) are met include: [State reasons. Consider the factors enumerated in the Discussion to Rule for Courts-Martial 305(t)(h)(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 Rule for Courts-Martial 305(i)(1): Finally, in accordance with Rule for Courts-Martial 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)].]

[6. See Section 131 of this instruction for reporting guidance when a member of the United States Air Force is a national of a foreign country and not a citizen or national of the United States.]
(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.).

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:

(Summarize the evidence available and attach relevant documents such as Air Force Office of Special Investigations or Security Forces reports, sworn statements, pictures of physical evidence, or statements of the accused. Also, indicate whether the accused or counsel claimed any violations of Articles 12 or 13, summarizing the evidence and attaching documents related to such matter).

6. FINDINGS: After considering the evidence (summarized above) and the attached documents, I (do) (do not) find by a preponderance of the evidence that 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 Rule for Courts-Martial 305(h)(2)(B) for the following reasons:

(List the factual findings that support your decision. The Rule for Courts-Martial 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 preliminary hearing, 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 paragraph 2.2. of the Pretrial Confinement Guide located on the AFLOA/JAJM Virtual Military Justice Deskbook).

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 Section I, paragraph 2, of the Pretrial Confinement Guide for options).

8. RECOMMENDATION. (If applicable, add this paragraph to set forth your recommendation and reasons for lesser forms of pretrial restraint).
3 Attachments:
1. Letter of Appointment
2. Confinement Order
3. Evidence

Figure A3.7. Template Victim Notification of Pretrial Confinement Proceedings

(Date)
MEMORANDUM FOR (Rank and Name of Victim)
FROM: (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)
SUBJECT: Notification of Pretrial Confinement Proceedings
1. Pursuant to Rule for Courts-Martial 305, a public hearing has been scheduled to determine whether [Rank and Name of Accused]’s pretrial confinement should be continued. In accordance with Article 6b, UCMJ, you are entitled to attend and to be heard at this proceeding.

2. The hearing is scheduled to begin on [date of hearing] at [time]. The hearing will be held on [installation] in [building and room number].

3. If you have any questions regarding this hearing, our point of contact is [Rank and Name of Point of Contact], who may be reached at [duty phone number].

(Name), (Rank), USAF
Staff Judge Advocate

Figure A3.8. Template Certification of Victim’s Opportunity to Express Views on Disposition

(Date)
MEMORANDUM FOR (Rank and Name of Victim)
FROM: (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)
SUBJECT: Notice of Opportunity to Submit Views on Disposition for Covered Sexual Assault Allegation(s) – [Rank and Name of Accused]

1. [Now that the investigation in the case of (Rank and Name of Accused) is complete, (Rank and Name of Special Court-Martial Convening Authority with initial disposition authority) will consider how to dispose of the allegations. There may be no action; administrative action; initiation of nonjudicial punishment proceedings; preferral of charges for trial by court-martial.]
Now that the Article 32 hearing in the case of (Rank and Name of Accused) has taken place, the Preliminary Hearing Officer who presided at the Article 32 hearing will make a recommendation to (Rank and Name of Special Court-Martial Convening Authority) on disposition of the allegations against (Rank and Name of Accused). The charges could be forwarded or referred to a court-martial; result in nonjudicial punishment under Article 15, UCMJ; result in administrative action (e.g., Letter of Reprimand, Letter of Admonishment, or Letter of Counseling); or be dismissed.

2. (Rank and Name of Special Court-Martial Convening Authority) would also like to hear your views on disposition of the allegations against (Rank and Name of Accused). You may submit a statement in writing to me, (Rank Name of Special Court-Martial Convening Authority’s Staff Judge Advocate), which I will provide to (Rank and Name of Special Court-Martial Convening Authority) for [his][her] consideration. As part of your submission, please include whether you are willing to testify in person, under oath, at a court-martial. If you would like to submit a statement, please provide it to me no later than (time/date) at the following office or email address: (office address)(email address). [NOTE: The victim should be given a reasonable amount of time to prepare comments, but no less than 5 days]. If you [or your Special Victims’ Counsel] would like to speak with (Rank and Name of Special Court-Martial Convening Authority) directly by telephone, video teleconference, or in person, please contact (rank and name of Victim Witness Assistance Program point of contact or Trial Counsel) at (phone number)(email address) to arrange a meeting.

3. (If eligible. See AFI 51-504 for legal assistance eligibility and Special Victim Counsel Rules of Practice and Procedure for Special Victim Counsel eligibility. Note that AFI 51-504, paragraph 1.3.11., permits Staff Judge Advocates to authorize legal assistance to persons not specifically identified as eligible beneficiaries when it benefits the command. Requests for exceptions to Special Victim Counsel eligibility rules should be submitted to Air Force Legal Operations Agency/Special Victims’ Counsel Division) You may also consult with a [legal assistance attorney] or [Special Victims’ Counsel] on whether to submit a statement for (Rank and Name of Special Court-Martial Convening Authority)’s consideration in accordance with AFI 51-504, Legal Assistance, Notary, and Preventive Law Programs.

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

1st Ind, ([Rank and] Name of Victim) (Date)
MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)
I understand that I may provide a statement to, or request an opportunity to discuss disposition of the charge(s) with the convening authority.

(Signature Block of Victim)

2nd Ind, ([Rank and] Name of Victim) (Date)
MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)
_______ I am submitting the attached statement.
_______ I am requesting an opportunity to discuss disposition of the charge(s) with the convening authority.
_______ I do not intend to submit a statement or request a meeting with the convening authority.

(Signature Block of Victim)

3d Ind, (Judge Advocate Office and Rank and Name of Base Level Staff Judge Advocate) (Date)

MEMORANDUM FOR All Reviewing Authorities
(NOTE: Statement is provided as part of the case file under Sec. 1744(e)(4) of the Fiscal Year 2014 National Defense Authorization Act. If meeting with the convening authority occurred in person, the victim’s views should be summarized.) ((Rank and Name of Victim) provided a statement). ((Rank and Name of Victim) did not provide a statement.) ((Rank and Name of Victim) requested an opportunity to discuss disposition of the charge(s) with the convening authority.) (This opportunity to discuss disposition of the charge(s) occurred on (date). The request for an opportunity to discuss disposition of the charge(s) was declined.))

(NAME), (Rank), USAF
Figure A3.9. Template Commander’s Recommendation on Initial Disposition of Sexual Assault Allegations

MEMORANDUM FOR (Initial Disposition Authority)

FROM: (Squadron Commander)

SUBJECT: Sex Offense Allegation Subject to Secretary of Defense Withhold Policy

1. On ________, [Victim] reported to [(Air Force Office of Special Investigations) (____)] that [Subject] had sexually assaulted (him) (her) on _________. The allegation qualifies as (an attempt to commit a) (rape) (aggravated sexual assault) (forcible sodomy) in violation of (Article 80) (Article 120) (Article 125), UCMJ. As such, this case, along with all other alleged offenses arising from or relating to the same incident, is subject to the Secretary of Defense Initial Disposition Withholding policy effective 28 June 2012.

2. I have reviewed the attached case file, including a Personal Data Sheet and the [(Security Forces report) (Air Force Office of Special Investigations report of investigation) (and) (describe other evidence)]. Based upon my review of this case [Commanders should consider factors listed in the Discussion to Rule for Courts-Martial 306(b)], I recommend initial disposition for the [Subject] [Victim] as follows: (no action) (administrative action in the form of ________) (initiating nonjudicial punishment proceedings for an alleged violation of Article(s), ______, UCMJ) (trial by court-martial).

3. Court-martial charges have (not) been preferred against [Subject]. [If charges have not been preferred and the immediate commander recommends a court-martial: I recommend (p preferral of court-martial charges and) referral to trial by (summary) (special) (general) court-martial for an alleged violation of Article(s), ______, UCMJ). [The charge(s), consisting of ___________, (was) (were) preferred by [Accuser] on _________, and the accused was informed of (it)(them) on ___________.] [If charges have been preferred and the immediate commander recommends that they be dismissed: I recommend that the charges against the accused be dismissed.] [If charges have been preferred and the immediate commander recommends a court-martial, the commander attaches the DoD Form 458, along with the first indorsement: I recommend the attached charges be referred to trial by (summary) (special) (general) court-martial.]

4. Briefly describe the Victim’s background if recommending disposition for victim misconduct.

5. In accordance with the Secretary of Defense policy, I am transmitting the case file, along with my recommendations, to you for your consideration and initial disposition pursuant to Rule for Courts-Martial 306.

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

[5] Attachments:
[1. DoD Form 458]
[2. First Indorsement to the Charge Sheet]
[3. Personal Data Sheet]
[4. Report of Investigation]
[5. List other documents as appropriate]
Figure A3.10. Template Initial Disposition Authority’s Decision for Sexual Assault Allegations

(Date)

MEMORANDUM FOR: (Subordinate Commander)
FROM: (Initial Disposition Authority)
SUBJECT: Initial Disposition of Sex Offense Allegation

Pursuant to the Secretary of Defense Initial Disposition Withholding policy effective 28 June 2012, I have reviewed the case file (and your recommendation(s)) pertaining to the alleged (attempt to commit) (rape) ((aggravated) sexual assault) (forcible sodomy) in violation of (Article 80) (Article 120) (Article 125), UCMJ, by [Subject] against [Victim] on ______ [along with other allegations of misconduct arising from or relating to the same incident]. I have consulted with a judge advocate. [I have determined that court-martial for the (Subject) (and) (or) (Victim) is not appropriate (and have dismissed charge(s)).] [In accordance with Rule for Courts-Martial 306(c)(5), I have elected to forward the matter to you for further disposition. You are not bound by your previous recommendation(s) to me and you may dispose of the case in any manner authorized by the UCMJ, Rules for Courts-Martial, or other regulation.]

(NAME), (Rank), USAF
(Initial Disposition Authority Duty Title)

Attachment:
Case File

[Note: The initial disposition process must be completed and documented whether the case is going forward to court-martial or disposed of in another manner.]

Figure A3.11. Template Notice to General Court-Martial Convening Authority of Initial Disposition Authority’s Decision for Sexual Assault Allegations

(Date)
MEMORANDUM FOR [General Court-Martial Convening Authority]
FROM: [Special Court-Martial Convening Authority]
SUBJECT: Written Notice of Initial Disposition Action for Covered Sexual Assault Allegation — [Name of Accused]

1. On [date], [Victim] reported to [(Air Force Office of Special Investigations) (_____)] that [Subject] had sexually assaulted (him) (her) on [date]. The allegation qualifies as (an attempt to commit a) (rape) (sexual assault) (forcible sodomy) in violation of (Article 80) (Article 120) (Article 125), UCMJ. As such, this case is subject to the Under Secretary of the Air Force’s 27 June 2013 memorandum, which requires that I notify you of my initial disposition action within 30 days of my initial disposition decision.
2. Briefly describe the Victim’s background if recommending disposition for victim misconduct.
3. Based upon my review of this case (to include [evidence considered by Special Court-Martial Convening Authority]), I [describe initial disposition action taken, to include no action].
MEMORANDUM FOR ALL REVIEWING AUTHORITIES
FROM: [General Court-Martial Convening Authority]
SUBJECT: Report of Disposition for Covered Sexual Assault Allegation – [Name of Accused]
On [date], the allegation(s) of [describe the allegations] against [Accused] resulted in [describe the action (court-martial, nonjudicial punishment, administrative discharge, Letter of Reprimand, etc.) and the result of the action (findings and sentence at court-martial, Nonjudicial Punishment result, type of admin discharge, etc.)] I have reviewed this disposition pursuant to the Under Secretary of the Air Force’s policy memorandum, effective 27 June 2013, requiring General Court-Martial Convening Authority Review of Certain Sexual Assault Cases.

(NAME), (Rank), USAF
(General Court-Martial Convening Authority)
Attachment:
Case File

Figure A3.13. Sample Specifications in Check Cases
I. Manual for Courts-Martial, 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, 330th Training Maintenance Squadron, did, at or near Keesler Air Force Base, Mississippi, on or about 1 November 2010,
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 2010, 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 or near Washington, D.C., on or about 10 June 2011, 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 2011, 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 or near Spangdahlem Air Base, Germany, on or about 12 March 2011, 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 2011, 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:

<table>
<thead>
<tr>
<th>DATE</th>
<th>CHECK #</th>
<th>AMOUNT</th>
</tr>
</thead>
</table>

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 2010 and on or about 15 December 2010, 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:
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. Manual for Courts-Martial, 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 or near Okinawa, Japan, on or about 7 February 2011, 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 2011, 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 or near Vandenberg Air Force Base, California, on or about 27 August 2011, 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 2011, 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 or near Beale Air Force Base, California, on divers occasions, between on or about 1 April 2011 and on or about 6 May 2011, 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. Manual for Courts-Martial, 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, which conduct was, under the circumstances, [(prejudicial to good order and discipline)(of a nature to bring discredit upon the armed forces)].

EXAMPLE:
In that AIRMAN JANE DOE, United States Air Force, 2853d Air Base Group, did, at or near San Antonio, Texas, on or about 10 May 2011, utter to San Antonio Jewelry, a certain check in the amount of $215.99, dated 10 May 2011, 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, which conduct was, under the circumstances, of a nature to bring discredit upon the armed forces.

Figure A3.14. Sample Statement of Understanding Regarding Recoupment of Education Assistance, Special Pay, or Bonuses

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 bonuses 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.
Figure A3.15. Template Commander’s 1st Indorsement to Charge Sheet

1st Indorsement, DoD Form 458, Charge Sheet, dated ________, (Rank), (Name), (Unit), (Base), (State Abbreviation)

FROM: (Squadron Commander)

MEMORANDUM FOR: (Special Court-Martial Convening Authority)

I recommend the charges be referred to trial by (summary) (special) (general) court-martial. The [(security forces’ report) (Air Force Office of Special Investigations 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.] [If applicable: The accused is a citizen of ______ and not a national or citizen of the United States. AF/JAO has been informed of this action.]

____ Attachments:
1. Personal Data Sheet
2. (Report of Investigation)
3. (List any other documents)

Figure A3.16. Template Personal Data Sheet

PERSONAL DATA SHEET

DATE PREPARED:

NAME OF ACCUSED:

ORGANIZATION: RANK:

SOCIAL SECURITY NUMBER: DATE OF RANK:
PAY GRADE:                             DATE OF BIRTH:

TOTAL ACTIVE FEDERAL MILITARY SERVICE DATE: LENGTH OF SERVICE: (See Note 1)

AIR FORCE SPECIALTY CODE: MILITARY TEST SCORES:

BASIC PAY: HARDSHIP DUTY PAY:

INITIAL DATE OF CURRENT SERVICE: HOSTILE FIRE PAY:

TERM OF CURRENT SERVICE: IMMINENT DANGER PAY:

PRIOR SERVICE: (See Note 2) SPECIAL PAY AND BONUSES:

OVERSEAS SERVICE (OCONUS): (See Note 3)

COMBAT SERVICE: (See Note 4)

NATURE OF PRETRIAL RESTRAINT: (See Note 5)

MARITAL STATUS: NUMBER OF DEPENDENTS:

NUMBER OF PREVIOUS COURT-MARTIAL CONVICTIONS:

NUMBER OF PREVIOUS ARTICLE 15 ACTIONS:

AWARDS AND DECORATIONS:

Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

NOTES:
1. List in years and months (e.g. 2 years, 3 months. Lost time: 8 days). Exclude and identify lost time as calculated by personnel records (i.e., prior adjudged confinement, absent without leave or periods of desertion, etc.) Lost time does not include pre-trial confinement. See AFI 36-2134, Air Force Duty Status Program, Chapter 3 and AFI 36-2604, Service Dates and Dates of Rank.
2. Include any prior enlistment or periods of service when there was a break in enlistment, reserve or service with another branch of service.
3. Identify service for which credit for overseas service was awarded per AFI 36-2110, Assignments. Include dates and locations.
4. Identify service for which the member was awarded “special pay for duty subject to hostile fire or imminent danger” per DoD 7000.14-R, Department of Defense Financial Management Regulation, Volume 7A, Chapter 10. Include dates and locations.
5. Include type of restraint (see Rule for Courts-Martial 304(a)), date imposed, location, and number of days. Include restraint by civil authorities at the behest of the Air Force.

Figure A3.17. Template Civilian Defense Counsel Agreement Not to Release Information Protected by the Privacy Act

Agreement Not to Release Privacy Act Information

As part of the discovery process, I am in receipt of material covered under the Privacy Act of 1974, under 5 U.S.C. § 552a. I hereby agree that I will not release Privacy Act material to anyone outside of defense personnel working on the case of United States v. __________.

_________________________  ___________________
Civilian Defense Counsel      Date
MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
COMMANDERS OF THE COMBATANT COMMANDS
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases

Pursuant to my general court-martial convening authority under Article 22 of the Uniform Code of Military Justice (UCMJ) and Rules for Courts-Martial 306, 401, and 601, I hereby withhold initial disposition authority from all commanders within the Department of Defense who do not possess at least special court-martial convening authority and who are not in the grade of O-6 (i.e., colonel or Navy captain) or higher, with respect to the following alleged offenses: (i) rape, in violation of Article 120; (ii) sexual assault, in violation of Article 120 of the UCMJ; (iii) forcible sodomy, in violation of Article 125 of the UCMJ; and (iv) all attempts to commit such offenses, in violation of Article 80. Additionally, this withholding applies to all other alleged offenses arising from or relating to the same incident(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof.

The effective date of this action will be June 28, 2012. The Services have discretion to further elevate initial disposition authority for these offenses.

The special court-martial convening authority shall be responsible for determining what initial disposition action is appropriate, to include whether further action is warranted and, if so, whether the matter should be resolved by court-martial, nonjudicial punishment, or adverse administrative action. The special court-martial convening authority’s initial disposition decision shall be based upon his or her review of the matters transmitted, any independent review and recommendation received (including court-martial charges, if any), and consultation with a judge advocate. Subordinate unit commanders are encouraged to provide their own recommendations regarding initial disposition.

Nothing in this directive removes the responsibility of commanders, at every level, to maintain an environment free of sexual assault, to provide support and assistance to victims, and to maintain good order and discipline within their units.

cc:
Acting USD(P&R)
Director, Sexual Assault Prevention and Response Office
MEMORANDUM FOR AF/CC

SUBJECT: General Court-Martial Convening Authority (GCMCA) Review in Certain Sexual Assault Cases

Effective ten days after the signing of this memorandum, I hereby direct that all cases involving the covered alleged offenses defined in paragraph 3 below, the Special Court-Martial Convening Authority (SPCMCA) is required to provide the GCMCA in the grade of O-7 or above written notice of the initial disposition action he or she has taken in the case within 30 days following the date of the initial disposition decision.

When disposition of the alleged offense is complete, the GCMCA will sign the written report of command action required to be produced on all covered offenses and maintained by the Air Force Office of Special Investigations (AFOSI) or Security Forces Office of Investigation (SFOI). This requirement is not delegable. AFOSI and SFOI will not close out investigative files regarding these covered offenses until receipt of the memorandum from the GCMCA.

Covered alleged offenses include (i) rape, in violation of Article 120, UCMJ; (ii) sexual assault, in violation of Article 120, UCMJ; (iii) forcible sodomy, in violation of Article 125, UCMJ; and (iv) all attempts to commit such offenses, in violation of Article 80, UCMJ.

Eric K. Fanning
MEMORANDUM FOR (Rank and Full Name of Preliminary Hearing Officer)

FROM: (Convening Authority Directing Preliminary Hearing)

SUBJECT: Article 32 Preliminary Hearing, U.S. v. (name, grade, squadron of accused)

1. You are hereby designated as the Preliminary Hearing Officer (PHO) pursuant to Article 32, UCMJ, to conduct a preliminary hearing examining the attached charge(s) against (name, grade, and squadron of accused). The preliminary hearing is your primary duty until its completion. You shall ensure that you meet all requirements of serving as a Preliminary Hearing Officer. You shall review the AFLOA, Military Justice Division, Article 32 Preliminary Hearing Officer’s Guide, dated [INSERT DATE], before beginning the preliminary hearing.

2. In conducting the preliminary hearing, you will comply with the provisions of Article 31, UCMJ, and Article 32, UCMJ.

3. As required by Article 32, the preliminary hearing will be recorded by the government. A copy of the recording will be provided to you following the close of the hearing. You are required to include in your report, at a minimum, a summary of the substance of all testimony. (Attaching a recording of the preliminary hearing to your report will satisfy this requirement.)

4. Your attention is directed to AFI 51-201, *Administration of Military Justice*, paragraph 4.4. A verbatim transcript of the testimony of a witness will only be prepared with the approval of my Staff Judge Advocate.

5. Within two days of your appointment, you will issue a written memorandum, to the counsel for the government, the defense counsel, and victims’ counsel providing guidance for the upcoming preliminary hearing. A sample memorandum is found at Attachment 2 of the Article 32 Preliminary Hearing Officer Guide.

6. Your report and recommendations using the current DoD Form 457, *Preliminary Hearing Officer’s Report*, will be submitted within eight days through my Staff Judge Advocate in an original and five copies.

7. The Article 32 preliminary hearing in this case is scheduled for ________________. Pursuant to Rule for Courts-Martial 707, you are hereby delegated authority to approve delays in the Article 32 hearing date. Your decision granting a delay must be noted in the report. Any delay beyond eight days in submitting your report will be fully explained in your report. My Staff Judge Advocate will provide any required assistance and support.

(NAME), (Rank), USAF
(Convening Authority Duty Title)
Figure A4.2. Sample Convening Order for Court of Inquiry

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

SPECIAL ORDER AA-1 15 April 20XX

A court of inquiry is hereby convened. It will proceed at 0730 hrs on 20 April 2011 in the Tyndall Air Force Base courtroom. The court will be constituted as follows:

MEMBERS

COLONEL ALLEN L. GARRET, PRES 325 MDSS AETC THIS STATION
COLONEL GERALD F. SMITH 325 LSS AETC THIS STATION
COLONEL JEFFREY A. SINGLETON 325 SFS AETC THIS STATION

COUNSEL FOR COURT

LT COL JOHN F. MILLER 325 FW AETC THIS STATION

COUNSEL FOR KNOWN PARTY

MAJ HELEN M. GREGORY USAF JUDICIARY AFLOA THIS STATION

KNOWN PARTY

LT COL EDWARD J. SCHMIDT 325 CES AETC 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
Brigadier General, USAF
Commander

FOR THE COMMANDER

ROBIN B. DUFFY, Colonel, USAF
Staff Judge Advocate

DISTRIBUTION

- 1 Each Individual
- 1 Each Orgn|
- 1– 325 FW/JA
Figure A4.3. Template Appointment of Deposition Officer

(Date)

MEMORANDUM FOR (Rank and Full Name of Deposition Officer)

FROM: (Convening Authority)

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; Rule for Courts-Martial 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 DoD 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].

(NAME), Rank, USAF
(Convening Authority Duty Title)

Attachment:
Request for Deposition
Figure A4.4. Sample Oral Deposition Transcript

UNITED STATES

v.

DEPOSITION

AIRMAN FIRST CLASS JOHN J. DOE
3d Services Squadron
Elmendorf Air Force Base, Alaska

DO: The proceedings will now come to order at (time, date and place). These proceedings are being recorded by [(a reporter)(audiotape)(videotape)] pursuant to Rule for Courts-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 Rule for Courts-Martial 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 A4.5. Template Authentication of Deposition by a Transcriber

AUTHENTICATION OF DEPOSITION
of
(name of witness)

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

TRANSCREIBER’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 A4.6. Template 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 Courts-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 A4.7. Template 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 Courts-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)
MEMORANDUM FOR ______/CC

FROM: ______/JA

SUBJECT: Pretrial Advice – United States v. Rank and Name, (Social Security Number), 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 29 December 2014; a preliminary hearing was conducted under Article 32, UCMJ, on 12 January 2015; and the preliminary hearing officer forwarded [his/her] report on 17 January 2015 with a recommendation for referral to trial by [general court-martial] [special court-martial].) OR (The charge was preferred on 29 December 2014. On 5 January 2015, the accused submitted a waiver to [his/her] right to a preliminary hearing under Article 32, UCMJ.) [The commander (Special Court-Martial Convening Authority) forwarded the charge on 9 January 2015 with a recommendation for trial by general court-martial.]

2. Pursuant to Rule for Courts-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, and was on active duty at the time of the alleged offenses. I am satisfied a court-martial would have jurisdiction over the accused and the offenses charged.
   [NOTE: If applicable, include information on significant, aggravating, extenuating or mitigating factors. And in capital cases, address aggravating circumstances.]

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

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

[7] Attachments:
1. Charge Sheet
2. Commander’s Indorsement with attachments
3. Forwarding letter(s)
4. Preliminary Hearing Officer Appointment Letter OR Waiver of Article 32 Preliminary Hearing
5. Article 32 Report
6. Receipt for Article 32 Report
7. Defense Objections (if applicable)
Figure A4.9. Template General Court-Martial Convening Authority Decision Not to Refer Sex Offense Charge.

(Date)

MEMORANDUM FOR (Rank and Name of Superior General Court-Martial Convening Authority or Secretary of the Air Force)

FROM: (Rank and Name of General Court-Martial Convening Authority who Declined to Refer Charges)

SUBJECT: Reasons for Decision Not to [Refer Charges] to Trial by Court-Martial – (Rank and Name of Accused, Unit, and Base)

1. After reviewing the Article 32, UCMJ, Report of Preliminary Hearing, Pretrial Advice of my Staff Judge Advocate pursuant to Article 34, UCMJ, the statement(s) of the victim(s) provided during the course of the criminal investigation against (Rank and Name of Accused), [the statement submitted by the victim(s) in this case] [considering to the view(s) of the victim(s) in this case], I have decided not to refer [any charges] [any charges alleging a sexual offense] against (Rank and Name of Accused) to trial by court-martial.

2. I have decided not to refer [any charges] [any charges alleging a sexual offense] against (Rank and Name of Accused) to trial by court-martial because (NOTE: select as many reasons as applicable) [the Article 32, UCMJ, Preliminary Hearing Officer recommended not referring [any charges] [any charges alleging a sexual offense] to court-martial] [the Pretrial Advice of my Staff Judge Advocate did not recommend referring [any charges] [any charges alleging a sexual offense] to court-martial] [there is not probable cause to support any alleged offense] [the victim has indicated (she)(he) does not wish to testify at a court-martial and there is not probable cause to support any alleged offense without (his)(her) testimony] [the victim has died and there is not probable cause to support any alleged offense without (his)(her) testimony and no admissible alternatives to live testimony exist] [the accused has died] [the statute of limitations has run on all alleged offenses] I have determined that the alternative disposition of __________ is legally authorized and appropriate]. [I (have returned) (intend to return) the charges to (Rank and Name of Subordinate Commander) for alternative disposition.] [I have served (Rank and Name of Accused) with (nonjudicial punishment for (state charges and specifications) and imposed punishment of (state Nonjudicial Punishment punishment)). I have finalized a (Letter of Reprimand)(Letter of Admonishment)(Letter of Counseling) on (Rank and Name Accused) which was filed in an (select all that apply (Officer Selection Record), (Senior Noncommissioned Officer Selection Record), (Unfavorable Information File) (Personnel Information File) (and I have placed Rank and Name of Member on the Control Roster).

(NAME), (Rank), USAF
(General Court-Martial Convening Authority Duty Title)
MEMORANDUM FOR (Rank and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

SUBJECT: Notification of (Rank and Name of Convening Authority)’s Decision to Forward the Case of (Rank and Name of Accused) to the Secretary of the Air Force for Review

1. (For cases forwarded to the Secretary of the Air Force, through command channels, pursuant to Section 1744(c) of the Fiscal Year 2014, National Defense Authorization Act. NOTE: Forwarding to the Secretary of the Air Force is required if the General Court-Martial Convening Authority decides not to refer any specification listed in paragraphs 3.7.1.1. through 3.7.1.4. and the General Court-Martial Convening Authority’s Staff Judge Advocate recommended that the specification be referred to trial) (Rank and Name of signer of Article 34, UCMJ, Pretrial Advice) recommended that the (state the charges and specifications recommended for referral) against (Name of Accused) be referred to trial by court-martial. (Rank and Name of General Court-Martial Convening Authority) has decided not to refer [any charges] [any charges alleging a sex offense] to a court-martial. (Rank and Name of General Court-Martial Convening Authority) is forwarding the case to the Secretary of the Air Force, through command channels, for a review as required by the 2014 National Defense Authorization Act, Section 1744(c).

2. If you have questions about this process, you may contact (rank and name of victim liaison or Trial Counsel) at (phone number). (If eligible) You may also consult with a [legal assistance attorney] or [Special Victims’ Counsel].

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

1st Ind, ([Rank and] Name of Victim) (Date)

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

I understand that (Name of General Court-Martial Convening Authority) has decided not to refer any charges against (Name of Accused) to trial by court-martial. I understand that the allegations against (Name of Accused) are being forwarded to the Secretary of the Air Force for review.
MEMORANDUM FOR THE SECRETARY OF THE AIR FORCE

I hereby certify that (Rank and Name of Victim) has been informed of (Name of General Court-Martial Convening Authority)’s decision to forward the allegations against (Name of Accused) for further review in accordance with Section 1744 of the Fiscal Year 2014 National Defense Authorization Act.

(NAME), (Rank), USAF
Staff Judge Advocate
Figure A4.11. Template Certification of Victim Notification of Superior General Court-Martial Convening Authority Review

(Date)

MEMORANDUM FOR (Rank and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

SUBJECT: Notification of (Rank and Name of Convening Authority)’s Decision to Forward the Case of (Rank and Name of Accused) to [Superior General Court-Martial Convening Authority] for Review

1. (For cases forwarded to the superior General Court-Martial Convening Authority pursuant to Section 1744(d) NOTE: Forwarding to the superior General Court-Martial Convening Authority is required if the General Court-Martial Convening Authority decides not to refer any specification listed in paragraphs 3.7.1.1. through 3.7.1.4.) (Rank and Name of signer of Article 34, UCMJ, Pretrial Advice) has recommended that [all charges and specifications] [all charges alleging a sex offense] against (Name of Accused) should not be referred for trial by court-martial. (Rank and Name of General Court-Martial Convening Authority) has decided not to refer [any charges] [any charge alleging a sex offense] to a court-martial. (Rank and Name of General Court-Martial Convening Authority) is forwarding the case to (Rank and Name of Superior General Court-Martial Convening Authority), for the review required by the Fiscal Year 2014 National Defense Authorization Act, Section 1744(d).

2. If you have questions about this process, you may contact (name of victim liaison or Trial Counsel) at (phone number). (If eligible) You may also consult with a [legal assistance attorney] or [Special Victims’ Counsel].

(NAME), (Rank), USAF
Staff Judge Advocate
Figure A4.12. Template Secretary of the Air Force Review Pursuant to Fiscal Year 14 National Defense Authorization Act, Section 1744(c)

(Date)

MEMORANDUM FOR (Rank and Name of General Court-Martial Convening Authority Who Declined Referral)

FROM: (Secretary of the Air Force)

SUBJECT: Review of Convening Authority Decision Not to Refer Charges

1. Sexual assault allegations against (Rank/Name of Accused) have been forwarded to me for review pursuant to Section 1744(c) of the Fiscal Year 2014 National Defense Authorization Act.

2. I have reviewed the case file, which includes the following (list documents included in the case file pursuant to Section 1744(e) and any other documents included for review):

   a. (DoD Form 458, Charge Sheet)
   b. (All reports of preliminary hearings regarding such charges, including the Air Force Office of Special Investigations report of investigation, if any, and Article 32, UCMJ, Preliminary Hearing Officer report)
   c. (A certification that the victim was notified of the opportunity to express views on disposition for consideration by the convening authority – see Figure A3.8.)
   d. (All statements from the victim provided to Air Force Office of Special Investigations and to the victim’s chain of command relating to the alleged sexual assault offense)
   e. (Any statement from the victim to the convening authority expressing the victim’s view on disposition)
   f. (Article 34, UCMJ, Pretrial Advice)
   g. (A written statement explaining the reasons for the convening authority’s decision not to refer any charges for trial by court-martial – see Figure A4.9.)
   h. (A certification that the victim of the alleged sexual assault offense was informed of the convening authority’s forwarding of the case for review – see Figure A4.10.)
   i. (Any other documentation forwarded for review)

3. I find that in making the decision not to refer charges to trial by court-martial, (Rank and Name of Subordinate Convening Authority) [considered the statement(s) provided by the victim(s) during the course of the criminal investigation against (Rank and Name of Accused)] [did not consider the statement(s) provided by the victim(s) during the course of the criminal investigation against (Rank and Name of Accused)] and that (Rank and Name of Subordinate Convening Authority) [considered the views expressed by the victim(s) as to disposition of the alleged sexual assault offense(s)] [did not consider the view(s) expressed by the victim(s) as to disposition of the alleged sexual assault offense(s)] [proper notification was made to the victim(s) of the opportunity to submit (his/her) views as to disposition of the alleged sexual assault offense(s), but the victim(s) declined to express (his/her) views].

(Secretary of the Air Force Signature Block)
Figure A4.13. Template Superior General Court-Martial Convening Authority Review Under Fiscal Year 14 National Defense Authorization Act, Section 1744(d)

(Date)

MEMORANDUM FOR  (Rank and Name of General Court-Martial Convening Authority Who Declined Referral)

FROM:  (Name of Superior General Court-Martial Convening Authority Conducting Review)

SUBJECT: Review of Convening Authority Decision Not to Refer Charges

1. Sexual assault allegations against (Rank/Name of Accused) have been forwarded to me for review pursuant to Section 1744(d) of the Fiscal Year 2014 National Defense Authorization Act.

a. I have reviewed the case file, which includes the following (list documents included in the case file pursuant to Section 1744(e) and any other documents included for review):

b. (DoD Form 458, Charge Sheet)

c. All reports of preliminary hearing regarding such charges, including the Air Force Office of Special Investigations report of investigation, if any, and Article 32, UCMJ, Preliminary Hearing Officer report)

d. (A certification that the victim was notified of the opportunity to express views on disposition for consideration by the convening authority – see Figure A3.8.)

e. (All statements from the victim provided to Air Force Office of Special Investigations and to the victim’s chain of command relating to the alleged sexual assault offense)

f. (Any statement from the victim to the convening authority expressing the victim’s view on disposition)

g. (Article 34, UCMJ, Pretrial Advice)

h. (A written statement explaining the reasons for the convening authority’s decision not to refer any charges for trial by court-martial – see Figure A4.9.)

i. (A certification that the victim of the alleged sexual assault offense was informed of the convening authority’s forwarding of the case for review – see Figure A4.11.)

j. Any other documentation forwarded for review)

2. I find that  in making the decision not to refer charges to trial by court-martial, (Rank and Name of Subordinate Convening Authority) [considered the statement(s) provided by the victim(s) during the course of the criminal investigation against (Rank and Name of Accused)] [did not consider the statement(s) provided by the victim(s) during the course of the criminal investigation against (Rank and Name of Accused)] and that (Rank and Name of Subordinate Convening Authority) [considered the views expressed by the victim(s) as to disposition of the
alleged sexual assault offense(s)] [did not consider the view(s) expressed by the victim(s) as to disposition of the alleged sexual assault offense(s)] [proper notification was made to the victim(s) of the opportunity to submit (his)(her) views as to disposition of the alleged sexual assault offense(s), but the victim(s) declined to express (his)(her) views].

(NAME), (Rank), USAF
Attachment 5

TEMPLATES AND SAMPLES FOR CONVENING COURTS-MARTIAL

Figure A5.1. Sample Convening Authority Selection of Court-Martial Members

MEMORANDUM FOR 12 AIR FORCE COMMANDER

FROM: 355 FIGHTER WING JUDGE ADVOCATE

SUBJECT: Nomination of Court Members, United States v. Airman Casey G. Story

1. Should you refer charges in the case of United States v. Airman Casey G. Story, you must nominate court members. In accordance with Rule for Courts-Martial 502, members detailed to a court-martial shall be those persons who in the opinion of the convening authority are best qualified for the duty by reason of their age, education, training, experience, length of service, and judicial temperament.

2. The members identified below have been identified by the special court-martial convening authority as potential court members. Your selection of members is not limited to these individuals and you may nominate additional members.

3. Please annotate which members you intend to nominate by initialing next to those members you desire to nominate and/or annotating additional members.

(NAME), (Rank), USAF

Staff Judge Advocate
1st Indorsement, 12 AF/CC, Nomination of Court Members, *United States v. Airman Casey G. Story*

Date:

I nominate the following individuals to serve as court members in the court-martial of *United States v. Airman Casey G. Story*.

<table>
<thead>
<tr>
<th>Name</th>
<th>Unit</th>
<th>ACC</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>COL Michael J. Dunbar</em></td>
<td>12 AF</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>LT COL Natalie L. Pope</td>
<td>355 MXG</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>LT COL Barry D. Dale</td>
<td>355 FW</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td><em>LT COL Maggie L. Smith</em></td>
<td>25 OWS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>LT COL Lee M. Majors</td>
<td>355 TRS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>LT COL Megan P. Gore</td>
<td>355 AMXS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>LT COL Kevin A. Ayers</td>
<td>355 CMS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>LT COL Lance V. Grey</td>
<td>355 FW</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td><em>LT COL Harry T. Tate</em></td>
<td>612 AOC</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>Maj Sally N. Norton</td>
<td>358 FS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>Maj Gerald D. Dicks</td>
<td>355 OG</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>Maj Mark P. Wollum</td>
<td>355 DS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>Maj Emily S. Darrow</td>
<td>563 OSS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>*Maj Adam P. Moore</td>
<td>25 OWS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>Capt Larry F. Wills</td>
<td>355 FSS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>Capt Perry M. Marr</td>
<td>355 CS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>Capt Jason M. Argo</td>
<td>355 CS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
<tr>
<td>1st Lt Mary F. McGill</td>
<td>355 CONS</td>
<td>ACC</td>
<td>Davis-Monthan AFB</td>
</tr>
</tbody>
</table>

*With concurrence of commander concerned.*

HARRY P. TUBBS
Lieutenant General, USAF
Commander
Figure A5.2. Sample Convening Order

(Special Order A-1 dated 28 September 2014, was the last Special Order of this headquarters published in Fiscal Year 15) OR (There were no Special Orders published in Fiscal Year 15.)

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS, 14TH AIR FORCE (AIR FORCE SPACE COMMAND)
VANDENBERG AIR FORCE BASE, CALIFORNIA 93437-6285

SPECIAL ORDER
A-1

3 Nov 2015

Pursuant to authority contained in Special Order G-15-001, Department of the Air Force, dated 24 March 2015, a general court-martial is hereby convened. It may proceed at Vandenberg Air Force Base, California, to try such persons as may be properly brought before it. The court will be constituted as follows:

MEMBERS

COLONEL ALONZO PETIT
LIEUTENANT COLONEL JOHN SMITH
**MAJOR DON F. WARREN
FIRST LIEUTENANT SID J. PORTER
SECOND LIEUTENANT WILLIAM RHODES

14 AF
30 CES
DET 9 SMC
30 MDF
30 OSS
AFSPC
AFSPC
AFSPC
AFSPC
AFSPC
THIS STATION
THIS STATION
THIS STATION
THIS STATION
THIS STATION

**With concurrence of the commander concerned.

RICHARD T. EARLY
Major General, USAF
Commander

FOR THE COMMANDER

CHARLES W. THOMAS, Colonel, USAF
Staff Judge Advocate

DISTRIBUTION
- 1 – Each Individual
- 1 – Each Organization
- 1 – 14 AF/JA
- 1 – ANGRC/IA (Air National Guard cases only)
Figure A5.3. Sample Amendment to Convening Order

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS, 14TH AIR FORCE (AIR FORCE SPACE COMMAND)
VANDENBERG AIR FORCE BASE, CALIFORNIA 93437-6285

SPECIAL ORDER
A-3

17 Dec 2015

The following members are detailed to the general court-martial convened by Special Order A-1, this headquarters, dated 3 November 2015, 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  DISTRIBUTION
Staff Judge Advocate
- 1 – Each Individual
- 1 – Each Organization
- 1 – 14 AF/JA
- 1 – ANGRC/JA (Air National Guard cases

only)
Figure A5.4. Sample Special Court-Martial Convening Order with a Savings Clause

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS, 30TH SPACE WING (AIR FORCE SPACE COMMAND)
VANDENBERG AIR FORCE BASE, CALIFORNIA 93437-6261

SPECIAL ORDER AB-5 20 Apr 2015

Pursuant to authority contained in Special Order G-15-001, Department of the Air Force, dated 24 March 2015, a special court-martial is hereby convened. It may proceed at Vandenberg Air Force Base, California, 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 2 February 2015, as amended by Special Order AB-3, this headquarters, dated 13 February 2015, and Special Order AB-5, dated 15 April 2015, 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 – Each Individual
- 1 – Each Organization
- 1 – 30 SW/JA
- 1 – ANGRC/JA (Air National Guard cases only)
Pursuant to authority contained in Special Order G-15-001, Department of the Air Force, dated 24 March 2015, a summary court is hereby convened. I have reviewed the charge sheet and evidence in the case of United States v. 1IC John H. Doe. It may proceed at Vandenberg Air Force Base, California, to try such persons as may be properly brought before it. Lt Col Will I. Judge, 30 SW/DO, is detailed as the Summary Court-Martial officer.

I. EMMA COMMANDER, Colonel, USAF
Commander

DISTRIBUTION
1 – Summary Court-Martial Officer
1 – 30 SW/JA
1 – ANGRC/JA (Air National Guard cases only)
Attachment 6
Templates and Samples For Witnesses and Immunity

Figure A6.1. Template Memorandum of Agreement for Employment of Civilian Expert Witness.

MEMORANDUM OF AGREEMENT
FOR
EMPLOYMENT OF CIVILIAN EXPERT WITNESS

1. (Doctor)(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). The witness is an expert in the field of ____________________.

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’ in-court testimony, and to be available for a 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 Travel Regulations.

   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 Joint Travel Regulations.

   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 Defense Finance and Accounting Service-Denver/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. Payment will be made from the Air Force Central Travel Fund, up to a maximum of $____ and in accordance with AFI 51-201, paragraph 6.2.4.3. The remaining 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)

Expert Witness

(Date)
Figure A6.2. Template Letter to Accompany Subpoena and Travel Order (Informal Service).

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 (ante meridiem/post meridiem, day, date). You will need to be present at [(that time) or (ante meridiem/post meridiem, day, date)] and remain in the local area until formally excused by the military judge. 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:

<table>
<thead>
<tr>
<th>Place</th>
<th>Time</th>
<th>Day &amp; Date</th>
<th>Airline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depart:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arrive:</td>
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<tr>
<td>Depart:</td>
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<td></td>
</tr>
<tr>
<td>Arrive:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
[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), (Rank), USAF
Trial Counsel

7 Attachments:
1. Subpoena, DoD Form 453 (2 copies)
2. Travel Order, DoD 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

[Staff Judge Advocate NOTE: Mark enclosed subpoenas as “copy 1” and “copy 2”]
Figure A6.3. Template Invitational Travel Order.

[Letterhead]

INVITATIONAL TRAVEL ORDER NUMBER _____

DATE APPROVED: _________________

FOR: [TITLE AND NAME]
[home address]
[and, if applicable, position or job title, employer and work address]

You are invited to depart from (home address) on [date travel begins] in sufficient time to arrive at [place required] by [date/time required] for the purpose of [purpose of travel, e.g., testifying in the Article 32 preliminary hearing of A1C John Doe] for approximately ___ days. Alternate means, such as Secure Video Teleconference or other web-based communication are not sufficient to accomplish travel objectives. 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. However, if a transportation ticket in your possession is lost or stolen, you must immediately report it to [name and phone number of point of contact at legal office]. You are required to pay for a replacement ticket and will be reimbursed for the second ticket, not to exceed the cost of the first ticket, ONLY AFTER the Government is refunded for the lost/stolen tickets. Unused transportation tickets must be returned with the travel claims.)

___ To arrange transportation, call: (____) ____-______

If you purchase transportation from a travel office (travel agency) not under contract with the Government, reimbursement is limited to the Government cost on a constructed basis for transportation that would have been arranged by a Contracted Commercial Travel Office (CTO) if available. If the contract between the Government and the Contracted Commercial Travel Office does not permit the Contracted Commercial Travel Office to arrange transportation for a traveler who is not a Government employee, reimbursement for transportation may not exceed the least expensive coach/economy air accommodations unless otherwise permitted in Joint Travel Regulations, paragraph 3500.
(a) Accommodations selected must be the least costly coach/economy service that permits satisfactory accomplishment of your mission, 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 constructed basis. You would normally be authorized to travel by common carrier. Reimbursement is 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. Room taxes at locations in the 50 states, District of Columbia, territories and possessions and the Commonwealths of Puerto Rico and Northern Mariana Islands is a reimbursable expense (Joint Travel Regulations, Appendix G). Foreign area room tax is included in the total lodging cost and is not a reimbursable expense. While traveling in connection with the Invitational Travel Authorization, you are authorized a per diem equal to the daily amount you pay for lodging, plus a fixed amount for meals and incidental expenses. That amount is limited to the applicable locality per diem rate prescribed on the Defense Travel Management Office homepage: http://www.defensetravel.dod.mil/site/perdiem.cfm for the locality concerned. 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 Joint Travel Regulations, Chapter 4, Part B, for applicable rules.

Applicable per diem rates:

<table>
<thead>
<tr>
<th>Locality</th>
<th>Maximum Lodging Rate</th>
<th>Meal &amp; Incidental Expense Rate</th>
<th>Total Per Diem</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
You are to be paid an actual subsistence expense allowance for lodging and a per diem for meals and incidental expenses. You are required to itemize your lodging expenses only.

You are to be paid an actual subsistence expense allowance for lodging and meals and incidental expenses. 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 places where meals are taken; and other necessary expenses. You are to be reimbursed for the actual expenses incurred, but not to exceed the maximum amount authorized for the locality concerned as indicated below. See Joint Travel Regulations, Chapter 4, Part C, for applicable rules.)

Actual Subsistence Expense Allowance Authorized:

<table>
<thead>
<tr>
<th>Locality</th>
<th>Maximum Actual Subsistence Expense Allowance</th>
<th>Amount allowed for Meals &amp; Incidental Expenses if authorized on a per diem basis</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTE: The cost you incur during travel for laundry/dry cleaning and pressing of clothing is included in the Incidental Expense portion of the per diem or actual expense allowance and is not separately reimbursable.


Address any inquiries regarding this travel order to [name and phone number of point of contact 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]        [typed name]
Approving Official  Authenticating Official
Figure A6.4. Template Letter to Civilian Witness for Article 32, UCMJ, Preliminary Hearings/Overseas Travel.

[Letterhead]

(Date)

Name (for example, Trial Counsel, Counsel for the Government)
Office Symbol
Mailing Address
Base, State, Zip Code

Name of Witness
Mailing Address
City, State Zip Code

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

This letter confirms our recent phone conversation about your participation as a witness in the [(Article 32 preliminary hearing) 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:

<table>
<thead>
<tr>
<th>Place</th>
<th>Time</th>
<th>Day &amp; Date</th>
<th>Airline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depart:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arrive:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depart:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arrive:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[Optional] Since you are flying into __________ Airport, you will need transportation to the base. (Give details of mode to get to base, for example, 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), (Rank), USAF
(Counsel for the Government)(Trial Counsel)

5 Attachments:
1. Invitational Travel Orders
2. Advance Fees
3. Airline Tickets (if applicable)
4. Map of Area
5. Map of Base
Figure A6.5. Template Grant of Immunity and Order to Testify.

(Date)

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

FROM: (General Court-Martial Convening Authority Unit and Address)

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

1. SCOPE OF IMMUNITY: An investigation revealed you have knowledge of [an] offense[s] allegedly committed by (rank, name, unit, and station of accused). The offense[s] in question involve (describe the specific nature of offenses and the persons involved pertaining to the witness’ knowledge). [NOTE: Be careful to use precise language as this language creates the scope of the immunity—what “matters” will be covered by immunity under Rule for Courts-Martial 704]

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

2. [For witness subject to UCMJ where Department of Justice authorization was required] By authority vested in me in my capacity as a general court-martial convening authority, by Rule for Courts-Martial 704(c)(1), Manual for Courts-Martial, United States, and by the Attorney General of the United States pursuant to 18 U.S.C. § 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 Courts-Martial 704(c)(2), Manual for Courts-Martial, and by the Attorney General of the United States pursuant to 18 U.S.C. § 6004,

[Continuation of paragraph 2] I hereby grant you [(testimonial) or (transactional)] immunity concerning the matters and military member[s] identified in Paragraph 1, and order you to answer questions posed to you by investigators and counsel pertaining to, to provide physical evidence to investigators and counsel, and to testify at any proceeding held pursuant to the UCMJ (10 U.S.C. § 801 et seq.), concerning the matters and military member[s] identified in Paragraph 1. This grant of immunity takes effect on the day you receive a copy of it. You will acknowledge receipt of this grant of immunity by signing the endorsement below.

3. [For testimonial immunity (preferred)] Under this immunity, your answers, disclosed physical evidence, and testimony regarding the matters and military member[s] identified in Paragraph 1, 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, your disclosed physical evidence, your answers to questions, or information derived from them,
in prosecuting you for perjury, giving a false statement, crimes disclosed or discovered outside the scope of this immunity, future crimes, 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 UCML) 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, your disclosed physical evidence, your statements or information derived from them, in prosecuting you for perjury, giving a false statement, crimes disclosed or discovered outside the scope of this immunity, future crimes, or otherwise failing to comply with this order to testify.

(NAME), (Rank), USAF
Commander

1st Ind, (Rank and Name of Witness) (Date)

MEMORANDUM FOR (General Court-Martial Convening Authority)

I acknowledge receipt of this grant of immunity (time) on (date).

(NAME), (Rank), USAF
Figure A6.6. Template Certification Memorandum for Civilian Expert Witnesses.

(Date)

MEMORANDUM FOR AIR FORCE LEGAL OPERATIONS MILITARY JUSTICE DIVISION

FROM: (Judge Advocate Office)

SUBJECT: Staff Judge Advocate Certification for Urinalysis Expert Witness / Inconvenience Fee

1. The following information is provided to prepare voucher for payment:
   a. Invoice Number:
   b. Payable to: Payee's name, address and phone number
   c. Social Security Number of Witness:
   d. Fund Cite: (leave blank, Air Force Legal Operations Agency, Military Justice Division will complete)

2. I certify the payment for entitlement of [(inconvenience) or (expert witness)] fees in the amount of $________ (Air Force Legal Operations, Military Justice Division fees only, see paragraphs 6.2.4.3 and 6.2.4.4) is in accordance with AFI 51-201, Chapter 6, paragraph 6.2.4.4.

3. [In-court testimony was provided on (date). Therefore, the expert is entitled to expert witness fees under AFI 51-201, Chapter 6.] or [The expert has visibly shown an actual monetary loss associated with this cancellation in that he/she __________. Therefore, the expert is entitled to the inconvenience fee under AFI 51-201, paragraph 6.2.4.4.]

(NAME), (Rank), USAF
Staff Judge Advocate
Figure A7.1. Template Offer for Pretrial Agreement and Appendix A Offer for Pretrial Agreement:

UNITED STATES

v.

(Organization)

PLACE

(RANK AND NAME)

OFFER FOR PRETRIAL AGREEMENT

(Date)

I, (RANK AND NAME), 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. Manual for Courts-Martial, 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 grants 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 Rule for Courts-Martial 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.

APPENDIX A TO
OFFER FOR PRETRIAL AGREEMENT

(RANK AND NAME)  (Date)
(Place)

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.)

____________  __________________________
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), USAF (if applicable)
Defense Counsel

I recommend (acceptance) (rejection) of this Appendix A.
The foregoing Appendix A is approved in conjunction with the Pretrial Agreement, dated ____.

NOTES:

1. The clauses contained in paragraph 6 of this Attachment 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); Manual for Courts-Martial, Appendix 21, Analysis, Rule for Courts-Martial 705(c)(2)(D).

2. The convening authority signs approving and accepting 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. The convening authority signs Appendix A only if approving it and the Offer for Pretrial Agreement.
Figure A7.2. Template Offer to Resign for the Good of the Service in Lieu of Trial by Court-Martial.
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 rank, full name, social security number)

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).]

(NAME), (Rank), USAF
(Organization)

[___ Attachments:]
[1. Certificate of Relief from Accountability or Responsibility]
[2. Recoupment Statement]
Figure A7.3. Template Commander’s Indorsement of Resignation in Lieu Of.
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 General Court-Martial Convening Authority)

(FUNCTIONAL ADDRESS SYMBOL OF MAJOR COMMAND OF ASSIGNMENT)

AIR FORCE LEGAL OPERATIONS AGENCY
MILITARY JUSTICE DIVISION
IN TURN

FROM: (Commander’s functional address symbol)

SUBJECT: Resignation for the Good of the Service under AFI 51-201 (Officer’s rank, full name, and social security number)

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

2. 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].

3. (Officer’s Rank) (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.)

4. (Officer’s Rank) (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.)

[5. 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 Preliminary Hearing. 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.)

[5. 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 Preliminary Hearing, and any other reports.)

6. 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.

7. Action under AFI 31-501 is [complete] [not required]. (See AFI 31-501 if the officer has or once had access to Single Integrated Operation Plan-Extremely Sensitive Information, or other special access programs.)

(NAME), (Rank), USAF
(Duty Title)
Figure A7.4. Template Recoupment Statement for Resignation in Lieu Of.

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, Record of Trial 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.

Dated this ___ day of ____________, _________.

(NAME), (Rank), USAF
(SSN)
Figure A7.5. Sample Findings Worksheet.

FINDINGS WORKSHEET
United States v. Airman Terry P. Partridge

I. NOT GUILTY

NOTE: If the accused is found not guilty of the specifications and charges, announce:

PRESIDENT: Airman Terry P. Partridge, this court martial finds you:
Of the Charges and Specifications: NOT GUILTY.

II. GUILTY AS CHARGED

NOTE: If the accused is found guilty of the specifications and charges, unmodified announce:

PRESIDENT: Airman Terry P. Partridge, this court-martial finds you:
Of the Charges and Specifications: GUILTY.

III. MIXED FINDINGS

NOTE: If the accused is found guilty of some specifications and charges, but not all announce the specifications and charges as follows:

PRESIDENT: Airman Terry P. Partridge, this court-martial finds you:
Of Specification 1 of Charge I (NOT GUILTY) or (GUILTY)
Of Specification 2 of Charge I (NOT GUILTY) or (GUILTY)
Of Charge I (NOT GUILTY) or (GUILTY)
Of the Specification of Charge II (NOT GUILTY) or (GUILTY)
Of Charge II (NOT GUILTY) or (GUILTY)
Of Specification 1 of the Additional Charge (NOT GUILTY) or (GUILTY)
Of Specification 2 of the Additional Charge (NOT GUILTY) or (GUILTY)
Of the Additional Charge (NOT GUILTY) or (GUILTY)
IV. MODIFIED FINDINGS OR GUILTY OF A LESSER INCLUDED OFFENSE

NOTE: To modify a specification or for a finding of guilty as to a lesser included offense, announce the specifications and charges as follows:

PRESIDENT: Airman Terry P. Partridge, this court-martial finds you:

Of Specification 1 of Charge I (NOT GUILTY) or (GUILTY),
except the words: __________________________________________
__________________________________________________________

substituting, therefore, the words: ____________________________
__________________________________________________________

Of the excepted words, NOT GUILTY.
Of the substituted words, GUILTY.

Of Specification 2 of Charge I (NOT GUILTY) or (GUILTY)
except the words: __________________________________________
__________________________________________________________

substituting, therefore, the words: ____________________________
__________________________________________________________

Of the excepted words, NOT GUILTY.
Of the substituted words, GUILTY.

Of Charge I (NOT GUILTY) or (GUILTY) or
(NO GUILTY, but GUILTY of a violation of Article ________________)

Of the Specification of Charge II (NOT GUILTY) or (GUILTY),
except the words: __________________________________________
__________________________________________________________

substituting, therefore, the words: ____________________________
__________________________________________________________

Of the excepted words, NOT GUILTY.
Of the substituted words, GUILTY.
Of Charge II (NOT GUILTY) or (GUILTY) or
(NOT GUILTY, but GUILTY of a violation of Article __________.)

Of Specification 1 of the Additional Charge (NOT GUILTY) or (GUILTY),
except the words: ________________________________

______________________________

substituting, therefore, the words: ________________________________

______________________________

Of the excepted words, NOT GUILTY.
Of the substituted words, GUILTY.

Of Specification 2 of the Additional Charge (NOT GUILTY) or (GUILTY)
except the words: ________________________________

______________________________

substituting, therefore, the words: ________________________________

______________________________

Of the excepted words, NOT GUILTY.
Of the substituted words, GUILTY.

Of the Additional Charge (NOT GUILTY) or (GUILTY) OR
(NOT GUILTY, but GUILTY of a violation of Article __________.)
Figure A7.6. Sample Sentencing Worksheet.

**SENTENCING WORKSHEET**
*United States v. Airman Terry P. Partridge*

<table>
<thead>
<tr>
<th><strong>PRESIDENT:</strong> Airman Terry P. Partridge, this court-martial sentences you.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NO PUNISHMENT</strong></td>
</tr>
<tr>
<td>☐ TO NO PUNISHMENT</td>
</tr>
<tr>
<td><strong>REPRIMAND</strong></td>
</tr>
<tr>
<td>☐ TO BE REPRIMANDED</td>
</tr>
<tr>
<td><strong>NOTE:</strong> The Court MAY NOT specify the terms or wording of a reprimand.</td>
</tr>
<tr>
<td><strong>REDUCTION</strong></td>
</tr>
<tr>
<td>☐ TO BE REDUCED TO THE GRADE OF E- _____</td>
</tr>
<tr>
<td><strong>MONETARY PENALTIES</strong></td>
</tr>
<tr>
<td>☐ TO FORFEIT ALL PAY AND ALLOWANCES</td>
</tr>
<tr>
<td>☐ TO FORFEIT $ ___________ OF YOUR PAY [PER MONTH FOR _______ MONTHS]</td>
</tr>
<tr>
<td><strong>NOTE:</strong> Forfeitures should be specified in whole dollar amounts. Any forfeiture in excess of one month should specify the amount per month to be deducted from the member’s pay. Do NOT express forfeiture amounts as a fraction of pay. The time period should be expressed in terms of months and NOT days. Fractions (e.g., 1.5 or 1 ½ months) should NOT be used.</td>
</tr>
<tr>
<td>☐ TO PAY THE UNITED STATES A FINE OF $ ____________</td>
</tr>
<tr>
<td><strong>NOTE:</strong> Ordinarily, a fine should not be adjudged unless the Accused was unjustly enriched by the offense. A fine and forfeitures may be adjudged as part of a sentence.</td>
</tr>
<tr>
<td>☐ TO PAY THE UNITED STATES A FINE OF $ ____________ AND TO BE [FURTHER] CONFINED UNTIL SAID FINE IS PAID, BUT FOR NOT MORE THAN _______ DAYS / MONTHS / YEARS [IN ADDITION TO THE _________ DAYS / MONTHS / YEARS HEREAFTER ADJUDGED]</td>
</tr>
<tr>
<td><strong>NOTE:</strong> Portions in [brackets] should only be read if the member is adjudged confinement in addition to the contingent confinement. The total period of confinement (i.e., the total of confinement adjudged and the contingent confinement) may not exceed the maximum period of confinement allowable. For example, if the maximum sentence is 1 year of confinement, the total of the adjudged confinement and conditional confinement together may not exceed 1 year.</td>
</tr>
</tbody>
</table>
RESTRAINT

- TO BE CONFINED FOR _____________ DAYS / MONTHS / YEARS

*NOTE:* The Court may NOT specify the place or manner of confinement. Confinement in excess of 11 months should be expressed in years and months (for example, 14 months of confinement should be expressed as 1 year and 2 months). Fractions (e.g., 1.5 or 1 ½ years) should NOT be used. Three-fourths of the members must concur in a sentence to confinement in excess of 10 years.

- TO PERFORM HARD LABOR WITHOUT CONFINEMENT FOR _______ DAYS / MONTHS

*NOTE:* Hard labor without confinement may not exceed 3 months. Fractions (e.g., 1.5 or 1 ½ months) should NOT be used.

- TO BE RESTRICTED TO LIMITS OF _____________ FOR A PERIOD OF _______ DAYS / MONTHS

*NOTE:* Restriction may not exceed 2 months. Fractions (e.g., 1.5 or 1 ½ months) should NOT be used. The court must specify a location for restriction.

DISCHARGE

- TO BE DISCHARGED FROM THE SERVICE WITH A BAD CONDUCT DISCHARGE (Enlisted Only)

- TO BE DISHONORABLY DISCHARGED FROM THE SERVICE (Enlisted Only)

- TO BE DISMISSED FROM THE SERVICE (Officers Only)
Date: 16 November 2015
Name of Accused: John J. Smith  Grade: E-6  SSN: 123-45-6789
Organization: 436th Maintenance Squadron, Dover Air Force Base, Delaware (Air Mobility Command)
Type of Court: General Court-Martial
Forum: Members   Enlisted Members Included: No
Summary of charge(s), specification(s), pleas, and findings:

<table>
<thead>
<tr>
<th>Charge(s):</th>
<th>Arraigned Offense(s)</th>
<th>Pleas</th>
<th>Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHARGE I</td>
<td>Art: 112a</td>
<td>G</td>
<td>G</td>
</tr>
<tr>
<td>Specification 1: 112AA1</td>
<td>Did, at or near Dover Air Force Base, Delaware, on or about 5 March 2015, wrongfully use phencyclidine, a Schedule II controlled substance.</td>
<td>NG</td>
<td>NG</td>
</tr>
<tr>
<td>Specification 2: 112AA1</td>
<td>Did, at or near Dover Air Force Base, Delaware, on divers occasions between on or about 3 February 2015 and on or about 30 April 2015, wrongfully use cocaine, a Schedule II controlled substance.</td>
<td>G</td>
<td>G</td>
</tr>
<tr>
<td>CHARGE II</td>
<td>Art: 120</td>
<td>NG</td>
<td>G</td>
</tr>
<tr>
<td>Specification: 120BE</td>
<td>Did, at or near Dover Air Force Base, Delaware, on or about 6 March 2015, engage in a sexual act with SVD, to wit: sexual intercourse with SVD, who was substantially incapacitated.</td>
<td>NG</td>
<td>G</td>
</tr>
</tbody>
</table>

Sentence Adjudged: 3 months confinement, Reduction to E-1
Sentence/Acquittal Date: 16 November 2015
Pretrial Confinement Credit: Not applicable
Pretrial Agreement Involved: No   Conditions of Pretrial Agreement: Not Applicable
DNA Processing Required Under 10 U.S.C. § 1565: Yes
Crime of Domestic Violence: No
Sex Offender Registration Required: Yes

Name, Rank, and Title of Person Signing
MEMORANDUM FOR (Rank and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

SUBJECT: Submission of matters, United States v. (Rank and Name of accused)

1. On (Date of conviction), (Current grade and name of the accused) was convicted by (Type of Court-Martial) of (Insert charges and specifications). For these crimes, (he/she) was sentenced to (Sentence). The next step in the process is for the Convening Authority, (grade and name of Convening Authority), to review the findings and sentence. In certain cases, the Convening Authority has discretion to approve all or any portion of the findings and sentence. In other cases, the discretion of the Convening Authority is limited by law. I am writing to let you know how you can provide input to (me) (the Convening Authority’s Staff Judge Advocate) for the Convening Authority’s consideration.

2. Before the Convening Authority takes action, (I) (the Convening Authority’s Staff Judge Advocate) will, pursuant to Rule for Courts-Martial 1106, submit a recommendation to (him/her), with a copy to defense counsel. (I) (the Convening Authority’s Staff Judge Advocate) will review the record of trial and advise the Convening Authority on whether the court-martial was lawfully constituted and had jurisdiction over the accused and each offense, whether any errors were committed which materially prejudiced (his/her) substantial rights, whether there is enough evidence in the record to support each finding of guilty, and whether the adjudged sentence is lawful.
3. You may submit a statement in writing to (me) (the Convening Authority’s Staff Judge Advocate) for consideration in advising the Convening Authority. The choice is entirely yours. This statement could describe the impact (Current grade and name of the accused)’s crime had on your life. [You may also discuss whether you believe the Convening Authority should approve the (findings and sentence/sentence) or grant some form of clemency, if authorized by law]. However, your statement should not reference any crimes for which (Current grade and name of the accused) was not convicted by the court-martial in order to avoid any prejudice to (his/her) post-trial rights.

4. You have 10 days to submit matters for consideration by the convening authority from the date you receive a copy of the authenticated record of trial or the date you receive a copy of the recommendation of the staff judge advocate, whichever is later. If you want to submit a statement, please provide it to the following office or email address: (office address) (e-mail address). Your signature is required on any statement submitted. [I will then provide your letter to the Convening Authority’s Staff Judge Advocate.] If you submit a statement, we will provide it, along with all of the relevant trial related documents, to (Current grade and name of the Accused) and (his/her) attorney. (Current grade and name of the accused) and (his/her) attorney will then have an opportunity to comment on your statement, if submitted, and to provide our office with matters they want the Convening Authority to consider [when making (his/her) decision on whether to approve the (findings and sentence/sentence)].

5. You may ask for additional time to submit your statement. I will provide your request to the Convening Authority who may grant up to an additional twenty days.

6. (If eligible) You may also consult with (a legal assistance attorney) or (Special Victims’ Counsel) on whether to submit a victim impact statement and the contents of such a statement in accordance with AFI 51-504, Legal Assistance, Notary, and Preventive Law Programs.

________________________________
(NAME), (Rank), USAF
Staff Judge Advocate/Trial Counsel

1st Indorsement, (Rank and Name of Victim) Date:

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

I acknowledge receipt of this notification.

(Rank and Name of Victim)

2nd Indorsement, (Rank and Name of Victim) Date:
MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

I understand that I may provide a statement to (you/the Convening Authority’s Staff Judge Advocate) for consideration in advising the Convening Authority [on whether to approve all or any portion of the (findings and sentence/sentence)].

_______ I am submitting the attached statement
_______ I do not intend to submit a statement.

(Rank and Name of Victim)

3d Indorsement, (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)       Date:

MEMORANDUM FOR (Rank and Name of Victim)

((Rank and Name of Victim) provided a statement) ((Rank and Name of Victim) did not provide a statement)

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

Figure A8.3. Submission of Matters by the Accused.

MEMORANDUM FOR (Rank and Name of Accused)

FROM: (Judge Advocate Office)

SUBJECT: Submission of Matters to the Convening Authority – United States. v. (Rank 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 findings of guilt or part of the sentence in your case as permitted by law. These matters may include:

   a. Allegations of errors affecting the legality of the findings or sentence in your case.
   b. Portions or summaries of your record of trial, or copies of evidence introduced at trial.
   c. Matters in mitigation 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. *(If the accused is enlisted)* Your desire to submit an application for Return to Duty. See AFI 31-105.

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 General Court-Martial or Special Court-Martial, insert:]* You have 10 days to submit matters for consideration by the convening authority from the date you receive a copy of the authenticated Record of Trial or, if applicable, the date both you and your defense counsel receive a copy of the recommendation of the staff judge advocate, 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 Summary Court-Martial, 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 Staff Judge Advocate, 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 Staff Judge Advocate, to waive any mandatory forfeitures of pay and allowances under Article 58b(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), (Rank), USAF  
(Duty Title)

cc: Defense Counsel

1st Indorsment, (Rank and Name of Accused)

(Date)

MEMORANDUM FOR  (Judge Advocate 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), (Rank), USAF  
Accused

Figure A8.4. Waiver of Submission of 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:  (Rank and Name of Accused)

SUBJECT:  Waiver of Right to Submit Clemency Matters – United States v. (Rank and Name of Accused)

1. I have been briefed by my Defense Counsel, (Rank and Name of Defense Counsel), (Location), concerning my rights to submit matters to the convening authority, detailed in Article 60, UCMJ, (and) Rule for Courts-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. I understand that this waiver is irrevocable once submitted.

2. I understand my rights and the time limitations to make submissions to the convening authority. [For a General Court-Martial or Special Court-Martial, 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 Summary Court-Martial, 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 in certain cases permitted by law 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 in certain cases permitted by law 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 in certain cases permitted by law 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), (Rank), 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 (general)(special)(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 Rule for Courts-Martial 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 findings of guilt in legally permissible cases, or to approve any legally permissible 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), (Rank), USAF
Defense Counsel

Figure A8.5. Waiver of Submission of 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: (Rank and Name of Accused)

SUBJECT: Waiver of Right to Submit Clemency Matters – United States v. (Rank and Name of Accused)

1. I have been briefed by my Defense Counsel, (Rank and Name of Defense Counsel), (Location) concerning my rights to submit matters to the convening authority, detailed in Article 60, UCMJ, and Rule for Courts-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]), (Waive [r 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. [For a General Court-Martial or Special Court-Martial 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 Summary Court-Martial, 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 in certain cases permitted by law 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 in certain cases permitted by law 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 in certain cases permitted by law 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), (Rank), USAF
Accused

1st Ind, (Defense Counsel) (Date)

MEMORANDUM FOR (Convening Authority)

1. (Name and Rank of Accused), having [received the record of trial (and) the Staff Judge Advocate’s Recommendation (and Addendum), dated __________][been sentenced by (general)(special)(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 Rule for Courts-Martial 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 findings of guilt in legally permissible cases, or to approve any legally permissible 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), (Rank), USAF
Defense Counsel

Figure A8.6. Waiver of Submission of Matters by the Accused (Request for Deferment of Reduction in Grade or Forfeitures, or Waiver of Mandatory Forfeitures).

MEMORANDUM FOR (Defense Counsel) (Date)

FROM: (Rank and Name of Accused)

SUBJECT: Waiver of Right to Submit Clemency Matters – United States v. (Rank and Name of Accused)

1. I have been briefed by my defense counsel, (Name and Rank of Defense Counsel), (Location) concerning my rights to submit matters to the convening authority, detailed in Article 60, UCMJ,
and Rule for Courts-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 in certain cases permitted by law disapprove findings of guilt to a charge and/or specification, but may not change a finding of not guilty to guilty. I also understand that the convening authority may in certain cases permitted by law 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 in certain cases permitted by law 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), (Rank), 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 (general)(special)(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 Rule for Courts-Martial 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 findings of guilt in legally permissible cases or to approve any legally permissible 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), (Rank), USAF
Defense Counsel

Figure A8.7. Convening Authority Action Memorandum (Summary Court-Martial or Special Court-Martial Without Adjudged Punitive Discharge).

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Action: United States v. (Rank 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 Report of Result of Trial memorandum, 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), (Rank), USAF
Staff Judge Advocate

8 Attachments:
1. (Proposed Action of the Convening Authority)( DoD Form 2329 with Proposed Action)
2. Defense Counsel Ltr, dtd ___
3. Accused’s Ltr, dtd ___
4. Mr. ____ Ltr, dtd ___
5. Air Force Good Conduct Medal Citation, dtd ___
6. Report of Result of Trial memorandum
7. Personal Data Sheet
8. Record of Trial (2 volumes)

OR

5 Attachments:
1. (Proposed Action of the Convening Authority)( DoD Form 2329 with Proposed Action)
2. Waiver of Clemency Matters, dtd ___ (if used)
3. Report of Result of Trial memorandum
4. Personal Data Sheet
5. Record of Trial (2 volumes)

1st Ind, (Convening Authority)  
(Date)

MEMORANDUM FOR (Judge Advocate Office)

I considered the attachments before taking action on this case.

(NAME), (Rank), USAF
Commander

Figure A8.8. Trial Counsel Recommendation to the Convening Authority Regarding Substantial Assistance by the Accused.  
(Date)
MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Trial Counsel’s Recommendation – United States v. (Rank and Name of Accused); Substantial Assistance

I was trial counsel on this case and I recommend (Rank and Name of Accused) be recognized for his/her substantial assistance in the (investigation) (prosecution) of (Rank and Name of Other Accused). [Briefly describe how accused provided substantial assistance.]

(NAME), (Rank), USAF
Trial Counsel

Figure A8.9. Staff Judge Advocate’s Recommendation (For Offenses Committed on or after 24 June 2014).

(Date)

[This sample should be used in cases where the Accused was convicted only of offenses occurring after 24 June 2014. (See Note 1). If the Accused was found guilty of at least one offense occurring before 24 June 2014, use the sample included at Attachment 8.9.]

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Staff Judge Advocate’s Recommendation – United States v. (Rank 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 Report of Result of Trial memorandum, 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 Rule for Courts-Martial 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. (For (list offense), you have the authority to approve or dismiss the finding of guilt.) [See Note 2] OR (For (list offense), you only have the authority to approve the finding of guilt and cannot dismiss the finding of guilt.) [See Note 3]

3. [Include any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence under Rule for Courts-Martial 1106(d)(3). Also address any military judge awarded additional credit for illegal pretrial confinement.]
4. [**NOTE:** If the defense raised legal errors in matters submitted under Rule for Courts-Martial 1105, address them pursuant to Rule for Courts-Martial 1106(d)(4). Also, address requests for deferral of punishment and waiver of required forfeitures, and if applicable, include that upon application, the accused’s dependents may also qualify for transitional compensation that may be approved in addition to any waived forfeitures. See paragraph 8.12.]

5. The accused was sentenced to ( ). The maximum imposable sentence for the offense(s) for which the accused was convicted is ( ). (The mandatory minimum for the offense(s) for which the accused was convicted is ( ).)

6. I have considered all matters in the record of trial, including all matters presented in the presentencing portion of the trial. (Trial counsel is recommending the accused be recognized for his/her substantial assistance during the investigation/prosecution of (______). As the convening authority, you have the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part without limitation.) (There was a pretrial agreement in this case where the accused agreed to (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)(______). In accordance with the pretrial agreement, I recommend you only approve so much of the sentence as calls for ( ).) (A dishonorable discharge was mandatory for the offense under Art ( ). You may only commute the discharge to a bad conduct discharge. [See Note 4] (You have the authority to disapprove, commute or suspend in whole or in part the adjudged sentence.) [See Note 5] OR (You do not have the authority to disapprove, commute or suspend in whole or in part (confinement) (punitive discharge). You do have the authority to disapprove, commute or suspend in whole or in part (adjudged forfeitures) (reduction in rank) (reprimand) (fine).” 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), (disapprove), (commute), (suspend) the (confinement) (punitive discharge) (forfeitures) (reduction in rank) (restriction) (hard labor without confinement) (reprimand) as adjudged.)

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

3 Attachments:
1. Report of Result of Trial memorandum
2. Personal Data Sheet
3. Trial Counsel Recommendation – Substantial Assistance memorandum

Note 1: If the specification for an offense specifies a date range beginning earlier than 24 June 2014 (e.g., “between on or about 1 June 2014 and on or about 1 July 2014”), the offense is considered to have been committed before 24 June 2014 for the purpose of this rule.

Note 2: For findings, evaluate each offense separately. If the offense (1) is not under Articles 120(a), 120(b), 120b, or 125, (2) has a maximum sentence of less than or equal to 2 years, AND (3) the adjudged sentence does not include a punitive discharge or greater than six months
confinement; then the convening authority has the authority to approve or disapprove the finding of guilt.

Note 3: For findings, evaluate each offense separately. If the offense (1) is under Articles 120(a), 120(b), 120b, or 125, (2) has a maximum sentence of more than 2 years, OR (3) the adjudged sentence includes a punitive discharge or greater than six months confinement; then the convening authority can only approve the finding of guilt and cannot disapprove the finding of guilt.

Note 4: Use this language only when a pretrial agreement is in place.

Note 5: The convening authority may not disapprove, commute, or suspend, in whole or in part, any confinement for a period exceeding 6 months or a punitive discharge, except upon trial counsel recommendation for substantial assistance or pursuant to a valid pretrial agreement. Rule for Courts-Martial 1107(d)(1)(A)–(B). The confinement and punitive discharge are analyzed as separate components. For example, if an accused is found guilty of assault consummated by a battery and sentenced to a bad conduct discharge and 3 months of confinement, the convening authority may disapprove or reduce the confinement, but may not disapprove the bad conduct discharge. See Rule for Courts-Martial 1107(d)(1)(F), Discussion.

Figure A8.10. Staff Judge Advocate’s Recommendation (for Offenses Committed before 24 June 2014 or before and on or after 24 June 2014).

[This sample should be used in cases where the Accused was convicted only of offenses occurring exclusively before 24 June 2014, or where the Accused was convicted of at least one offense occurring before 24 June 2014 and at least one offense on or after 24 June 2014. (See Note 1). If the Accused was found guilty only of offenses occurring on or after 24 June 2014, use the sample included at Attachment 8.8.]

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Staff Judge Advocate’s Recommendation – United States v. (Rank 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 Report of Result of Trial memorandum, 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 Rule for Courts-Martial 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. You have the authority to approve or disapprove the finding of guilt for all offenses.
3. [Include any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence under Rule for Courts-Martial 1106(d)(3). Also address any military judge awarded additional credit for illegal pretrial confinement.]

4. [NOTE: If the defense raised legal errors in matters submitted under Rule for Courts-Martial 1105, address them pursuant to Rule for Courts-Martial 1106(d)(4). Also, address requests for deferral of punishment and waiver of required forfeitures, and if applicable, include that upon application, the accused’s dependents may also qualify for transitional compensation that may be approved in addition to any waived forfeitures. See paragraphs 8.12.]

5. The accused was sentenced to ( ). The maximum imposable sentence for the offense(s) for which the accused was convicted is ( ). [Include mandatory minimum sentence if applicable.]

6. I have considered all matters in the record of trial, including all matters presented in the pre-sentencing portion of the trial.
   
   a. You have the authority to approve, disapprove, commute, or suspend the adjudged sentence as explained below.

   b. [Insert the appropriate language below]

   [If the Accused was found guilty of at least one offense that carries a mandatory minimum sentence under Article 56(b), UCMJ, [See Note 2] use the following, unless: (1) trial counsel is recommending the accused be recognized for his/her substantial assistance in another case; or (2) there is a pretrial agreement with a sentence cap of a bad conduct discharge:]

As the convening authority, you have the authority to disapprove, commute, or suspend in whole or in part (confinement) (forfeitures) (reduction in rank) (reprimand) (fine). The offense(s) of (list mandatory minimum offenses for which the accused was found guilty) (carries) (carry) a mandatory minimum sentence of (dishonorable discharge) (dismissal). [See Note 2]. If you approve the finding of guilt for (this offense) (at least one of these offenses), a (dishonorable discharge) (dismissal) is mandatory. If you disapprove the finding of guilt for (this offense) (all of these offenses), you have the authority to disapprove, commute, or suspend the (dishonorable discharge) (dismissal). [See Note 3].

   [If the Accused was found guilty of at least one offense that carries a mandatory minimum sentence under Article 56(b), UCMJ, [See Note 2] and there is a pretrial agreement with a sentence cap of a bad conduct discharge, use the following]:

As the convening authority, you have the authority to disapprove, commute, or suspend in whole or in part (confinement) (forfeitures) (reduction in rank) (reprimand) (fine). The offense(s) of (list mandatory minimum offenses for which the accused was found guilty) ordinarily (carries) (carry) a mandatory minimum sentence of dishonorable discharge. [See Note 2]. If you approve the finding of guilt for (this offense) (at least one of these offenses), you only have the authority to commute the discharge to a bad conduct discharge pursuant to the approved pretrial agreement discussed below. [See Note 4]. If you disapprove the finding of guilt for all of these offenses, you have the authority to disapprove, commute, or suspend the dishonorable discharge. There
was a pretrial agreement in this case where the accused agreed to (plead guilty to all charges and specifications) \( \text{(list any other conditions imposed on the accused by the pretrial agreement)} \). In exchange, a punitive discharge would be limited to a bad conduct discharge (confinement would be limited to ____ \( \text{(list any other sentencing limitations in the pretrial agreement)} \)). In accordance with the pretrial agreement, I recommend you only approve so much of the sentence as calls for the bad conduct discharge (\( \text{(list any other sentencing limitations in the pretrial agreement)} \)).

\[ \text{If the Accused was found guilty of at least one offense that carries a mandatory minimum sentence under Article 56(b), UCMJ, [See Note 2] and trial counsel is recommending the accused be recognized for his/her substantial assistance in another case, use the following:}\]

As the convening authority, you have the authority to disapprove, commute, or suspend in whole or in part (forfeitures) (reduction in rank) (reprimand) (fine). The offense(s) of (\( \text{list mandatory minimum offenses for which the accused was found guilty}\)) ordinarily (carries) (carry) a mandatory minimum sentence of (dishonorable discharge) (dismissal). [See Note 2]. However, trial counsel is recommending the Accused be recognized for (his) (her) substantial assistance in the (investigation) (prosecution) of (list offender). Based on this recommendation and the Accused’s assistance, you also have the authority to disapprove, commute, or suspend the adjudged (dishonorable discharge) (dismissal). [See Note 5]

\[ \text{If the Accused was not found guilty of an offense that carries a mandatory minimum sentence under Article 56(b), UCMJ, use the following:}\]

As the convening authority, you have the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part without limitation. [If applicable] There was a pretrial agreement in this case where the accused agreed to (plead guilty to all charges and specifications) (\( \text{list any other conditions imposed on the accused by the pretrial agreement}\)). In exchange, (confinement would be limited to ____ \( \text{(list any other sentencing limitations in the pretrial agreement)} \)). In accordance with the pretrial agreement, I recommend you only approve so much of the sentence as calls for (\( \text{list any other sentencing limitations in the pretrial agreement}\)).

\( \text{c. The sentence adjudged (is) (is not) appropriate for the offense(s) for which the accused was convicted. [If the sentence is not appropriate explain why it is not appropriate.]}\) (I recommend you (approve), (disapprove), (commute), (suspend) the (confinement) (punitive discharge) (adjudged forfeitures) (reduction in rank) (restriction) (hard labor without confinement) (reprimand) as adjudged.)

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

3 Attachments:
1. Report of Result of Trial memorandum
2. Personal Data Sheet
3. Trial Counsel Recommendation – Substantial Assistance memorandum

Note 1: If the specification for an offense specifies a date range beginning earlier than 24 June 2014 (e.g., “between on or about 1 June 2014 and on or about 1 July 2014”), the offense is considered to have been committed before 24 June 2014 for the purpose of this rule.

Note 2: Note that the mandatory minimum sentence applies only to those offenses listed in Article 56(b)(2), UCMJ, committed on or after 24 Jun 2014. See Section 1705, Fiscal Year 2014 National Defense Authorization Act.


Figure A8.11. Addendum to Staff Judge Advocate’s Recommendation when Matters are Submitted by Victim or Accused.

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Addendum to Staff Judge Advocate’s Recommendation: United States v. (Rank 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. You shall also consider the result of trial and the recommendation of the Staff Judge Advocate. 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), (Rank), 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. Air Force Good Conduct Citation, dtd ___
6. Staff Judge Advocate’s Recommendation (w/ __ Atchs), dtd ___

1st Ind., (Convening Authority) (Date)

MEMORANDUM FOR: (Judge Advocate Office)

I have considered the attached matters before taking action on this case.

(NAME), (Rank), USAF
Commander

Figure A8.12. Addendum to Staff Judge Advocate’s Recommendation when Matters are
not Submitted by Victim or Accused.

MEMORANDUM FOR (Convening Authority) (Date)

FROM: (Judge Advocate Office)

SUBJECT: Addendum to Staff Judge Advocate’s Recommendation: United States. v. (Rank
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), (Rank) USAF
Staff Judge Advocate

3 Attachments:
1. Proposed Action of the Convening Authority
2. Waiver of Clemency Matters, dtd ___ (if used)
3. Staff Judge Advocate’s Recommendation (w/__ Atchs), dtd ___

1st Ind, (Convening Authority) (Date)

MEMORANDUM FOR: (Judge Advocate Office)

I have considered the attachments before taking action on this case.

(NAME), (Rank), USAF
Commander

Figure A8.13. Sample Convening Authority Actions.
Punitive Discharge Approved

ACTION OF THE CONVENING AUTHORITY:

DEPARTMENT OF THE AIR FORCE, HEADQUARTERS, EIGHTY FIRST TRAINING WING (AETC), KEESLER AIR FORCE BASE, MISSISSIPPI 39534-2553

In the case of AIRMAN FIRST CLASS JOHN R. SMITH, 123-45-6789, United States Air Force, 81st Communications Squadron, the sentence is approved and, except for the bad conduct 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 directed by Air Force Security Forces Center, Confinement and Corrections Directorate. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC SMITH will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.
Adjudged Sentence in Part

ACTION OF THE CONVENING AUTHORITY:

DEPARTMENT OF THE AIR FORCE, HEADQUARTERS, EIGHTY FIRST TRAINING WING (AETC), KEESLER AIR FORCE BASE, MISSISSIPPI 39534-2553

In the case of AIRMAN FIRST CLASS JOHN R. SMITH, 123-45-6789, United States Air Force, 81st Communications Squadron, only so much of the sentence as provides for 2 months confinement, forfeiture of $775.00 pay per month for 2 months, reduction to the grade of E-1 and a bad conduct discharge is approved and, except for the bad conduct discharge, will be executed. The term of confinement having been served, no place of confinement is designated. Unless competent authority otherwise directs, AIRMAN BASIC SMITH will be required under Article 76a UCMJ, to take leave pending completion of appellate review.

(NAME), (Rank), USAF
Commander

New Action Required

ACTION OF THE CONVENING AUTHORITY:

DEPARTMENT OF THE AIR FORCE, HEADQUARTERS, SECOND AIR FORCE (AETC) KEESLER AIR FORCE BASE, MISSISSIPPI 39534-2804

In the case of AIRMAN FIRST CLASS JOHN R. SMITH, XXX-XX-XXXX, the record of trial having been returned by (The Judge Advocate General)(the Air Force Court of Criminal Appeals) (higher headquarters) with directions that a new action be accomplished, the action taken (by me)(by my predecessor) on 16 February 2016, is withdrawn, and Special Court Martial Order Number 8, Headquarters Eighty First Training Wing (AETC), dated 16 February 2016, is rescinded and the following is substituted for the original action: In the case of AIRMAN FIRST CLASS JOHN R. SMITH, XXX-XX-XXXX, United States Air Force, 81st Communications Squadron, the entire sentence is approved and, except for the bad conduct discharge, will be executed. The term of confinement having been served, no place of confinement is designated. Unless competent authority otherwise directs, AIRMAN BASIC SMITH will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.
(NAME), (Rank), USAF
Commander

Figure A8.14. Convening Authority Action Language.

Approving Adjudged Sentence in its Entirety:
In the case of (RANK) (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 (RANK) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence as provides for _______ (identify each punishment that is approved by type and amount, to include any punitive discharge if applicable) 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 Rule for Courts-Martial 1113(c). Use the following format in the action: "In the case of (RANK) (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 (RANK) (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 Air Force Security Forces Center, Confinement and Corrections Directorate.”

If no military facilities are reasonably available, the installation commander may authorize the use of civilian facilities to incarcerate inmates in accordance with AFI 31-105. 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 Air Force Security Forces Center, Confinement and Corrections Directorate. 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 (RANK) (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. Rule for Courts-Martial 1101(c):
In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and will be executed. Pursuant to Article 57a, UCMJ, the service of the sentence to confinement was deferred on _____________ until ______________.

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), (the sentence is approved)( and will be executed)(only so much of the sentence as provides for _______ (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 (RANK) (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 Air Force Security Forces Center, Confinement and Corrections Directorate.]. Also, see paragraph 8.27.4. for additional requirements when punishment is suspended.

Directing Excess Leave
(CONFINEMENT) 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, (REDUCED RANK, as approved, and NAME of ACCUSED) will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.” See Section 8K for additional guidance on excess leave pending appellate review.

(CONFINEMENT COMPLETED) 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 when confinement has been served: “Unless competent authority otherwise directs, (REDUCED RANK, as approved, and NAME of ACCUSED) will be required, under Article 76a, UCMJ, to take leave pending completion of
appellate review.” See Section 8K for additional guidance on excess leave pending appellate review.

Figure A8.15. Convening Authority Action Language Involving Forfeitures.

Disapproval of All Adjudged Forfeitures:
In the case of (RANK) (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 (RANK) (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 (RANK) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence extending to forfeiture of (total pay and allowances) ([$___] 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 (RANK) (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 (RANK) (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 United States v. Emminizer, 56 M/J. 441 (C.A.A.F. 2002). To our knowledge, it has not been tested at the appellate level.]

Deferral of Adjudged and Mandatory Forfeitures:
Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), UCMJ, (all) ($____pay per month) of the adjudged and 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), UCMJ, (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), UCMJ, (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), UCMJ, (all) ($____pay per month) of the mandatory forfeitures are waived for a period of ___ months [NOTE: no more than 6 months] or release from confinement (if applicable: or expiration of term of service), whichever is sooner, with the waiver commencing on ([the date of this action] [_______ - specify an earlier date if the waiver is retroactive]). The (total pay and allowances) ($____ 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] [_______, legal guardian of ______, for the benefit of the accused’s dependent, _______]).

Waived Forfeitures Granted on an Earlier Date and Memorialized in the Action:
Pursuant to Article 58b, Section (b), UCMJ, (all) ($____pay per month) of the mandatory forfeitures were waived for a period of ___ months [NOTE: no more than 6 months] or release from confinement (if applicable: or expiration of term of service), whichever is sooner, ([from 14 days after sentence was adjudged] [from _____ - insert other date prior to action]). The (total pay and allowances) ($____ 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] [_______, legal guardian of ______, for the benefit of the accused’s dependent, _______]).

NOTE: Be sure to include language designating confinement and language directing excess leave.

Figure A8.16. Sample Contingent Confinement Execution Order.

DEPARTMENT OF THE AIR FORCE
General Court-Martial Order 10 December 2015
No. 4

In the general court-martial case of AIRMAN FIRST CLASS JOHN R. SMITH, 555-66-7777, United States Air Force, 81st Communication Squadron, that portion of the sentence promulgated in General Court-Martial Order No. 11, this headquarters, dated 18 December 2014, providing for an additional 6 month confinement in lieu of the $10,000 fine will be executed. The sentence was adjudged by military judge on 23 October 2014.

CHRISTOPHER B. JOHNSON
Major General, USAF
Commander

DISTRIBUTION:

Figure A8.17. Notification of Adjudged Sentence or Convening Authority Action.

MEMORANDUM FOR HQ AFPC/DPSOE (enlisted only)
AFSFC/FC
DFAS-IN/FLTBA
(Local Servicing Finance Office)

FROM: (Judge Advocate Office)

SUBJECT: (Adjudged Sentence)(Convening Authority Action) (SPCM or General Court-Martial) – 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)(bad conduct discharge)(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)
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).] (and/or) [Automatic forfeitures in the amount of (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 (total)($_____ per month) pay and allowances (took effect on (date)) (were deferred)(were waived) (from (date) until (date)).

4. Action was promulgated by (Special Court-Martial Order)(General Court-Martial Order) No. _____, Headquarters (Convening Authority) dated _____.

(NAME), (Rank), USAF
(Duty Title)

Figure A8.18. Notification of Required Excess Leave and Indorsements.
MEMORANDUM FOR (Rank, Name, SSN, Losing Unit of Accused)

FROM: (Convening Authority or Staff Judge Advocate if excess lease is directed in action)

SUBJECT: Required Excess Leave / Appellate Review 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 (final action: type of discharge, confinement sentence, grade reduction). You are hereby required, under Article 76a, UCMJ (UCMJ), to take leave pending completion of appellate review of your conviction by court-martial. The effective date of your appellate review leave will be determined administratively, and you will receive an Air Force Form 899, permanent change of station Orders, and Air Force Form 988, Leave Request Form, through your Force Support Squadron and approved by HQ AFSFC indicating your departure date and your appellate review leave start date.

2. If you have accrued ordinary leave, you can elect to:

   a. Receive pay and allowances during the period of accrued leave, 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 appellate review leave will be unpaid excess leave.

4. While on required appellate review leave, you remain a member of the United States Air Force, on active duty and subject to UCMJ, to lawful orders and regulations and to recall from required appellate review leave as provided in paragraph 5. While on appellate leave you and your dependents will be entitled to medical care, use of military exchange facilities, commissaries, and other military welfare benefits. These entitlements may be curtailed or terminated for cause; therefore, you and your dependents must follow all applicable rules and maintain proper conduct. In order to make use of these benefits, you and your dependents will be issued appropriate identification cards of limited duration.

5. You are required to provide a correct leave address and report any changes to your address to HQ AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236. Failure to provide a correct address may result in loss of valuable opportunities to recoup any pay and allowances, which you may be entitled to if your sentence is disapproved or set aside. It may also prevent you from receiving important instructions regarding your case while undergoing appellate review. You are also subject to recall from appellate leave. Failure to return promptly to your unit (if directed by order delivered or mailed to your leave address) could result in placement in absent without leave or desertion status and could result in disciplinary action.

6. You will be informed of any significant action or decisions with regard to the appellate review of your conviction. This information and instructions will be sent to you at your leave address. If you have any questions concerning your status or your court-martial, contact the Appellate Defense Division, AFLOA/JAJA, 1500 West Perimeter Road, Suite 1100, Joint Base Andrews Naval Air Facility Washington, Maryland, 20762 (Phone: (240) 612-4770 or toll free 1-800-414-8847). You may also contact your defense counsel, or any defense counsel or staff judge advocate office at any Air Force base.

7. You are required to complete the 1st Indorsement to this memorandum. This includes providing an appellate leave address, making your elections regarding accrued leave and acknowledging that you cannot depart on excess leave without out processing through Force Support Squadron Separations office and without orders from AFSFC/FC.

8. (Base Force Support Squadron, SEPARATIONS POC information) will brief you regarding your status, obligations and entitlements while on excess leave and complete all personnel actions in regards to out processing; they will also allow you to ask any questions you may have in this regard.

(Name, Rank, USAF)
(Commander)(Staff Judge Advocate)
1st Ind, (Rank , Name, SSN, Losing Unit of Accused)

MEMORANDUM FOR (Losing Commander)

1. On __________, I received a copy of this document regarding required excess leave. In accordance with paragraph 7 of this memorandum, I provide the following appellate review leave address and contact information:

   (Street Address) __________________________

   (City, State) __________________________

   (Zip code) __________________________

   (Phone number) __________________________

   (E-mail address) __________________________

In regards to my accrued leave, I elect as follows:

   _____Receive pay and allowances during the period of accrued leave then continue on unpaid required excess leave.

   _____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. I will only be entitled to base pay. This entitlement does not extend to allowances or special pay.

   _____I do not have accrued leave, the entire period of appellate leave will be unpaid excess leave.

I acknowledge that I cannot depart on excess leave without out processing through (Force Support Squadron).

   (Name, Rank, USAF)

   Accused

2nd Ind (Losing Commander)

MEMORANDUM FOR (Rank, Name, SSN, Losing 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 administratively assigned to AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236. 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 all base out processing and personnel actions through the local Force Support Squadron; upon approval of appellate leave package by AFSFC/FCI you will receive an Air Force Form 899 Request and Authorization for Permanent Change of Station and Air Force Form 988 Leave Request Authorization indicating your departure date and your appellate review leave start date.

3. You are required to complete the 3d 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 AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236.

4. (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 permitted you to ask any questions you had in this regard.

(Name, Rank, USAF)
(Commander)(Title of Representative)

3d Ind (Rank, Name, SSN, Losing Unit of Accused)

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 2nd Indorsement, is as follows:

(Street Address)  ______________________________
(City, State)  ______________________________
(Zip code)  ______________________________
(Phone number)  ______________________________
(E-mail address)  ______________________________

I also understand that my appellate defense counsel also requests that I provide a long term alternative address and phone number of a relative or other person to contact if I cannot be reached at the above address. That address, the provision of which is optional, is:

(Street Address)  ______________________________
Finally, I understand it is critical that I keep my appellate defense counsel informed of my current address.

(Name, Rank, USAF)
Accused

cc:
AFLOA/JAIM
AFLOA/JAJA
HQ AFSFC/FC
Losing Unit/CC
Losing FSS/CC
Losing Unit /JA
Gaining Unit/CC
Gaining FSS/CC
Gaining Unit/JA
DNA PROCESSING REQUIRED. 10 U.S.C. § 1565

General Court-Martial Order No. 3, 13 September 2015, was the last General Court-Martial Order of this headquarters published in Fiscal Year 15.

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 2015

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.


Specification: Did, on or about 24 June 2015, 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 2015. Plea: NG. Finding: NG, but G of absence without authority from his unit, from 24 June 2015 to 25 July 2015, 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 2015, 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 2015, 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: NG, but G, of the LIO of wrongful appropriation, excepting the word "steal," and substituting therefore the words "wrongfully appropriate."
SENTENCE

Sentence adjudged by officer members on 10 September 2015: 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, General Court-Martial Order No. 1, HQ 9 AF, Shaw AFB, SC, 18 October 2015.

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 2016, 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 directed by Air Force Security Forces Center, Confinement and Corrections Directorate. 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

FOR THE COMMANDER

ANN D. JONES, SMSgt, USAF
Paralegal Manager

DISTRIBUTION:

GCMO No. 1 Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)
Figure A9.2. Sample Court-Martial Order - Amended Specification.

DNA PROCESSING REQUIRED. 10 U.S.C. § 1565

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 2016

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.


Specification: Did, at Davis-Monthan Air Force Base, Arizona, on or about 4 August 2014, 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 officer and enlisted members on 6 December 2015: Dishonorable discharge, confinement for 25 years, forfeiture of all pay and allowances, and reduction to airmman 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 airmman 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 directed by Air Force Security Forces Center, Confinement and Corrections Directorate. 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. JONES, SMSgt, USAF
Paralegal Manager

DISTRIBUTION:

GCMO No. 10

Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

Figure A9.3. Sample Court-Martial Order - Change of Pleas.

DNA PROCESSING REQUIRED. 10 U.S.C. § 1565

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 35TH FIGHTER WING (PACAF)
APO AP 96319-5000

Special Court-Martial Order
No. 5

29 December 2015

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 2015, 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 2015, 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 2015, willfully destroy the Misawa AB Noncommissioned Officer 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 2015: 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. SPCMO No.5, HQ 35 FW, APO, AP, 29 December 2015.

s/Joseph T. Jones
JOSEPH T. JONES, Colonel, USAF
Commander

FOR THE COMMANDER

JOHNATHAN J. SMITH, Lt Col, USAF
Staff Judge Advocate

DISTRIBUTION:
Figure A9.4. Sample Court-Martial Order - Corrected Copy.

DNA PROCESSING REQUIRED. 10 U.S.C. § 1565

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 2016

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.


Specification: Did, in the continental United States, on divers occasions, between on or about 15 June 2004 and 15 July 2015, commit indecent acts upon the body of a female under 16 years of age. Plea: None Entered. Finding: Withdrawn and dismissed 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 2013 to on or about 10 June 2014, commit the offense of carnal knowledge with LJK. Plea: NG. Finding: G.


Specification: Did, at or near Ellsworth Air Force Base, South Dakota, on or about 16 March 2015, wrongfully use marijuana. Plea: NG. Finding: Withdrawn after defense motion to suppress evidence.

SENTENCE

Sentence adjudged by military judge on 31 August 2015: 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 directed by Air Force Security Forces Center, Confinement and Corrections Directorate. 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

DISTRIBUTION:

GCMO No. 3  Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)
GENERAL COURT-MARTIAL ORDER

No. 23

3 June 2015

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, 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 2013. 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 2015 (ACM 38240). The affirmed findings of the former proceedings are as follows:


Specification 1: Did, on or about 25 February 2013, at or near Belleville, Illinois, attempt to wrongfully distribute lysergic acid diethylamide. Plea: G. Finding: G.

Specification 2: Did, on or about 25 February 2013, at or near Belleville, Illinois, attempt to wrongfully use a substance she intended and believed to be lysergic acid diethylamide. Plea: G. Finding: G.


Specification: Did, on or about 25 February 2013, at or near Belleville, Illinois, wrongfully distribute 50 grams, more or less, of cocaine. Plea: G. Finding: G.

SENTENCE

Sentence adjudged by military judge, upon a rehearing, on 1 April 2015: 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 2013 to 31 March 2015, 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 directed by Air Force Security Forces Center, Confinement and Corrections Directorate. Unless competent authority otherwise directs, upon completion of the sentence to confinement AIRMAN BASIC 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

DISTRIBUTION:

GCMO No. 23  
Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

Figure A9.6. Sample Court-Martial Order - Acquittal of all charges.  
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 2017

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: NG. Finding: NG.

Specification: Did, at or near Davis-Monthan Air Force Base, Arizona, on or about 4 August 2015, 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: NG. Finding: NG.

SENTENCE

The findings were announced by officer and enlisted members on 6 December 2016.

ANN D. JONES, SMSgt, USAF  
Paralegal Manager

DISTRIBUTION:
In the special court-martial case of SENIOR AIRMAN WALTER F. DUNE, 111-22-3333, United States Air Force, 18th Maintenance Squadron, the accused having withdrawn his rights to appellate review under Article 61, and review under Rule for Courts-Martial 1112 having been completed, the sentence to bad conduct discharge, confinement for 3 months, forfeiture of $250.00 per month for 8 months, and reduction to airman basic, as promulgated in Special Court-Martial Order No. 2, Headquarters 18th Wing (PACAF), dated 5 November 2015, 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 February 2016. The sentence was adjudged by military judge on 12 September 2015 (ACM S30049).

W. E. SMITH
Lieutenant General, USAF
Commander

DISTRIBUTION:

SPCMO No. 7

Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

Figure A9.8. Sample Court-Martial Order - Final Supplementary Order and 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 12 January 2017
No. ____

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 [entire adjudged sentence] 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 _______).

(signature)
BRUCE M. STRONG
Lieutenant General, USAF
Commander

DISTRIBUTION:

(GCMO.___) (SPCMO.___) Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

Figure A9.9. Sample Court-Martial Order - New Action.

DNA PROCESSING REQUIRED. 10 U.S.C. § 1565

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS THIRD AIR FORCE (USAFE)
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 2015 to 29 September 2015 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 2015: 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 (higher headquarters)(The Judge Advocate General)(Air Force Court of Criminal Appeals)(Court of Appeals for the Armed Forces) with directions that a new action be accomplished, the action taken by (me) (my predecessor) on 23 January 2016 is withdrawn, and General Court-Martial Order Number 17, Headquarters Third Air Force (USAFE), dated 23 January 2016, 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

DISTRIBUTION:

GCMO No. 5  Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)
Attachment 10

TEMPLATES AND SAMPLES FOR APPEALS, EXCESS LEAVE, POST-TRIAL
HEARINGS, AND RELATED MATTERS

Figure A10.1. Template Request for Relief by Accused (Article 69, UCMJ).

(SUMMARY) (SPECIAL) (GENERAL) COURT-MARTIAL
UNITED STATES ) [Application for Relief Under Article 69(b),
   v. ) UCMJ] or [Matter for Consideration on
     ) Examination under Article 69(a), UCMJ]

[RANK AND NAME OF ACCUSED] ) [Date]

TO: The Judge Advocate General, United States Air Force

The following information is provided under AFI 51-201, paragraph 10.7:

1. The accused’s name, service number and present mailing address: (Rank 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, Rank, USAF
(Defense Counsel) (Accused)

Subscribed and sworn to before me this __ day of __________, 20__.
Judge Advocate or Notary Public

Figure A10.2. Sample Notification to Accused of End of Involuntary Excess Leave.

(Date)

MEMORANDUM FOR (Accused)

FROM: Headquarters 11 WG/CC
    (Address)
SUBJECT: Required Excess Leave for (accused)

1. On 15 May 2013, 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), UCMJ. On 6 July 2015, 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].

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, Joint Base Andrews Naval Air Facility Washington.

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), UCMJ (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]

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 Force Support Flight at Joint Base Andrews on (date). If you have any questions, contact 11 FSS/DPM, at (phone number).

Convening authority signs

Figure A10.3. Template Convening Authority’s Decision to Direct Limited Hearing.

(MEMORANDUM FOR  (Judge Advocate Office)

FROM:  (Convening Authority)

SUBJECT:  Hearing - United States v. (Rank 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 States Court of Appeals for the Armed Forces’) (The Judge Advocate General’s) decision.

(NAME)
(Rank), USAF
Commander

Attachment:
(Decision)
MEMORANDUM FOR AF TRIAL JUDICIARY

FROM: (Convening Authority)

SUBJECT: DuBay Hearing - United States v. (Rank 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 (United States Court of Appeals for the Armed Forces)(Air Force Court of Criminal Appeals) 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 Court-Martial Report 411 (United States Court of Military Appeals 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: (Rank and Name)
   b. Military Defense Counsel: (Rank and Name)

   (NAME)
   (Rank), USAF
   Commander

2 Attachments:
1. Record of Trial w/Attachments, United States v. (Name of Accused)
2. (United States Court of Appeals for the Armed Forces)(Air Force Court of Criminal Appeals) Opinion
## Figure A11.1. Responsibilities.

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Responsible Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Component Responsible Official, USAF</td>
<td>The Judge Advocate General</td>
</tr>
<tr>
<td>Local Responsible Official</td>
<td>Installation Commander or Special Court-Martial Convening Authority; (may delegate responsibilities to Staff Judge Advocate or VWAP Coordinator)</td>
</tr>
<tr>
<td>Develop training syllabus</td>
<td>Judge Advocate, Security Forces, Air Force Office of Special Investigations, SG, Sexual Assault Response Coordinator, FAP</td>
</tr>
<tr>
<td>Accomplish training</td>
<td>Judge Advocate, Security Forces, Air Force Office of Special Investigations, SG, Airman and Family Readiness Center, Installation Chaplain, Sexual Assault Response Coordinator, FAP</td>
</tr>
<tr>
<td>Prepare notice forms</td>
<td>Judge Advocate</td>
</tr>
<tr>
<td>Identify victims</td>
<td>Security Forces, Air Force Office of Special Investigations, Judge Advocate, Commanders, Sexual Assault Response Coordinator, FAP, First Sergeants, Airman and Family Readiness Center, SG, Installation Chaplain</td>
</tr>
<tr>
<td>Notify victims of rights/services</td>
<td>Security Forces, Air Force Office of Special Investigations, Judge Advocate, Sexual Assault Response Coordinator, FAP, SG, Airman and Family Readiness Center</td>
</tr>
<tr>
<td>Notify victims of state crime victims’ funds</td>
<td>Judge Advocate</td>
</tr>
<tr>
<td>Coordinate/deliver services</td>
<td>Airman and Family Readiness Center, SG, Sexual Assault Response Coordinator, FAP, other base agencies</td>
</tr>
</tbody>
</table>
Figure A11.2. Template Notice of Proceedings.

(Date)

MEMORANDUM FOR (Rank and Name of SVC or Victim’s Counsel)

FROM: (Judge Advocate Office and Rank and Name of Legal Office Member sending Notification)

SUBJECT: Notice of Proceeding – (Rank and Name of Accused)

1. We have received notice that you represent (Rank and Name of Victim), the alleged victim in case of United States v. (Rank and Name of Accused).

2. Please be advised a (Seven Day Hearing) (Article 32 Preliminary Hearing) (Court-Martial) (A proceeding of the Air Force clemency) has been scheduled for [INSERT DATE AND TIME OF HEARING] at the following location: [INSERT DATE AND TIME OF HEARING]. Please contact AFLOA/JAJR at (240) 612-4841 regarding receiving notices for any proceedings related to the accused’s parole board relating to the offense(s).

3. If you have any questions please contact [INSERT NAME AND CONTACT INFORMATION OF POC].
Figure A11.3. Victim Request for Record of Trial and Appellate SVC Representation.

<table>
<thead>
<tr>
<th>VICTIM ELECTIONS FOR RECEIPT OF RECORD OF TRIAL AND REPRESENTATION DURING APPELLATE REVIEW</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNITED STATES v. ___________________________</td>
</tr>
</tbody>
</table>

Privacy Act Statement

AUTHORITY: 10 U.S.C. 806b (Article 6b, UCMJ), Rights of a Victim of an Offense; 10 U.S.C. 854 (Article 54, UCMJ), Record of Trial; 10 U.S.C. 1044e, Special Victims’ Counsel for Victims of Sex-Related Offenses; Rule for Court-Martial (R.C.M.) 1103, Preparation of Record of Trial

PURPOSE: Information is collected to document your preferences with regards to (1) receiving a copy of the record of trial in the court-martial in which you were identified as a victim of a sex related offense, and (2) being represented by Special Victims Counsel during the appellate review process.

ROUTINE USE: Information may be disclosed for any of the DoD Blanket Routine Uses.

DISCLOSURES: Voluntary, however, failure to provide the information may result in our inability to provide you with a copy of the record of trial or representation during appellate review.

### VICTIM INFORMATION

<table>
<thead>
<tr>
<th>NAME</th>
<th>TELEPHONE NUMBER (Optional)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Last</td>
<td>First</td>
</tr>
</tbody>
</table>

### MAILING ADDRESS

| Street | Suite | Zip |

### RECEIPT OF RECORD OF TRIAL

In accordance with 10 U.S.C. 854 and R.C.M. 1103, you are entitled to receive a copy of the record of trial in the above-captioned court-martial. After carefully reviewing the options below, please annotate your elections by marking the appropriate boxes.

- [ ] I request a copy of the Record of Trial in this case. I desire that the record be provided to the mailing address annotated above in the following format (choose one): [ ] Hard Copy  [ ] Electronic
  - Please select one of the following options on when to receive a copy of the record of trial:
    - [ ] Please provide a copy of the record as soon as it is authenticated.
    - [ ] Please provide a copy of the record when action is taken in this case.

- [ ] I do not request a copy of the Record of Trial in this case

### REPRESENTATION DURING APPELLATE REVIEW

In accordance with 10 U.S.C. 1044e, you are entitled to legal representation by a Special Victims’ Counsel in matters related to the above-captioned court-martial, including (if desired) representation during the appellate review process. After carefully reviewing the options below, please annotate your elections by marking the appropriate box:

- [ ] I request Special Victims’ Counsel representation during the appellate review process and request that the Air Force Special Victims’ Counsel Division (AFLOA/CLSV) be informed of any appellate proceedings or hearings in this case.

- [ ] I do not request Special Victims’ Counsel representation during the appellate review process at this time.

I certify that the information annotated above is correct to the best of knowledge, and I consent to the official release of this information to the extent such release is necessary to satisfy my elections.

| SIGNATURE | DATE |
Attachment 12

MISCELLANEOUS TEMPLATES

Figure A12.1. Template Delegation of Military Justice Administrative Duties.

(date)

MEMORANDUM FOR (Judge Advocate Office)

FROM: (Convening Authority)

SUBJECT: Delegation of Military Justice Administrative Duties

The Staff Judge Advocate, Deputy 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 person acting as the Staff Judge Advocate is delegated the authority to detail personnel to take depositions under Article 49, UCMJ (UCMJ), and to detail counsel to represent the United States at preliminary hearings convened under Article 32, UCMJ.

(NAME), (Rank), USAF
Convening Authority

Figure A12.2. Template Notification of DNA Processing Responsibilities.

(Date)

MEMORANDUM FOR (UNIT CC)

FROM: (Judge Advocate Office)

SUBJECT: Notification of DNA Processing Responsibilities

1. In accordance with 10 U.S.C. § 1565, 42 U.S.C. § 14135a, 28 C.F.R. § 28.12, and DoD Instruction 5505.14, *Deoxyribonucleic Acid Collection Requirement for Criminal Investigations, Corrections, and Commanders*, a DNA sample must be collected from (Rank/Full Name of Member). DNA collection is required because [(charges were preferred for a qualifying offense) (a 72-hour commander’s memorandum has approved continued pretrial confinement based on the alleged commission of a qualifying offense)(the accused was convicted by general or special
2. As this member’s immediate commander, you must:

   a. You must coordinate with the investigative agency (Air Force Office of Special Investigations or Security Forces investigations) to accomplish the appropriate collection procedures. Obtain a DNA collection kit from [(Security Forces) (the Air Force Office of Special Investigations)(the Air Force Correctional Facility at ________ AFB)(a facility designated by AFSCFC/FC to maintain such kits, by calling Defense Switch Network 945-5608 or (210) 925-5608)].

   b. Ensure a DNA sample is obtained using the U.S. Army Criminal Investigative Laboratory DNA collection kit and instructions contained therein. Utilize local Security Forces personnel and local medical personnel (as necessary), to process the collection of the DNA sample. This includes requesting local Security Forces personnel assistance in completing pertinent items on the U.S. Army Criminal Investigation Laboratory collection card and mailing the sample to the U.S. Army Criminal Investigation Laboratory.

   c. When the DNA sample is collected, ensure the member is provided with the Privacy Act statement and the notice of rights for requesting expungement that are included in the kit.

   d. Ensure the required DNA sample is collected and mailed to the U.S. Army Criminal Investigation Laboratory before the member is permitted to begin excess appellate leave or before the member is administratively discharged from the Air Force. DNA samples cannot be collected from members who are no longer subject to military jurisdiction. 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 location. 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.

   e. Notify my office of the date the DNA sample for the above member was sent to the U.S. Army Criminal Investigation Laboratory 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_________________).

   f. If more than 90 days is required to obtain the sample, please advise.

3. If you have any questions regarding the foregoing, contact (Rank and Name) at (XXX) XXX-XXXX (Commercial) or Defense Switch Network XXX-XXXX.

   (NAME), (Rank), USAF
   Staff Judge Advocate
MEMORANDUM FOR (Judge Advocate Office)

In accordance with the above notification, [(a DNA sample was obtained from (Rank)(Name of Accused) and sent to the U.S. Army Criminal Investigation Laboratory for processing on (Date)) (a DNA sample could not be obtained from (Rank)(Name of Accused) for the following reason: ______________________________)].

(NAME), (Rank), USAF
Commander