



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

AFMAN51-203\_AFGM2016-01  
3 AUGUST 2016

MEMORANDUM FOR DISTRIBUTION C  
MAJCOMs/FOAs/DRUs

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

SUBJECT: Air Force Guidance Memorandum 2016-01 to AFMAN 51-203, *Records of Trial*

By Order of the Secretary of the Air Force, this is an Air Force Guidance Memorandum immediately changing AFMAN 51-203, *Records of Trial*. Compliance with this Memorandum is mandatory. To the extent its directions are inconsistent with other Air Force publications, the information herein prevails, in accordance with AFI 33-360, *Publications and Forms Management*.

Current guidance in AFMAN 51-203 remains in effect with the following changes:

**Replace Chapter 16 in its entirety with the following:**

## Chapter 16

### DUTIES AND RESPONSIBILITIES OF THE COURT REPORTER

**16.1. Generally.** The primary duty of the court reporter is to record verbatim all sessions of any proceeding to which he or she is assigned, to travel in support of any judicial and administrative proceedings, and to accurately transcribe and, with the coordination/assistance of the case trial paralegal, assemble Records of Trial (ROT); Article 32, UCMJ; preliminary hearings; *DuBay* hearings; contingency confinement hearings; proceedings in revision; courts of inquiry; and other proceedings as required. The SJA will detail a court reporter in all GCMs and SPCMs. **(T-0).**

**16.2. Definitions.** Court Reporters are defined as follows:

16.2.1. Civilian Court Reporters. A civilian court reporter is an individual who has obtained sufficient knowledge, education, experience, or technical training as determined by the hiring base's civilian personnel office. Civilian court reporters are directly supervised at wing level, but may be assigned travel and transcription assignments as needed when their approved docketing calendar indicates they have time available.

16.2.2. Enlisted Court Reporters. An enlisted court reporter is an internal, special duty military paralegal that performs nearly the same duties as a civilian court reporter, but does so under the guidance and direction of AF/JAT. Enlisted court reporters are the primary court reporters to travel to the AOR for courts and hearings. Enlisted court reporters are centrally managed and supervised by AF/JAT.

**16.3. Neutrality of the Court Reporter.** The court reporter is to remain neutral in any proceedings to which assigned. The court reporter should refrain from expressing personal opinions about the case before, during, or after trial. Counsel should provide court reporters a list of witnesses and a list of exhibits before trial. Court reporters must not share information received from one party to another party in any proceeding to which the reporter is assigned. **(T-3)**. This includes witness lists and exhibit lists provided to the reporter in advance of trial to assist in the reporter's preparation.

#### **16.4. Judicial and Administrative Proceedings.**

16.4.1. Administrative Proceedings. Court reporters may be assigned to record or transcribe the following proceedings: Administrative Discharge Boards, Flying Evaluation Boards, Medical Evaluation Boards, Command Directed Investigations, Accident Investigation Boards, Safety Investigation Boards, Board of Inquiries, and all other similar proceedings.

16.4.2. Other Proceedings Under the Manual for Courts-Martial (MCM). Court reporters may be assigned to record and transcribe depositions, Article 32, UCMJ, preliminary hearings, *DuBay* hearings, contingency confinement hearings, and courts of inquiry. The following guidance is provided for these proceedings.

##### 16.4.2.1. Depositions.

16.4.2.1.1. Recording and Transcribing a Deposition. A court reporter appointed for a deposition will record and transcribe the deposition verbatim. **(T-1)**. The court reporter will note the opening and closing times and dates as well as the times and dates of any recesses or adjournments. **(T-1)**. The format for transcribing depositions is found in AFI 51-201, Figure 4.4. Depositions may be recorded on digital media, audiotape, or videotape. *See* R.C.M. 702(g)(3).

16.4.2.1.2. Authenticating a Deposition. The deposed witness need not sign the deposition. In accordance with R.C.M. 702(f), the deposition officer will authenticate the deposition and the court reporter will attest to it. **(T-0)**. AFI 51-201, Figure 4.5 provides a format for the authentication and court reporter's certificate.

16.4.2.1.3. Written Interrogatories. Depositions taken on written interrogatories are recorded and authenticated in the manner provided by DD Form 456, Interrogatories and Depositions.

16.4.2.1.4. Deposition Exhibits. The court reporter will mark deposition exhibits in the lower right corner of the exhibit using Arabic numerals (*e.g.*, as "Deposition Exhibit 1, 2, etc."). **(T-1)**.

##### 16.4.2.2. Article 32, UCMJ, Preliminary Hearings.

16.4.2.2.1. Recording a Preliminary Hearing. Court reporters may be assigned to record testimony in Article 32, UCMJ, Preliminary Hearings. The Government Counsel shall ensure the preliminary hearing is recorded utilizing a suitable recording device. **(T-0)**. Court reporters will assist government counsel in ensuring the hearing is properly recorded. **(T-1)**.

16.4.2.2.2. Additional Guidance. Court reporters may find more specific guidance for preliminary hearings in AFI 51-201, Section 4A, as well the Preliminary Hearing Officer Guide, Section 8, published by AFLOA/JAJM. Figure 16.3 contains a suggested format for summarized testimony.

16.4.2.3. *DuBay* Hearings. *DuBay* hearings are post-trial sessions ordered by an appellate court to find facts to assist the review of the case. For more specific guidance on conducting these hearings, reference AFI 51-201, para 11.15.

16.4.2.3.1. Recording a *DuBay* Hearing. The court reporter will record these proceedings verbatim unless otherwise directed. **(T-1)**.

16.4.2.3.2. Transcribing a *DuBay* Hearing. In transcribing the proceedings, the court reporter will use the same format used for courts-martial. **(T-1)**. The court reporter will mark exhibits in the lower right corner of the exhibit using Arabic numerals (*e.g.*, as “Hearing Exhibit 1, 2, etc.”).

16.4.2.3.3. Authenticating a *DuBay* Hearing Transcript. The military judge will authenticate the transcript for a *DuBay* hearing. **(T-0)**.

16.4.2.3.4. Using Contents of the ROT in the *DuBay* Hearing. If documents are removed from the ROT and used in the hearing, the court reporter will place a blank sheet of paper in the ROT where the document was located and annotate where the document where the document has been relocated. **(T-1)**.

16.4.2.4. Contingency Confinement Hearings. AFI 51-201, paragraph 9.34, sets forth the procedures for hearings to impose conditional confinement adjudged for failing to pay a fine.

16.4.2.4.1. Transcribing a Contingency Confinement Hearing. The proceedings may be summarized unless the convening authority directs a verbatim transcript. The court reporter will transcribe the military judge’s statement of evidence and findings verbatim if done on the record. **(T-1)**. If the military judge completes a written statement of evidence and findings, the court reporter will attach the statement to the record as a hearing exhibit. **(T-1)**. The format for the transcript is the same as for courts-martial.

16.4.2.4.2. Exhibits in a Contingency Confinement Hearing. The court reporter will mark exhibits in the lower right corner of the exhibit using Arabic numerals (*e.g.*, “Hearing Exhibit 1, 2, etc.”). **(T-1)**. The court reporter will prepare and attach to the record a cover page similar to the front cover of the DD Form 490, *Record of Trial*, and an index of testimony and exhibits. **(T-1)**.

16.4.2.4.3. Authenticating a Contingency Confinement Hearing Transcript. The court reporter will prepare an authentication sheet for the military judge similar to the authentication sheet used in ROTs, substituting “Contingency Confinement Hearing” for “Record of Trial.” (T-1). Once authenticated, the court reporter will include the authentication sheet in the record of trial. (T-1).

16.4.2.5. Courts of Inquiry. AFI 51-201, paragraph 4.2 and Article 135, UCMJ, discuss the requirements for courts of inquiry. The parties to a court of inquiry are the members (the senior member is the president), counsel for the court is the legal advisor, the “known party” (referred to as the respondent), the known party’s counsel (referred to as respondent’s counsel), and the government representative (referred to as the recorder).

16.4.2.5.1. Transcribing a Court of Inquiry. The court reporter will prepare a verbatim transcript of the proceedings for the president of the court of inquiry and the legal advisor for the court to authenticate. (T-0).

16.4.2.5.2. Exhibits. The court reporter will mark exhibits in the lower right corner. (T-1). Exhibits offered by the court are marked using Roman numerals (*e.g.*, “Court Exhibit I, II, etc.”). Exhibits offered by the respondent are marked alphabetically (*e.g.*, “Respondent’s Exhibit A, B, etc.”). The court reporter will prepare and attach to the record a cover sheet similar to the DD Form 490 as well as an index and list of exhibits. (T-1).

**16.5. Court Reporter Recesses.** The court reporter should inform the military judge if feeling ill or fatigued so either a recess or a replacement court reporter, as appropriate, may be arranged.

**16.6. Interruption of Proceedings.** When anything interferes with the court reporter’s ability to record the proceeding verbatim (*e.g.* the court reporter is unable to hear the person speaking or the recording equipment is malfunctioning), the reporter must bring this to the attention of the military judge immediately. (T-1). The court reporter must check the equipment periodically to ensure it is functioning properly. (T-1).

**16.7. Court-Martial Exhibits.** Court reporters should ensure that they have all of the exhibits at the close of each hearing and trial session. Court reporters who are providing TDY support will not travel back to their home station with any original trial exhibits. (T-1). Reporters are permitted to travel to their home station with copies of exhibits if necessary, provided they abide by applicable privacy and security guidelines.

**16.8. Court Reporter Checklist.** Court reporters should use a checklist to ensure all tasks are completed. Figure 16.1 contains a sample checklist.

**16.9. Court Reporter Attestation.** The court reporter who recorded the proceeding is ultimately responsible for attesting to the quality, authenticity of the transcript, and method used to transcribe the proceeding. Even when the record is transcribed by another court reporter, the assigned court reporter will review the record for accuracy and sign an attestation to be inserted in the record after the court reporter chronology. (T-1). A sample attestation is included at Figure 16.2.

**16.10. Methods of Reporting.**

16.10.1. Requirement for Digital Recording. Digital recording is as the primary method of recording. Court reporters will accomplish digital recording by using the latest software approved by AF/JAT. The use of cassette recording is prohibited except in cases of emergency when digital means of recording are unavailable.

#### 16.10.1.1. Recording Software.

16.10.1.1.1. Standardizing the software and methods used to record court and board proceedings across the Air Force ensures audio is easily transferrable to any Air Force or sister service court reporter at any base or post for transcription assistance. Additionally, using voice recognition redictation enhances the court reporter's ability to produce transcripts quicker without compromising accuracy.

16.10.1.1.2. The software that is currently approved for use by AF/JAT is For the Record Gold (FTR) and Dragon Naturally Speaking (DNS); however, AF/JAT may mandate use of new court-reporting software when purchased and provided for use. AF/JAT will notify court reporters of any software updates or centrally purchased equipment. Court reporters may not use software that has not been approved for use by AF/JAT in performing their official duties.

16.10.1.2. Open Microphone or Stenomask. Court reporters are authorized to use open microphone recording or the stenomask (closed microphone) as a method to document the proceedings. Court reporters using the stenomask must do so using the FTR software or replacement technology, and in conjunction with normal open microphone recording procedures. Court reporters may use the stenomask with real-time computer aided transcription while in court, provided that such use is accomplished in conjunction with normal open microphone recording procedures to include recording the proceeding verbatim with FTR or replacement technology.

16.10.1.2.1. Open Microphone Procedures. Court reporters recording proceedings using the open microphone method of reporting must adhere to the following procedures in addition to the requirements included elsewhere in this manual:

16.10.1.2.1.1. Monitor the recording at all times by using the headset to ensure the proceeding is being recorded verbatim. **(T-1)**. If there is noise that prevents the reporter from hearing what is on the recording or a person is not speaking loudly enough for the recording equipment to pick up what is being said, interrupt the proceedings to inform the military judge of the problem immediately. **(T-1)**. This procedure ensures that a clear and intelligible recording is made of everything being said.

16.10.1.2.1.2. Use authorized note taking tools when available, to generate detailed notes of what transpires during the course of the trial. **(T-1)**. The Log Notes program allows the court reporter to automatically time-stamp and link the audio which allows for easy play back. Make a note of any gestures made by counsel or a witness whether or not described on the record. **(T-1)**. Also note case cites and terms with which the reporter is not familiar, and clarify during a recess or after court. **(T-1)**.

16.10.1.2.1.3. Annotate all openings and closings of court-martial sessions on the record with dates and times. **(T-0)**.

16.10.1.2.1.4. A suggested list of notable entries is listed below; however, it is not all-inclusive:

16.10.1.2.1.4.1. The detailing of counsel and counsel qualifications;

16.10.1.2.1.4.2. The detailing of military judge;

16.10.1.2.1.4.3. Rights to counsel explained to the accused;

16.10.1.2.1.4.4. Nature of the charges;

16.10.1.2.1.4.5. Opportunity to challenge military judge;

16.10.1.2.1.4.6. Explanation of choice of forum to accused;

16.10.1.2.1.4.7. Arraignment;

16.10.1.2.1.4.8. Motions;

16.10.1.2.1.4.9. Pleas;

16.10.1.2.1.4.10. Explanation of guilty plea;

16.10.1.2.1.4.11. Maximum punishment authorized;

16.10.1.2.1.4.12. Elements of the offense;

16.10.1.2.1.4.13. *Care* inquiry;

16.10.1.2.1.4.14. Pretrial agreement, if any;

16.10.1.2.1.4.15. Announcement of findings;

16.10.1.2.1.4.16. Members called;

16.10.1.2.1.4.17. Swearing in of court members;

16.10.1.2.1.4.18. Assembly of court-martial;

16.10.1.2.1.4.19. Preliminary instructions to members;

16.10.1.2.1.4.20. Voir dire, en banc and individual;

16.10.1.2.1.4.21. Challenges;

16.10.1.2.1.4.22. Members informed of accused's pleas;

16.10.1.2.1.4.23. Distribution of charges to the members;

16.10.1.2.1.4.24. Opening statements;

- 16.10.1.2.1.4.25. The calling of each witness and direct and cross-examination, any obligations and rulings, and excusal of each witness;
- 16.10.1.2.1.4.26. Any documentary or physical evidence introduced, objections, rulings, and place where admitted or rejected;
- 16.10.1.2.1.4.27. Resting of case by either side, rebuttal, and surrebuttal;
- 16.10.1.2.1.4.28. Rights in extenuation, mitigation, and right to make a statement;
- 16.10.1.2.1.4.29. Arguments on findings/sentence;
- 16.10.1.2.1.4.30. Instructions on findings/sentence;
- 16.10.1.2.1.4.31. Announcement of findings/sentence;
- 16.10.1.2.1.4.32. Personal data on accused introduced;
- 16.10.1.2.1.4.33. Sentence limitations contained in pretrial agreement;
- 16.10.1.2.1.4.34. Post-trial and appellate rights advisement;
- 16.10.1.2.1.4.35. Adjournment; and
- 16.10.1.2.1.4.36. Privileged evidence, testimony or arguments that are required to be sealed by the military judge.

16.10.1.2.2. Additional Note Requirements when Requesting Transcription Assistance. When any audio recording is sent for transcription assistance, the court reporter recording the proceeding must include notes annotating when a speaker changes as well as any and all notable gestures by the parties. **(T-3)**. These notes ensure the transcribing court reporter or court reporters not present during the proceeding are able to quickly and accurately identify the current speaker.

16.10.2. Requirement for Backup Reporting Method. Court reporters must use both a primary and backup system to ensure a record can be accurately prepared. **(T-1)**. The recommended backup method is to attach a separate digital hand-held recorder to the “monitor all” jack on the back of the DMX-8 USB Mixer. This method requires the court reporter to not only consistently monitor the battery life on the digital hand-held recorder, but also press “record” or “stop” on the digital hand-held recorder to ensure proper and continued operation. In addition, a special audio cord, a 3.5mm double ended cord, is needed to be placed in the “mono” jack of the recorder. Failure to comply will result in the backup system not recording the audio.

**16.11. Time Goals.** The time required to transcribe a record varies depending on a number of factors, such as the complexity of the case, the effectiveness of the court reporter’s equipment, the quality of the court reporter’s notes taken during trial, and the court reporter’s familiarity with the equipment and software. As a general guideline, one hour of in-court proceedings should take no more than five hours to transcribe and, in more complex cases, no more than

seven hours to transcribe. AF/JAT should suspend transcription assistance as follows: one hour of audio should be allocated one duty day to transcribe. In calculating in-court time, For the Record (FTR) Gold is capable of indicating the exact length of audio recorded each day.

**16.12. Safeguarding Recordings and Evidence.** The court reporter must safeguard their laptop and evidence during recesses and while preparing the record of trial. **(T-1)**. If a recording or evidence is lost, a verbatim transcript may not be able to be prepared, which may result in the convening authority being unable to approve the findings or the adjudged sentence. *See* R.C.M. 1103(f). During recesses and overnight adjournments, court reporters should keep all recordings, transcriptions, and evidence provided to them in a locked drawer or cabinet when not under their direct observation. Court reporters should follow these security measures while preparing the ROT and continue until receiving an authenticated ROT. If a recording, transcription, or evidence becomes lost or missing, the court reporter will immediately notify the military judge, trial counsel, or SJA. **(T-1)**.

**16.13. Retention of Trial Notes or Recordings.** Court reporters will retain all reporter's notes, worksheets, relevant materials, copies of audio and videotapes, and recordings of the original proceedings subject to the Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS) and the rules described below. **(T-0)**. Court reporters will annotate these materials with the accused's name, date of trial, and other pertinent data. **(T-1)**. Following the disposition rules ensures records are not needlessly retained past their disposition date.

16.13.1. Preliminary Hearings under Article 32, UCMJ. In cases where a preliminary hearing under Article 32, UCMJ, was held, but charges were not referred to court-martial, the court reporter's recordings and notes may be destroyed on the date of dismissal. *See* RDS, Table 51-03, Rule 36.00. However, R.C.M. 405 and AFI 51-201 require that a copy of the recording of the preliminary hearing be provided to the Defense Counsel and, upon request, to the victim (if applicable) as soon as practicable following the hearing. In a case involving named victims, the court reporter will consult with trial counsel prior to destroying any recording of a preliminary hearing. **(T-0)**.

16.13.2. Court-Martial Acquittal. In cases where the court-martial results in full acquittal, the court reporter's recordings and notes may be destroyed on the date of final action or publication of the court-martial order. *See* RDS, Table 51-03, Rule 36.00.

16.13.3. Special Court-Martial Conviction without a Punitive Discharge. In cases where a special court-martial resulted in conviction for some offense, but a punitive discharge was not adjudged, the court reporter's recordings and notes may be destroyed six months after the date the sentence is announced in a case. *See* RDS, Table 51-03, Rule 34.00.

16.13.4. General Court-Martial Conviction or Special Court-Martial Conviction with a Punitive Discharge. In cases where (1) a general court-martial resulted in conviction for some offense, or (2) where a special court-martial resulted in conviction for some offense AND a punitive discharge was adjudged, the court reporter's recordings and notes may be destroyed one year after the date of the date the sentence is announced in a case or 60 days after the conclusion of appellate review, whichever is later. *See* RDS, Table 51-03, Rule 35.00.

16.13.5. If a court reporter's recordings or notes are requested under the Freedom of Information Act (FOIA), DOD 5400.7-R\_AFMAN 33-302, *Freedom of Information Act Program*, requires that the records be retained pending a decision whether to release the records by a competent release authority. If release of the records is denied in whole or in part, DOD 5400.7-R\_AFMAN 33-302 also requires that the requested be retained for six years after the date of denial to meet the statute of limitations requirement. See DOD 5400.7-R\_AFMAN 33-302, para. C5.2.9. This rule takes precedence over any of the above disposition rules. This rule applies even if, prior to receiving the FOIA request, the requested record could have been destroyed under one of the above disposition rules. A court reporter will consult with the SJA prior to destroying any recording or related record that has been requested under the FOIA. (T-0).

**16.14. WebDocs.** Upon authentication, court reporters will upload the ROT transcript and authentication sheet to WebDocs. (T-1). The court reporter may not upload sealed portions of a transcript to WebDocs. (T-1). Where a transcript contains sealed portions, the court reporter will insert cross-reference sheets annotating those sealed portions. (T-1).

**16.15. Centralized Court Reporter Management and Court Reporter Travel and Transcription Assistance.** Effective 17 February 2016, as directed by TJAG, the Air Force Trial Judiciary (AF/JAT) became 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 TDY support. AF/JAT has direct interaction with the wing, NAF, and MAJCOM personnel in the scheduling of each court reporter. Effective upon completion of all required union notifications, and in accordance with the Position Descriptions (PDs) that require travel as part of a court reporter's duties, the AF/JAT management authority will include authority to task court reporters for travel.

16.15.1. Decision Authority. The Chief Trial Judge is responsible for all policies pertaining to court reporters and the overall management of the court reporter program. Decisions regarding TDY or transcription support are based on the Air Force's worldwide mission, workload, and the best interests of the Air Force. Decisions of the Chief Trial Judge are considered final.

16.15.2. Operational Delegation. For operational purposes, authority is delegated to the AF/JAT Court Reporter Manager. The Court Reporter Manager, in coordination with the Central Docketing Office and based upon the schedules posted in the docketing calendar will detail court reporters to travel, record, or transcribe proceedings; maintain and monitor a secure webpage for the exchange of electronic files of proceedings; and determine the priority of transcription and travel as needed.

16.15.3. Processing a Request for TDY Assistance. All court reporter travel assistance requests should be submitted through the SharePoint Centralized Court Reporter Management Homepage to ensure requests are tracked and timely processed.

16.15.3.1. Assignment.

16.15.3.1.1. AF/JAT prioritizes travel requests in line with all other requests until a court reporter is available and assigned. AF/JAT will review the docketing calendar

and determine who is available for the requested date. AF/JAT will attempt to solicit volunteers for any request received more than two weeks in advance of the proceeding. If a request is received less than two weeks in advance of a proceeding, AF/JAT may assign a court reporter without soliciting volunteers.

16.15.3.1.2. Once AF/JAT confirms with the court reporter that the docketing calendar is accurate, AF/JAT will notify the court reporter of the assignment telephonically and via email. AF/JAT should also notify the requesting POC, the requesting base's SJA and Law Office Superintendent (LOS), and the assigned court reporter's SJA and LOS. Transcription services taken by a TDY court reporter can normally be done at the court reporter's home station unless an extended TDY for transcription services is requested by the court or requesting installation.

16.15.3.1.2.1. Calendar Updates. The AF/JAT Court Reporter Manager will update the SharePoint Centralized Court Reporter Management website upon issuing a court reporter the assignment. The assigned court reporter should ensure his or her docketing calendar reflects the assignment. *See* paragraph 16.18.

16.15.3.1.2.2. Travel Arrangements. The assigned court reporter will coordinate with the requesting base's LOS, requesting POC, court reporter, and appropriate military justice personnel on the details of his or her travel. AF/JAT will not maintain information for the traveler's requirements and is not the point of contact for Defense Travel System (DTS) setup or issues.

16.15.3.1.2.3. Overtime during TDY Assignment. When the need for overtime work during TDY assignments is known in advance, the requesting base SJA should note this at the time of the travel request, or as soon as practicable. In such cases, the requesting base SJA must also notify the civilian reporter and their supervising SJA of the need for overtime work. **(T-1)**. The requesting base SJA is responsible for paying the overtime. Paragraph 16.16 provides additional discussion on overtime.

#### 16.15.3.2. Request for Release from TDY Assignment.

16.15.3.2.1. Generally. A request for release from a TDY assignment has significant potential to negatively impact the overall court reporter management process. To minimize any scheduling or assignment conflicts, court reporters should keep their docketing calendars current at all times.

16.15.3.2.2. Process for Requesting Release. The court reporter must submit any request for release from TDY travel in writing. Figure 16.4 provides a template for a TDY release request. Release requires approval from the court reporter's MAJCOM SJA and the AF/JAT Chief Trial Judge. A court reporter is responsible for the TDY assignment until approved for release by the AF/JAT Chief Trial Judge or delegate. The AF/JAT Court Reporter Manager will track all requests for release, whether approved or disapproved, in SharePoint for reporting purposes.

16.15.4. Processing a Request for Transcription Assistance. All court reporter transcription assistance requests should be submitted through the SharePoint Centralized Court Reporter Management Homepage to ensure requests are tracked and timely processed.

16.15.4.1. Assignment. AF/JAT prioritizes transcription requests in line with all other requests until a court reporter is available and assigned. AF/JAT will make the assignment as soon as practicable after verifying that a court reporter is available to support the request. AF/JAT will notify the court reporter of the assignment telephonically and via email. AF/JAT should also notify the requesting POC, the requesting base's SJA and LOS, and the assigned court reporter's SJA and LOS.

16.15.4.1.1. Calendar Updates. The AF/JAT Court Reporter Manager will update the SharePoint Centralized Court Reporter Management website upon issuing a court reporter the assignment. The assigned court reporter should ensure his or her docketing calendar reflects the assignment. *See* paragraph 16.18.

16.15.4.1.2. Suspense Date and Extensions. AF/JAT will provide the assigned court reporter a suspense date to complete the assignment. Generally, a reporter will be allotted one duty day for every one hour of audio to complete the transcription. If the assigned court reporter is unable to meet the suspense date, the SJA of the assigned court reporter and the SJA responsible for the proceedings to be transcribed will coordinate any necessary extensions. AF/JAT will not directly negotiate or approve extensions.

16.15.4.2. Attestation. The transcribing court reporter is responsible for the record in its entirety and its accuracy. The court reporter will accomplish an attestation for a completed transcription. Figure 16.2 includes template language for an attestation.

16.15.4.3. Providing the Audio for Transcription. The SJA or designee responsible for the proceeding to be transcribed will ensure the audio and any accompanying files is uploaded and available to the assigned court reporter. **(T-1)**. Audio recordings provided for transcription should generally be provided in the authorized FTR Gold version with Log Notes completed. If the uploaded audio does not conform to the established requirements or the audio is of poor quality, the court reporter will consult with the AF/JAT Court Reporter Manager. If the AF/JAT Court Reporter Manager concurs that the transcription cannot reasonably be accomplished, the AF/JAT Court Reporter Manager will return the recording and accompanying files to the requesting POC and inform the requesting POC of the reason for being unable to complete the transcription. .

16.15.4.4. Priority. Transcription duties should take priority over all non-court reporting duties assigned to court reporters at the base level. The court reporter will notify the requesting POC of any if the court reporter becomes aware of a new transcription or court reporting requirement that he or she believes should take priority over any assigned transcription. **(T-3)**. Paragraph 16.17 provides additional discussion on workload prioritization.

16.15.4.5. Requesting Release from Transcription Assignment.

16.15.4.5.1. Generally. A request for release from a transcription assignment has significant potential to negatively impact the overall court reporter management process. To minimize any scheduling or assignment conflicts, court reporters should keep their docketing calendars current at all times.

16.15.4.5.2. Process for Requesting Release. The court reporter must submit any request for release from a transcription assignment in writing. Figure 16.5 provides a template for a transcription assignment release request. Release requires approval from the court reporter's MAJCOM SJA and the AF/JAT Chief Trial Judge. A court reporter is responsible for the transcription assignment until approved for release by the AF/JAT Chief Trial Judge or delegate. The AF/JAT Court Reporter Manager will track all requests for release, whether approved or disapproved, in SharePoint for reporting purposes.

**16.16. Overtime.** Court proceedings, TDY assignments, transcription services, or other duties may require overtime work. SJAs are ultimately responsible for determining whether their budget allots for overtime pay prior to authorizing overtime work for civilian reporters. Overtime and compensatory time procedures are governed by law, Air Force regulations, and applicable collective bargaining agreements. Overtime work conducted at the civilian reporter's duty station in connection with a court proceeding for the duty station is to be approved in advance. When it is determined by the court that a proceeding will exceed an 8-hour workday, trial counsel or the civilian reporter must notify the SJA as soon as practicable so that overtime can be approved for the reporter. **(T-1)**. When overtime is approved, the civilian reporter may choose between accepting overtime pay or compensatory time for overtime work.

### **16.17. Workload Prioritization.**

16.17.1. Generally. All assistance requests will be prioritized by AF/JAT. The AF/JAT workload prioritization is based on the needs of the Air Force and available resources. It is subject to change at the discretion of the AF/JAT Court Reporter Manager. Court reporters who are assigned a tasking must notify AF/JAT of any changes or additions to their workload which would delay the completion of assigned tasking.

16.17.2. Categories. AF/JAT will prioritize a request using one of the following general categories:

16.17.2.1. Priority 1 – Courts martial and Article 32, UCMJ, preliminary hearings involving an alleged offense under Articles 120 or 125, UCMJ, or attempts to commit such an offense. These proceedings will ordinarily necessitate a request for travel/TDY support.

16.17.2.2. Priority 2 – AIBs. These proceedings will ordinarily necessitate a request for travel/TDY support and transcription.

16.17.2.3. Priority 3 – Discharge boards (travel)

16.17.2.4. Priority 4 – Medical credential hearings and flying evaluation boards (travel)

16.17.2.5. Priority 5 – Courts-martial and Article 32, UCMJ, preliminary hearings involving alleged offenses under Articles 120 and 125, UCMJ (transcribe)

16.17.2.6. Priority 6 – Discharge boards (transcribe)

16.17.2.7. Priority 7 – Medical credential hearings and flying evaluation boards (transcribe)

16.17.2.8. Priority 8 –All others (CDI, labor hearings, DuBay hearings, OSI interviews, etc.)

16.17.2.9. Priority 9 – Sister Service Support (case-by-case basis)

**16.18. Judiciary Docketing System (JDS).** JDS is the primary means by which AF/JAT determines the availability of court reporters to either travel or assist in transcribing records. Each court reporter must keep his or her JDS calendar updated. Required entries include, but are not limited to, courts-martial, discharge boards, accident investigation boards, transcription, and leave. A court reporters will enter all assignments from AF/JAT into his JDS calendar. **(T-1)**. The Court Reporter Manager may edit these assignments in JDS. SJAs, LOSs, and court reporters requiring access to JDS should contact AF/JAT.

**16.19. Court Reporting Training.** Court reporters need timely refresher training to best equip them to support the worldwide Air Force needs. Such training enables court reporters to upgrade their skills, to become and remain current on areas of court reporting, and to broaden their knowledge base. Supervisors should strive to foster an environment in which continuing training of court reporters is encouraged and utilized at least twice per year.

16.19.1. Training through Distance Learning. SJAs are encouraged to allow court reporters sufficient time to participate in refresher training provided by AF/JAT and outside agencies. These sessions can provide additional training, address issues of local interest, or instruct court reporters on how to handle recurring matters. Due to the location of each court reporter, a live webcast via CAPSIL or Defense Collaboration Services (DCS) is the preferred method for training; however, court reporters may download the training at a later date, to a local server, and view the training when their schedule permits.

16.19.2. In-person Training. SJAs are encourages to allow court reports to attend training in person provided by AF/JAT and outside agencies for their professional development.

16.19.3. Scheduling and Tracking Training. Court reporters should coordinate the scheduling of all training with their supervisors. Scheduling should be consistent with the needs of the legal office and the availability of the court reporter.

## **16.20. Adopted Forms.**

AF Form 135, *Corrections to Record of Trial*

AF Form 138, *Post Trial Clemency Evaluation*

AF Form 304, *Request for Appellate Defense Counsel*

AF Form 847, *Recommendation for Change of Publication*

AF Form 1359, *Report of Result of Trial*

DD Form 456, *Interrogatories and Depositions*

DD Form 457, *Investigating Officer's Report*

DD Form 490, *Record of Trial*

DD Form 494, *Court-Martial Data Sheet*

DD Form 1722, *Request for Trial*

DD Form 2329, *Record of Trial by Summary Court-Martial*

**Figure 16.1. Sample Checklist Items for Court Reporters.**

## CHECKLIST ITEMS FOR COURT REPORTERS

### PRIOR TO TRIAL

- Ensure digital recording equipment/software is set up properly
- Exhibit stamps available
- Stapler, stapler remover, paper clips, pencils, paper
- Test recording equipment and backup
- Set up exhibit worksheet
- Obtain exhibit/witness lists and convening orders from counsel

### DURING TRIAL

- Record opening and closing times of sessions
- Check recording equipment following breaks to ensure it is operating properly
- Keep an accurate exhibit list
- Annotate gestures in appropriate software (if not described by counsel)
- Annotate all sessions of trial and exhibits required by the military judge to be sealed
- Make sure to confidence monitor during live proceedings to avoid missing audio issues and to determine if there are any technical difficulties that require a recess

### POST-TRIAL

- Ensure you have all exhibits discussed during trial
- Determine the appropriate type of transcript (i.e., verbatim, summarized, abbreviated) dependent upon the sentence
- Obtain original signatures on authentication memorandums
- In a summarized record ensure those portions required to be verbatim are transcribed verbatim
- Properly mark all exhibits to show page admitted/rejected
- Ensure all copies of the ROT are legible and identical
- Ensure all information required to be sealed is appropriately sealed
- Forward the ROT and the electronic trial transcript
- Upload the ROT and transcript to WebDocs, excluding sealed portions

**Figure 16.2. Court Reporter Attestation/Partial Attestation.**

ATTESTATION OF TRANSCRIPT

in the case of

U.S. v. \_\_\_\_\_

I hereby attest and affirm that I have reviewed the transcript of this record in its entirety and that it is an accurate reflection of the proceeding of the court. Additionally, I used For the Record Gold (FTR) version \_\_\_\_ and Dragon Naturally Speaking (DNS) version \_\_\_\_ to transcribe this record.

\_\_\_\_\_  
Court Reporter Signature

\_\_\_\_\_  
Date

-OR-

PARTIAL ATTESTATION OF TRANSCRIPT

in the case of

U.S. v. \_\_\_\_\_

I hereby attest and affirm that I have reviewed the transcript of this record in its entirety and that it is an accurate reflection of the proceeding of the court. Additionally, I used For the Record Gold (FTR) version \_\_\_\_ and Dragon Naturally Speaking (DNS) version \_\_\_\_ to transcribe this record.

\_\_\_\_\_  
Court Reporter Signature

\_\_\_\_\_  
Date

**Figure 16.2.1 Transcribing Court Reporter Attestation**

ATTESTATION OF TRANSCRIPT  
In the case of  
U.S. v \_\_\_\_\_

I, [Full Name], certified court reporter, United States Air Force, hereby attest and affirm that, pursuant to the above-entitled case, that I have transcribed the portions of this record which begin at (include time stamp) through (include time stamp) in its entirety and that it is an accurate reflection of the recording from the court-martial proceeding.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Court Reporter Name/Signature

**Figure 16.3. Suggested Format for Summarized Article 32, UCMJ, Preliminary Hearing Testimony**

SUMMARIZED TESTIMONY OF (NAME AND RANK OF WITNESS)

(Rank and full name of witness), (organization, base, and state), appeared at the preliminary hearing, was sworn, and testified substantially as follows:

(Summarized Testimony)

I declare under penalty of perjury that the foregoing is true and correct. Executed at \_\_\_\_\_ Air Force Base, \_\_\_\_\_, on \_\_\_\_\_.

(Full Name and Rank of Witness)

I declare under penalty of perjury that the foregoing is a true and accurate summary of the testimony given by the witness. Executed at \_\_\_\_\_ Air Force Base.

(Name), (Rank), USAF  
Preliminary Hearing Officer

**Figure 16.4. Sample Memorandum, Court Reporter Transcription Request for Release**

MEMORANDUM FOR AF/JAT

FROM: Office  
Address  
Base

SUBJECT: Request for Release from AF/JAT-Assigned Transcription Assignment

1. On [date] I received a transcription assignment from AF/JAT. I was assigned to transcribe \_\_\_\_\_ hours of a (court-martial) (discharge board) (...). I am aware that in 2016, the The Judge Advocate General of the Air Force designated AF/JAT as the organization authorized to assign court reporters to assist with transcription of military justice proceedings.
2. On [date] I informed AF/JAT that I was unavailable to transcribe the audio which was assigned to me. (I completed \_\_\_\_\_ hours of the \_\_\_\_\_ hours assigned.) I request that I be released from this detail and it be reassigned to another court reporter because [provide detailed description of reasons for requested release].
3. I understand that I am not officially released from this detail until the AF/JAT Chief Trial Judge has released me.
4. Thank you for your consideration in this matter.

[Court Reporter's Signature Block]

1st Ind, [Court Reporter's SJA]

I recommend approval/denial of this release request.

[SJA Signature Block]

2d Ind, [MAJCOM SJA]

I recommend approval/denial of this release request.

[MAJCOM SJA Signature Block]

3d Ind, AF/JAT (Chief Trial Judge)

The release request is approved/denied.

[Chief Trial Judge Signature Block]

**Figure 16.5. Sample Memorandum, Court Reporter TDY Request for Release**

Date

MEMORANDUM FOR AF/JAT

FROM: Office  
Address  
Base

SUBJECT: Request for Release from TDY Support

1. On [date] I was assigned by AF/JAT to travel and assist [organization] with a (court-martial) (discharge board) (...). The proceeding was scheduled to begin on [scheduled start date] and end on [scheduled end date].
2. On [date] I informed AF/JAT that I was unavailable to travel to the proceeding. I request that I be released from this travel and have it reassigned to another court reporter because [provide detailed description of reasons for requested release].
3. I understand that I am not officially released from this detail until the AF/JAT Chief Trial Judge has released me.
4. Thank you for your consideration in this matter.

[Court Reporter's Signature Block]

1st Ind, [Court Reporter's SJA]

I recommend approval/denial of this release request.

[SJA Signature Block]

2d Ind, [MAJCOM SJA]

I recommend approval/denial of this release request.

[MAJCOM SJA Signature Block]

3d Ind, AF/JAT (Chief Trial Judge)

The release request is approved/denied.

[Chief Trial Judge Signature Block]

The guidance in this Memorandum becomes void after 1 year has elapsed from the date of this Memorandum, or upon incorporation by interim change to, or a rewrite of AFMAN 51-203, *Record of Trial* whichever is earlier.

CHRISTOPHER F. BURNE  
Lieutenant General, USAF  
The Judge Advocate General

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

**AIR FORCE MANUAL 51-203**

**17 NOVEMBER 2009**

*Incorporating Change 1, 27 JUNE 2013*

*Law*

**RECORDS OF TRIAL**



**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

---

**ACCESSIBILITY:** Publications and forms are available for downloading or ordering on the e-Publishing website at [www.e-publishing.af.mil](http://www.e-publishing.af.mil).

**RELEASABILITY:** There are no releasability restrictions on this publication.

---

OPR: AFLOA/JAJM

Certified by: AFLOA/CC  
(Brigadier General Daniel B. Fincher)

Supersedes: AFMAN 51-203, 1 October  
1999

Pages: 81

---

This manual implements Air Force Policy Directive (AFPD) 51-2, *Administration of Military Justice*. It provides guidance on preparing Records of Trial (ROT)s, Article 32 reports of investigation, and other proceedings under the Manual for Courts-Martial (MCM), and gives guidance to court reporters on performing their duties. Users of this manual must familiarize themselves with the Uniform Code of Military Justice (UCMJ), MCM, and all applicable Department of Defense (DoD) Directives and Instructions. It applies to individuals at all levels, including Air National Guard (ANG) members while in Federal service and Air Force Reserve Command (AFRC) members in Title 10 status. This publication requires the collection and maintenance of information protected by the Privacy Act of 1974. The authority to collect and maintain this information is in 10 U.S.C. §§ 854 and 865. Privacy Act System of Records Notification F051 AF JA I, Courts-Martial and Article 15 Records, applies. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF IMT 847, *Recommendation for Change of Publication*; route AF IMT 847s from the field through Major Command (MAJCOM) functional managers. This publication may not be supplemented. Forward requests for any waivers to this publication to AFLOA/JAJM. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS) located at <https://www.my.af.mil/gcss-af61a/afirms/afirms/>.

**SUMMARY OF CHANGES**

This interim change implements the revised UCMJ Article 54(e) which includes providing a Record of Trial to a victim who testified during the proceedings. Additional significant changes include how to divide the record of trial into volumes, an updated guide for assembling the record of trial (Figure 4.1.), and updated guidance on summary courts-martial records of trial.

A bar ( | ) indicates revision from the previous edition.

<b>Chapter 1—PREPARING RECORDS OF TRIAL</b>	<b>7</b>
1.1. Format. ....	7
1.2. Paper. ....	7
1.3. Margins. ....	7
1.4. Font. ....	7
1.5. Page Breaks and Line Spacing. ....	7
1.6. Justification. ....	8
1.7. Punctuation Marks. ....	8
1.8. Numbering Pages. ....	8
1.9. Printer. ....	8
1.10. Exhibits. ....	8
<b>Chapter 2—COPYING RECORDS OF TRIAL</b>	<b>11</b>
2.1. Reproduction Methods. ....	11
2.2. One-Sided Copies. ....	11
2.3. Evidence That Should Not Be Copied. ....	11
<b>Chapter 3—NUMBER OF COPIES OF THE ROT</b>	<b>12</b>
3.1. Verbatim Transcript Required under RCM 1103. ....	12
3.2. Sentence Includes Confinement for 12 Months or More. ....	12
3.3. Cases in which Offender is in Confinement at the United States Disciplinary Barracks (USDB). ....	12
3.4. All Other General Courts-Martial (GCM) and Special Courts-Martial (SPCM). ..	12
3.5. Summary Courts-Martial (SCM). ....	12
3.6. Additional Copies. ....	12
<b>Chapter 4—ASSEMBLING RECORDS</b>	<b>14</b>
4.1. Dividing Records into Volumes. ....	14
4.2. Dividers. ....	14

4.3.	Binding Volumes of the Record of Trial. ....	14
4.4.	Videotapes and Other Recordings. ....	14
4.5.	Accused’s Copy. ....	15
4.6.	Organization of Contents of Record of Trial. ....	15
Figure 4.1.	Guide for Assembling Records of Trial. ....	15
Figure 4.2.	Suggested Format for Cover Page, Master Index, and Receipt of Record. ....	21
Figure 4.3.	Suggested Format for Page 1 of Transcript. ....	27
<b>Chapter 5—SPECIAL FORMAT FOR TRANSCRIPTS</b>		<b>28</b>
5.1.	Verbatim Transcript in Summarized Cases. ....	28
5.2.	Court Reporter Log. ....	28
5.3.	Oaths to Military Judges, Court Members, Counsel, Reporters, Interpreters, and Witnesses. ....	28
5.4.	Article 39(a) Session. ....	28
5.5.	Assembly of Court-Martial after Termination of Initial Article 39(a) Session in a Member’s Trial. ....	28
5.6.	Recess. ....	29
5.7.	Reconvening. ....	29
5.8.	Court Members. ....	29
5.9.	Voir Dire. ....	29
5.10.	Interrupted Testimony. ....	29
5.11.	"Stricken" Portion. ....	30
5.12.	Testimony through an Interpreter. ....	30
5.13.	Non-response by a Witness. ....	30
5.14.	Non-verbal Responses and Gestures. ....	30
5.15.	Transcribing Quotes into the Record. ....	31
5.16.	Excusing Witnesses from the Courtroom. ....	31
5.17.	Closing and Reopening the Court-Martial. ....	31
5.18.	Reporter Reads the Record. ....	31
5.19.	Miscellaneous Examples for Summarized Transcripts. ....	31
5.20.	Certificate of Correction. ....	32
<b>Chapter 6—CLASSIFIED, CONTROLLED TEST AND SEALED MATERIALS IN THE ROT</b>		<b>34</b>
6.1.	Procedures for Classified Materials. ....	34

6.2.	Procedures for Controlled Test Materials. ....	34
6.3.	Procedures for Sealed Materials. ....	35
<b>Chapter 7—ABBREVIATED RECORDS OF TRIAL</b>		<b>37</b>
7.1.	Preparing Abbreviated ROTs. ....	37
Figure 7.1.	.....	37
<b>Chapter 8—SUMMARIZED RECORDS OF TRIAL</b>		<b>38</b>
8.1.	Preparing Summarized ROTs. ....	38
8.2.	Verbatim Portions. ....	38
8.3.	Video or Audio Recordings. ....	38
8.4.	Other Magnetic or Digital Media. ....	38
8.5.	Summarized Voir Dire. ....	38
<b>Chapter 9—SPECIFIC REQUIREMENTS FOR VERBATIM RECORDS</b>		<b>39</b>
9.1.	Video or Audio Recordings. ....	39
9.2.	Other Magnetic or Digital Media. ....	39
9.3.	Instructions. ....	39
<b>Chapter 10—RECORDS OF TRIAL FOR SUMMARY COURTS-MARTIAL</b>		<b>40</b>
10.1.	DD Form 2329. ....	40
10.2.	Numbering. ....	40
10.3.	Authentication. ....	40
10.4.	Service of ROT and Post-Trial Submissions. ....	40
10.5.	Convening Authority Action. ....	40
10.6.	Post Action Review. ....	40
<b>Chapter 11—RECORDS OF GCMS OR SPCMS TERMINATED BY MISTRIAL, DISMISSAL OF ALL CHARGES OR OTHERWISE TERMINATED WITHOUT FINDINGS</b>		<b>41</b>
11.1.	Retrial Intended. ....	41
11.2.	Retrial Not Intended. ....	41
11.3.	Cases Not Tried. ....	41
<b>Chapter 12—AUTHENTICATING GCM AND SPCM ROTs</b>		<b>42</b>
12.1.	Authentication of Record and Trial Counsel’s Certificate of Review. ....	42
12.2.	Court Reporter. ....	42
12.3.	Substitution of Military Judge or Court Reporter. ....	42
12.4.	Forwarding the ROT Without the Article 32 Investigation. ....	42

12.5.	AF IMT 135, Corrections to Record of Trial. ....	42
12.6.	Correcting Errors in ROTs. ....	42
12.7.	Examination by Defense Counsel. ....	43
12.8.	Accused’s Copy. ....	43
12.9.	Prisoners. ....	43
12.10.	Delivery Impossible. ....	43
Figure 12.1.	Suggested Format for Authentication of Record of Trial, including Trial Counsel’s Certificate of Review and Defense Counsel’s Examination of Record. ....	43
<b>Chapter 13—FORWARDING RECORDS OF TRIAL</b>		<b>45</b>
13.1.	Cases Reviewed Under Article 66, UCMJ. ....	45
13.2.	Cases Where Appellate Review is Waived or Withdrawn. ....	45
13.3.	Cases Reviewed Under Article 69, UCMJ. ....	45
13.4.	Remands. ....	45
13.5.	SPCMs with BCD Not Approved by the Convening Authority. ....	45
13.6.	Method of Forwarding ROTs. ....	45
13.7.	Disposition. ....	45
13.8.	Electronic Trial Transcripts. ....	45
<b>Chapter 14—RETURN OF EXHIBITS TO RIGHTFUL OWNERS</b>		<b>47</b>
14.1.	Generally. ....	47
14.2.	Conflicting Claims. ....	47
<b>Chapter 15—PREPARING AND ASSEMBLING ARTICLE 32 REPORTS</b>		<b>48</b>
15.1.	Appointment of Article 32 Investigating Officer (IO). ....	48
15.2.	Report. ....	48
15.3.	Exhibits. ....	48
<b>Chapter 16—DUTIES AND RESPONSIBILITIES OF THE COURT REPORTER</b>		<b>49</b>
16.1.	Generally. ....	49
16.2.	Neutrality of Court Reporter. ....	49
16.3.	Court Reporter Recesses. ....	49
16.4.	Interruption of Proceedings. ....	49
16.5.	Court Reporter Tapes. ....	49
16.6.	Exhibits. ....	49
16.7.	Court Reporter Checklist. ....	49
16.8.	Court Reporter Attestation. ....	49

16.9. Methods of Reporting. .... 49

16.10. Time Goals. .... 52

16.11. Safeguarding Recordings and Evidence. .... 52

16.12. Retention of Trial Notes or Recordings: .... 52

16.13. Transcribing Other Proceedings Under the MCM. .... 52

Figure 16.1. Checklist Items for Court Reporters. .... 54

Figure 16.2. Court Reporter Attestation. .... 55

Figure 16.3. Suggested Format for Summarized Article 32 Testimony. .... 55

16.14. Adopted Forms. .... 55

**Attachment 1—GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION 57**

**Attachment 2—SAMPLE SUMMARIZED REPORT OF THE PROCEEDINGS  
TRANSCRIPT 59**

**Attachment 3—SAMPLE ABBREVIATED RECORD OF TRIAL TRANSCRIPT 72**

**Attachment 4—SAMPLE EXTRACTS OF VERBATIM TRANSCRIPTS 76**

## Chapter 1

### PREPARING RECORDS OF TRIAL

**1.1. Format.** Prepare the Record of Trial (ROT) as prescribed in the Manual for Courts-Martial (MCM), Appendices 13 and 14, Rules for Courts-Martial (RCMs) 1103 through 1305, and this manual. **Figures 4.1** and **7.1** are guides for assembling ROTs. Submit requests for deviations from this manual to AFLOA/JAJM.

**1.2. Paper.** Use 15-pound bond or other high-quality 8 ½ by 11-inch paper. Redlined margins and other legal formats, such as numbered lines, are acceptable.

**1.3. Margins.** Leave a margin of 1 ½ inches, or more as necessary, on the top of each page to permit binding. Leave a one-inch margin on the bottom and on the left and right sides of each page.

**1.4. Font.** Use 12-point with only Courier New or Times-New Roman fonts. Avoid a cursive or italic font, except when appropriate (e.g., citations). Use bold type for the initial identification of the accused, judge, counsel, court members, court reporter, and in the introductory preface to identify each witness. Type the complete name, including rank or other title, in bold print. In the introductory preface for identifying witnesses, type the name of the witness and the entire introductory clause describing the witness being called and sworn in bold type. Also use bold type to identify various stages of the proceedings (e.g., Article 39(a) Session, Direct Examination, Pleas, Findings, Sentence) and to identify the transition for questions being asked by trial counsel, defense counsel or the military judge. (For examples, see **Attachment 4**.) Use of bold type to identify names at other locations in the ROT is not required, including names of individuals not participating in the trial (e.g., names of individuals referenced in witness testimony).

#### **1.5. Page Breaks and Line Spacing.**

1.5.1. Begin each session of court, as well as each Article 39(a) session, on a new page separate from the other transcribed proceedings. The reporter should note the time and date of the beginning and ending of each session of the court, including the opening and closing of the court-martial during the trial.

1.5.2. Double-space text, returning to the left margin on second and subsequent lines, with the exception of pleas, findings, and sentence, which should be single-spaced, indented, and in bold print. Individual elements of offenses in guilty plea cases may be single-spaced but double-space between separate elements.

1.5.3. Continue double-spacing the text when changes in speakers occur, including the question and answer (“Q” and “A”) portions of the transcript. When typing questions and answers, ensure at least two lines or the entire text of a question or answer appears at the bottom of a page. Page break in appropriate places where necessary. Do not repeat the “Q” or “A” prefix at the top of the next page. To the extent practicable, use page breaks so that the answer to a question does not appear on a page separate from the question.

1.5.4. See **Attachment 4** for examples of page breaks and line spacing within transcripts.

**1.6. Justification.** Use left justification only, with the exception of pleas, findings, sentence, and elements of offenses in guilty plea cases, which may be justified both left and right. When using left justification, indent five spaces from the left margin and type the appropriate prefix to indicate the identity of the speaker followed by a colon and two spaces. Also, indent five spaces from the left margin when typing the appropriate “Q” or “A” prefix followed by a period and two spaces. (See samples in [Attachment 4](#).) If a speaker’s testimony consists of two or more continuous, uninterrupted paragraphs, the subsequent paragraph(s) should be indented but do not require insertion of the speaker or “Q” and “A” prefix.

**1.7. Punctuation Marks.** Do not use exclamation marks. Dashes or hyphens may be used where the speaker changes thought or subject, where one participant interrupts another, or where other punctuation is not appropriate. Use periods at the end of complete thoughts to avoid lengthy sentences. Avoid phonetic spelling. Obtain correct spelling from counsel or the witness. The Government Printing Office Style Manual is a useful guide for punctuation.

### **1.8. Numbering Pages.**

1.8.1. Number all pages in the transcribed ROT consecutively, beginning with "1." Center the page number on the page  $\frac{3}{4}$  inch from the bottom. If material is omitted and additional pages must be inserted, use the preceding page number plus a decimal and an Arabic number after the corresponding whole numbered page (e.g., “19.1”). In addition, annotate the bottom of the preceding page to reflect the following inserted page (e.g., “next page 19.1”) and annotate the return to consecutive numbering at the bottom of the last inserted page (e.g., “next page 20”). If a page number is omitted, but no page is actually missing from the transcript, note the missing page number at the bottom of the page preceding the missing page number (e.g., “there is no page 22; next page 23”). The last numbered page is the adjournment of the court. This the number of pages entered in AMJAMS on the ROT Authentication Tab.

1.8.2. A sample format for page 1 of the transcribed ROT is in [Figure 4.3](#) Type at the bottom of page 1 “The convening orders, Special Order \_\_\_\_, dated \_\_\_\_ and Special Order \_\_\_\_, dated \_\_\_\_, are numbered as pages 1.1, 1.2, etc.” Type the appropriate page numbers on the convening order and any amendment to the convening order in the middle of the page one-half inch from the bottom of the order. The charge sheet is numbered in the same manner. For example, at the bottom of the page preceding the insertion of the charge sheet type, “The charge sheet is numbered pages 4.1 through 4.5.”

**1.9. Printer.** Print all ROTs in a manner to produce a letter quality manuscript – a clear, solid, black imprint. Laser and ink-jet printers are authorized and preferred in that order.

### **1.10. Exhibits.**

1.10.1. Taken from Article 32 Reports. When part of the Article 32, UCMJ, investigation is used during the trial and made an exhibit, remove the item from the Article 32 report and insert it at the appropriate point in the ROT. Insert a sheet of paper in the Article 32 report stating where the original exhibit appears in the ROT. If the entire Article 32 report is made an exhibit, insert a sheet of paper at the place in the ROT where the Article 32 report normally goes (See [Figure 4.1](#)), stating where the report appears in the ROT.

1.10.2. Substituting for Originals. When possible, obtain the military judge's permission to withdraw an exhibit that consists of physical evidence and substitute a written description,

photograph, or other means of description in the ROT. Do not substitute a photograph of a videotape for a videotape or other recording admitted into evidence and played in court. Substitute photocopies of documents for the originals and return originals to the document custodian. Withdrawal and substitution may be made without the military judge's permission if trial and defense counsel agree on the replacement photograph, replica, or description. See RCM 913(c)(2), Discussion.

1.10.3. Withdrawal of Exhibits. Describe exhibits withdrawn from the original ROT and substitute the description in the original and all copies of the ROT. Include the reasons for the withdrawal and substitution in the ROT.

1.10.4. Photographs. Because written descriptions are permitted as substitutes for exhibits withdrawn from the ROT, photographs are not necessary unless a photograph is essential to the appellate process. For example, a photograph of a small quantity of marijuana may well be extraneous. If photographs are used, use 5" x 7" color photographs whenever possible. Several exhibits may be described on a single sheet of paper. Photographs taken by digital cameras are authorized.

1.10.5. Identifying Exhibits. The reporter is responsible for ensuring exhibits offered for identification or admission are properly marked. Mark exhibits at the bottom right corner of the page if possible. Except in rare cases, the court reporter, not counsel, premarks both Prosecution and Defense exhibits to ensure the exhibits are marked uniformly. Premarking should occur prior to commencement of trial, if possible. A stamp labeling the exhibit and also indicating when in the record the exhibit was offered and admitted or rejected should be available to the court reporter. Do not use stick-on labels to mark exhibits unless stamps are unavailable. Labels come off exhibits and make it difficult to later identify exhibits. The court reporter is responsible for informing counsel of this policy. Note the page(s) at which an exhibit is offered and admitted or rejected, as well as noting those pages on the Master Index (see **Figure 4.2**). The following is suggested language and format for exhibit stamps:

Prosecution Ex \_\_ for Identification  
Offered Page \_\_ Accepted/ Rejected Page \_\_

Defense Ex \_\_ for Identification  
Offered Page \_\_ Accepted/Rejected Page \_\_

Appellate Ex \_\_  
Marked Page \_\_

When there is not enough space at the bottom right corner of a page for this information, mark the exhibit elsewhere on the front lower portion of the page. If there still is insufficient space, affix a blank sheet of paper to the front of the exhibit and place the stamp on the blank sheet as described above and type or print under the stamp "Consisting of \_\_ pages." Follow this procedure for 8" x 10" photographs (however, use 5" x 7" photographs whenever possible). For smaller photographs, mount them on a blank sheet of paper and stamp the sheet of paper as described above. For exhibits consisting of more than one page, stamp or type "Page \_\_ of \_\_ pages." Number each side of a two-sided document as a separate page. Do not place exhibit stamps or labels on exhibits that will be returned to the owner (including the accused) after trial.

Mark these exhibits lightly in pencil in the lower right-hand margin of the document, e.g., “Pros Ex 1 for ID,” “Def Ex A for ID,” “App Ex I.” If there is insufficient room to mark the front lower portion of a document that is to be returned to its owner, it is permissible to mark the exhibit on the back side of the document in the lower right-hand corner.

1.10.6. Bulky Exhibits. Do not send bulky physical items admitted into evidence with the ROT. Withdraw these items and replace them with a photograph or an accurate description. When the size of an object is important, include a ruler or yardstick in the photograph.

1.10.7. Judicial Notice. When the military judge takes judicial notice of a document, publication or other item, reproduce the pertinent part of, or all of, the document, publication or item, if possible. If the document, publication or item was not marked as an exhibit, attach it to the ROT as an allied paper. For publications, include the first or cover page, an extract of the relevant contents, and, if applicable, a copy of the signature page in the ROT.

## Chapter 2

### COPYING RECORDS OF TRIAL

**2.1. Reproduction Methods.** Photocopy the original ROT on an office copier or use base reproduction services if they are available and warranted.

**2.2. One-Sided Copies.** Produce the original transcript and all copies on one side of the paper only. Whenever a double-sided original document exists in a ROT, ensure that both the front and reverse sides of the page are numbered in the original ROT. When making copies of the ROT, ensure the reverse side of any double-sided original document is copied to a separate page.

**2.3. Evidence That Should Not Be Copied.** Do not use photographs or other full-size reproductions of obligations or securities of the United States and foreign countries (currency, coins, bonds, etc.), or identification cards, passes, official badges, and other insignia of any department or agency of the United States. In such cases, if a written description will not suffice, include the item itself, or the original document or paper, in the ROT.

## Chapter 3

### NUMBER OF COPIES OF THE ROT

**3.1. Verbatim Transcript Required under RCM 1103.** Prepare an original and four copies. Forward the original and two copies to AFLOA/JAJM. The remaining copies are for the accused and retention by the base or general court-martial (GCM) legal office, as appropriate. The copy of the record of trial maintained at the base office must be identical to the original record of trial forwarded to JAJM.

3.1.1. If a verbatim transcript is required under RCM 1103 but the sentence does not include death, a punitive discharge, or confinement for more than one year, review by the Air Force Court of Criminal Appeals is not required. RCM 1201(a). In these cases, prepare the original and two copies. Forward the original to AFLOA/JAJM. The remaining copies are for the accused and retention by the base or GCM legal office, as appropriate. However, if The Judge Advocate General subsequently directs appellate review under RCM 1201(b)(1), prepare and forward two additional copies to AFLOA/JAJM.

**3.2. Sentence Includes Confinement for 12 Months or More.** Prepare an original and five copies. Distribute the original and four copies as provided in paragraph 3.1 Forward the fifth copy to the confinement facility.

**3.3. Cases in which Offender is in Confinement at the United States Disciplinary Barracks (USDB).** Prepare an original and five copies. Distribute the original and four copies as provided in paragraph 3.1 Forward the fifth copy to the USDB. This applies to all officer and enlisted members confined at the USDB, even if their sentence of confinement is less than 12 months.

**3.4. All Other General Courts-Martial (GCM) and Special Courts-Martial (SPCM).** Prepare an original and two copies. Forward the original to AFLOA/JAJM. The remaining copies are for the accused and retention by the base or GCM legal office, as appropriate.

**3.5. Summary Courts-Martial (SCM).** Prepare an original and seven copies. Forward the original and three copies of the DD Form 2329 to AFLOA/JAJM. The remaining copies are for the accused, defense counsel, and the base and GCM legal offices.

**3.6. Additional Copies.** In addition to the minimum number of copies needed, a staff judge advocate (SJA), on behalf of the convening authority, may authorize additional copies. For example, an additional copy may be reproduced and distributed to the individual defense counsel.

3.6.1. Copies provided to Victims. Victims of a crime punishable under Article 120, UCMJ, who testified during the proceedings of a special or general court-martial are entitled to a copy of the record of proceedings without charge as soon as the records are authenticated.

3.6.2. In a case with a conviction, in accordance with RCM 1103(b)(2)(B-D), provide victims with the record of proceedings to include: a copy of the record of trial; 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 which were received in evidence; and, when made available, a copy of the dated, signed, action by the convening authority. Since the

convening authority's action is normally prepared after authentication, offer to delay providing the record to the victim until after the convening authority's action is signed. If the victim agrees, obtain written confirmation of the victim's decision. If the victim instead elects to receive the authenticated record of trial as soon as it is available, the convening authority's signed action shall be served on the victim as soon as it is available. *Note: Ensure records sealed in accordance with RCM 1103A are not provided to the victim. Also ensure all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act.*

3.6.3. In a case with an acquittal, in accordance with RCM 1103(e), furnish the victim with the same record provided to the accused: a copy of the convening order (and any amending orders); sufficient information to establish jurisdiction over the accused and the offense, and abbreviated ROT. *Note: Ensure all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act.*

## Chapter 4

### ASSEMBLING RECORDS

#### 4.1. Dividing Records into Volumes.

4.1.1. Divide ROTs into volumes not to exceed 1 1/2 inches in thickness. EXCEPTION: Cases forwarded for Article 66 review, make the first or only volume of a ROT an inch thick or smaller (after inclusion of SJA Recommendation, clemency matters, and other post-trial documents). This permits addition of appellate papers to the first volume of records when examined by the Air Force Court of Criminal Appeals. Make subsequent volumes 1 1/2 inches thick or smaller. Avoid assembling any volume that is less than 1/2 inch thick by adding pages to it that would otherwise have been included in preceding or subsequent volumes.

4.1.2. Place like parts of the ROT together in volumes divided by subject, and divide them to meet volume thickness restrictions. Indicate the contents of the volume on the front cover (e.g., transcript, exhibits, or allied papers). If the transcript is split into two or more volumes, indicate on the front cover which pages of the transcript are in which volume (e.g., Volume 2 of 4, Transcript, pages 1-300). Number each volume of the ROT as follows: "Volume 1 of 4." Assemble the record in accordance with **Figure 4.1**. In the upper right-hand corner of the DD Form 490, label the ROT to reflect which copy it is, e.g., "ORIGINAL," "ACCUSED," "JAJM-1," "JAJM-2," "DEFENSE COUNSEL," "BASE," "CONFINEMENT FACILITY."

4.1.3. If the trial is lengthy, and the record is larger than three volumes, it is usually best to divide the trial transcript into more than one volume.

4.1.4. If the record consists of sealed matters, create a volume to include a cover, hard backing, and single reference sheet for identification for the additional copies of the record. Do not include sealed matters in any distributed copies. They are in the original record of trial only.

**4.2. Dividers.** Use un-tabbed dividers of heavy-stock paper, a different color from the ROT, to make separations in a volume. Place a label in the lower right corner of the divider identifying the contents under the divider. Insert dividers as provided in **Figure 4.1**.

**4.3. Binding Volumes of the Record of Trial.** Bind the volumes at the top to withstand repeated handling. Add hard backings to the bottom of each volume (original and copies). GSA stocks an item which can be used for this purpose: "Blank Paper Lt. Green Press Board, Size 8 1/2 x 11 1/2,." Use 2-inch capacity Acco-type prong-and-clamp fasteners. GSA stocks an item that can be used for this purpose: "Fastener, paper w/compressor 2" capacity. Place tape over the backs of the fasteners only. Do not "sew" or "stack" fasteners together to bind thick volumes.

**4.4. Videotapes and Other Recordings.** Package videotapes and other recordings, to include audio tapes, compact discs (CDs), digital video discs (DVDs), and other digital media, in sturdy envelopes, with no more than two videotapes to an envelope. Bind each envelope as a separate volume of the record and fasten the envelopes to the standard covers using Acco-type fasteners. Mark each envelope with the accused's full name, social security number, and exhibit number, if applicable. As discussed in paragraph **9.1**, the party offering a recording into evidence must prepare a description of the recording's contents to serve as a suitable substitute in the ROT.

Place on the bottom right corner of the description, the exhibit number, page offered, page accepted/rejected, and in which volume the recording is placed. Provide a copy of the recording for each copy of the ROT forwarded to AFLOA/JAJM.

**4.5. Accused's Copy.** Do not include classified materials, controlled test materials, or matters ordered sealed by the judge in the accused's copy of the ROT. Follow the procedures in Chapter 6. Furthermore, if a ROT contains sexually explicit materials that have not been ordered sealed by the military judge, the following guidance applies to these items:

4.5.1. Remove these items from the accused's copy of the ROT (this includes sexually explicit exhibits contained in Article 32 investigations). In place of the materials, insert a certificate stating the materials were removed due to their sexually explicit content and that the original ROT, which includes the materials, may be inspected at AFLOA/JAJM. Insert a certificate at each location where such materials are removed.

4.5.2. Include these items in the original ROT and each copy of the ROT forwarded to AFLOA/JAJM. However, insert the materials, wherever located in the ROT, in a sealed opaque envelope containing the following label: "WARNING: SEXUALLY EXPLICIT MATERIALS ENCLOSED – NOT ORDERED SEALED BY THE COURT."

**4.6. Organization of Contents of Record of Trial.** Arrange the contents of the ROT as set forth in [Figure 4.1, "Guide for Assembling Records of Trial,"](#) with heavy stock dividers used to separate major components of the records. To the extent applicable, include signed originals of pertinent documents in the original ROT. Explain the absence of an original document, and insert a certified true copy or signed duplicate original copy in the ROT. However, if a photocopy or data fax copy is provided in lieu of the original document for use in the proceedings, including pretrial and post-trial matters, treat the photocopy or data fax copy as an original and place it in the ROT. This does not apply to the convening authority's action. No certification is required. If attachments are listed on a document, the attachments will remain with the document and be included in the ROT.

**Figure 4.1. Guide for Assembling Records of Trial.**

GUIDE FOR ASSEMBLING RECORDS OF TRIAL  
(SPECIAL AND GENERAL COURTS-MARTIAL)

1. Front Cover, DD Form 490, *Record of Trial*. If computer-generated forms are used, print the front cover of the DD Form 490 on hard card stock (Dutch Blue cover paper bearing stock number 9310-01-083-5214). [Note: A duplicate DD Form 490 on hard card stock should be inserted at the beginning of each volume of a ROT. On each DD Form 490, annotate the volume number and the volume's contents and remember to label each copy to reflect whose it is.]
2. Chronology with reporter's transcription log.
3. Court reporter attestation.
4. Any orders issued after the 2707, transferring the accused to a confinement facility or paperwork pertaining to excess/appellate leave. The transfer message is only included in the original ROT

5. AF IMT 304, *Request for Appellate Defense Counsel*. Ensure the form includes the accused's permanent address where he or she can be reached during the appellate process. Insert a copy in each ROT (not just the original) for general courts-martial, including those that are examined under Article 69(a), UCMJ, and all special courts-martial that result in a bad conduct discharge (BCD) and/or 12 months of confinement. If the member waives appellate counsel immediately after trial, prepare a second AF Form 304, complete to include member's elections, and insert into the record immediately in front of the initial 304.

7 Waiver of appellate Review (if applicable).

6. Court-Martial Data Sheet. (Either DD Form 494 or Air Force version may be used). Use of this form is optional. If used, include a copy in each additional copy of record.

7. Defense counsel Article 38(c) briefs, if any.

8. Court-Martial Orders -- Include 7 copies in the original ROT and one copy in each copy of the record for cases reviewed under Article 66 and Article 69(a). (See RCM 1111(a)(1).) Include four copies in the original ROT and one in each copy of the ROT for courts-martial which result in acquittal of all charges; are terminated before findings; and cases reviewed under Article 64(a).

9. Proof of Service on the defense counsel of the Staff Judge Advocate's recommendation (and Proof of Service on defense counsel of any addenda containing new matters).

10. Defense response to the Staff Judge Advocate's recommendation (and addenda), if any. [Note: If defense counsel combines the RCM 1105 and 1106 submissions in a single memorandum, place the memorandum addressing both matters as provided in paragraph 13 below and insert a page at this point in the record stating "Defense Response to Staff Judge Advocate's Recommendation is included with the RCM 1105 submissions."]

11. Proof of Service of the Staff Judge Advocate's Recommendation on the accused (and Proof of Service of any addenda containing new matters on the accused) or a statement explaining why the accused was not served personally.

12. Staff Judge Advocate's Recommendation or the Action Memorandum, with the Result of Trial Memorandum, and Personal Data Sheet attached, and any addenda to the Staff Judge Advocate's Recommendation. Also include any AF IMT 138, *Post-Trial Clemency Evaluation*, or other evaluations obtained by the government.

13. Post-trial matters submitted by accused under RCM 1105, in the following order, as applicable:

- a. Defense counsel's memorandum pertaining to RCM 1105 submissions.
- b. Accused's statement.

- c. Other statements and submissions.
  - d. Notification letter to accused regarding submission of post-trial matters.
14. If the ROT is transferred to another GCM jurisdiction for review, insert documentation concerning the transfer in the following order:
- a. Request for transfer (for disqualification or other reason).
  - b. Correspondence between GCMs.
  - c. Documents designating new GCM to review case.
15. Any request for deferment of post-trial confinement and action thereon.
16. Any request for deferment/waiver of automatic forfeitures and any action thereon.
17. Any request for deferment of reduction in grade and any action thereon.
18. Heavy stock divider.
19. Article 32 investigation, if any, and all related exhibits and attachments, in the following order, as applicable:
- a. Letter appointing Article 32 Investigating Officer (separate letter from convening authority to the investigating officer).
  - b. DD Form 457, *Investigating Officer's Report*, unless the accused waived the Article 32 investigation. If waived, insert the written waiver at this point in the ROT.
  - c. Recommendation of the special court-martial convening authority (SPCMCA) to the general court-martial convening authority (GCMCA).
  - d. Proof of Service of Article 32 report on accused and defense counsel.
  - e. Defense objections to the Article 32 report, if any.
  - f. Documents related to scheduling the Article 32 hearing, including delays.
  - g. Additional Article 32 Investigations. Add documents, in the order described in (a) through (f), above, after the original Article 32 investigation report and related documents.
20. Heavy stock divider.
21. Pretrial Allied Papers, including:

- a. First indorsement to DD Form 458, *Charge Sheet*, the unit commander's transmittal of the charges to the SPCMCA with a copy of the personal data sheet as an attachment.
- b. Any other papers, indorsements, or investigations that accompanied the charges when referred for trial. Include the referral Memo signed by the convening authority. (Do not include the court member data sheets.)
- c. Article 34 pretrial advice of the Staff Judge Advocate.
- d. Indorsement of convening authority to the pretrial advice.
- e. Proof of service of Article 34 pretrial advice on accused and defense counsel.
- f. Pretrial confinement proceedings, if any.
- g. Withdrawn charge sheets, if any.
- h. Other pretrial requests by counsel and the action taken thereon. Group the requests by subject area in chronological order, with the oldest on top to the most recent on the bottom. Subject areas include, but are not limited to, requests for delays, individual military defense counsel (IMDC), mental health board reports, pretrial agreements, discharge in lieu of court-martial, witnesses, depositions, and immunity.
- i. Record of any former trial - include two copies of the promulgating order only. However, in cases involving a retrial, comply with paragraph 12.1 of this manual.
- j. Miscellaneous pretrial related documents, when appropriate (e.g., writs, collateral litigation). [Note: It is not necessary to include the following items as allied papers in a ROT: Discovery requests/responses, court member selection documents (unless raised as an issue in a motion and not made appellate exhibits), and Congressional inquiries.]

22. Heavy stock divider.

23. Record of Proceeding of Court-Martial, in the following order:

- a. Judge's errata sheet (AF IMT 135), if any.
- b. Cover Page, Master Index of Proceedings, Witnesses and Exhibits, and Receipt of Accused (see suggested format at Figure 4.2). Since the preprinted index on DD Form 490 is inadequate to properly reflect the proceedings, witnesses, and exhibits, court reporters should substitute and expand upon the index as illustrated in Figure 4.2. Include all Article 39(a) sessions held and a brief description of them. Pay special attention to noting the pages at which exhibits are offered and accepted/rejected, to include annotating those page numbers on the bottom of an exhibit as appropriate. If the accused does not receipt for the ROT, ensure the

record contains trial counsel's certificate in lieu of receipt pursuant to RCM 1104(b)(1)(B) or substitute service on defense counsel pursuant to RCM 1104(b)(1)(C).

c. Page 1 of the Transcript. Use suggested format at Figure 4.3, followed by:

(1) Convening order.

(2) Amending orders, if any.

(3) Written orders or correspondence detailing the military judge or counsel, if any.

(4) DD Form 1722, *Request for Trial before Military Judge Alone*, if any (unless marked as an appellate exhibit).

(5) Written request for enlisted members, if any (unless marked as an appellate exhibit).

d. Transcript of the proceedings of the court, including all Article 39(a) sessions. Insert the original Charge Sheet at arraignment. [Note: If pen and ink changes have been made on the original charge sheet after arraignment, insert at arraignment a photocopy of the charge sheet as it existed at arraignment followed by the original charge sheet containing the post arraignment changes. Include a notation in the ROT identifying the page numbers for "the photocopy of the charge sheet as it existed at arraignment" and the page numbers for "the original charge sheets with the post-arraignment changes."]

e. Authentication sheet, including trial counsel's certificate of review and defense counsel's examination of the record. (For format, see Figure 12.1.)

f. Certificate of Correction, if any.

g. Action of the Convening Authority.

h. Assumption of or appointment to command orders, if the commander who takes the action is different from the commander who referred the case.

24. Heavy stock divider.

25. Post-trial sessions. (Page numbers should continue in sequence from end of the transcript of the original proceedings, and will be separately authenticated if initial proceedings have been previously authenticated. Additional exhibits should be lettered or numbered in sequence, following those already marked/admitted.)

26. Heavy stock divider.

27. Prosecution exhibits admitted into evidence.

28. Heavy stock divider.

29. Defense exhibits admitted into evidence.
30. Heavy stock divider.
31. Prosecution exhibits marked but not offered and/or admitted into evidence.
32. Heavy stock divider.
33. Defense exhibits marked but not offered and/or admitted into evidence.
34. Heavy stock divider.
35. Appellate exhibits.
36. Heavy stock divider.
37. Any records of proceedings in connection with vacation of suspension.
38. Hard Backing. There is no longer a requirement to include the inside back cover of the DD Form 490 (Instructions for Preparing and Arranging Record of Trial) in the ROT. However, each separate volume of a ROT (original and copies) should contain a hard backing.

Figure 4.2. Suggested Format for Cover Page, Master Index, and Receipt of Record.

**RECORD OF TRIAL**

of

\_\_\_\_\_  
 (Name: Last, First, Middle Initial)                      SSN                      (Rank or Grade)

\_\_\_\_\_  
 (Organization)                      (Branch of Service)                      (Station or ship)

\_\_\_\_\_ **COURT-MARTIAL**

Convened by \_\_\_\_\_  
 (Title of convening authority)

\_\_\_\_\_  
 (Command of convening authority)

at \_\_\_\_\_ on \_\_\_\_\_  
 (Place of Trial)                      (Date or Dates of Trial)

**MASTER INDEX**

	<u>Starting Page</u>	<u>Volume Number</u>
<b>INITIAL ARTICLE 39(a) SESSION</b>		
Introduction of Persons Present		
Detail and Qualifications of Trial Counsel/Assistant Trial Counsel		
Assistant Trial Counsel Sworn		
Accused's Rights to Counsel Explained		
Detail and Qualification of Defense Counsel		
Qualifications of Civilian Defense Counsel		
Civilian Defense Counsel Sworn		

	<u>Starting Page</u>	<u>Volume Number</u>
Detail and Qualifications of Military Judge		
Challenges to Military Judge		
Accused's Rights to Choice of Forum Explained		
Accused's Request to Trial by Military Judge Alone		
Request for Trial by Members		
Request for Enlisted Members		
 <b>PROCEEDINGS OF THE COURT</b>		
Arraignment		
Charge Sheet		
Motions		
Motion to ____		
MJ Ruling on Motion		
Motion to ____		
MJ Ruling on Motion		
Plea		
Guilty Plea Inquiry		
Stipulation of Fact Inquiry		
Pretrial Agreement Inquiry		
Identification of Members		
Members Sworn		
Voir Dire		
Individual Voir Dire		
Challenges of Members		
Opening Statement by Trial Counsel		
Opening Statement by Defense Counsel		
 <b>FINDINGS PORTION OF THE PROCEEDINGS</b>		
Presentation of Prosecution Witnesses and Evidence		
(see attached witness and exhibit indices)		
Presentation of Defense Witnesses and Evidence		
(see attached witness and exhibit indices)		
Rebuttal (see attached witness and exhibit indices)		
Surrebuttal (see attached witness and exhibit indices)		
Article 39(a) Session on Proposed Instructions		
Closing Argument by Trial Counsel		
Closing Argument by Defense Counsel		
Rebuttal Argument by Trial Counsel		
Instructions on Findings		
Court Closed for Deliberations on Findings		
Findings Announced		

Starting Page Volume Number**SENTENCING PORTION OF PROCEEDINGS**

Rights of Allocution, Extenuation, and Mitigation

Presentation of Prosecution Witnesses and Evidence

(see attached witness and exhibit indices)

Presentation of Defense Witnesses and Evidence

(see attached witness and exhibit indices)

Rebuttal (see attached witness and exhibit indices)

Surrebuttal (see attached witness and exhibit indices)

Article 39(a) Session on Proposed Instructions

Sentencing Argument by Trial Counsel

Sentencing Argument by Defense Counsel

Rebuttal Argument by Trial Counsel

Surrebuttal Argument by Defense Counsel

Instructions on Sentencing

Sentence Announced

Accused Advised of Post-Trial and Appellate Rights

Court Adjourned

**WITNESS TESTIMONY****in the case of****United States v. \_\_\_\_\_****Name of Witness    Direct and Redirect    Cross and Recross    Examined by Court/MJ****PRE-TRIAL MOTIONS:****FINDINGS WITNESSES:****Prosecution****Defense****Rebuttal****Surrebuttal****SENTENCING WITNESSES:****Prosecution****Defense****Rebuttal****Surrebuttal**

**EXHIBITS**

**in the case of**

**United States v. \_\_\_\_\_**

<b>Brief Description</b>	<b>Page Offered</b>	<b>Page Admitted</b>	<b>Page Rejected</b>	<b>Page W/D</b>
--------------------------	---------------------	----------------------	----------------------	-----------------

**PROSECUTION EXHIBITS**

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

**DEFENSE EXHIBITS**

- A.
- B.
- C.
- D.
- E.
- F.

**EXHIBITS OFFERED BUT NOT ADMITTED**

- Prosecution Exhibit
- Prosecution Exhibit
- Defense Exhibit
- Defense Exhibit

**APPELLATE EXHIBITS**

- I.
- II.
- III.
- IV.
- V.

**COPIES OF RECORD**

\_\_\_\_\_ copy of record furnished the accused as per attached certificate of receipt.

\_\_\_\_\_ copies of record forwarded herewith.

**RECEIPT FOR COPY OF RECORD**

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. \_\_\_\_\_ delivered to me at \_\_\_\_\_  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of accused)

**Figure 4.3. Suggested Format for Page 1 of Transcript.**

PROCEEDINGS OF A \_\_\_\_\_ COURT-MARTIAL

The military judge called the Article 39(a) Session to order. The court met at \_\_\_\_\_  
AFB, \_\_\_\_\_, at \_\_\_\_ hours on \_\_\_\_\_, pursuant to the following orders:

[The convening order(s), Special Order \_\_\_\_\_, dated \_\_\_\_\_,  
and Special Order \_\_\_\_\_, dated \_\_\_\_\_, are numbered as  
pages 1.1 and 1.2. The USAF Trial Judiciary (AFLOA/JAT)  
memorandum dated \_\_\_\_\_ detailing the Military  
Judge is numbered as page 1.3.]

(Note: Also insert a reference to a Request for Military Judge Alone or a Request for Enlisted  
Members if such a request is not made an Appellate Exhibit)

## Chapter 5

### SPECIAL FORMAT FOR TRANSCRIPTS

**5.1. Verbatim Transcript in Summarized Cases.** A verbatim transcript may be prepared when RCM 1103(b)(2)(C) authorizes a summarized transcript.

**5.2. Court Reporter Log.** The reporter keeps a log of the opening and closing of all sessions of a court-martial such as recesses, adjournments, Article 39(a) sessions and closed session deliberations.

**5.3. Oaths to Military Judges, Court Members, Counsel, Reporters, Interpreters, and Witnesses.** It is not necessary to record verbatim the oath actually used. Record only that the individual took an oath or affirmation. Recite that the military judge, court members, counsel, reporters, interpreters, and witnesses were sworn (for format, see MCM, Appendices 13 and 14). For those legal personnel who have previously been administered a one-time oath, indicate in the ROT that they were previously sworn.

**5.4. Article 39(a) Session.** Use the following format for an Article 39(a) session:

#### ARTICLE 39(a) SESSION

[The Article 39(a) session began at 1333 hours, 16 August 2009. The military judge, trial counsel, defense counsel, accused, and the reporter were present.]

(Verbatim or summarized transcript of entire session.)

[The Article 39(a) session adjourned at 1337 hours, 16 August 2009.]

(Note: Insert Page Break between Sessions.)

[The court was called back to order at 1338 hours, 16 August 2009, with all necessary parties present, including the court members.]

**5.5. Assembly of Court-Martial after Termination of Initial Article 39(a) Session in a Member's Trial.** In a verbatim transcript, after the initial Article 39(a) session ends, use the following format:

MJ: This Article 39(a) session is adjourned.

[The Article 39(a) session adjourned at 1340 hours, 14 August 2009.]

(Note: Insert Page Break between Sessions.)

#### PROCEEDINGS OF THE COURT-MARTIAL

[The court-martial was called to order at 1615 hours, 14 August 2009.]

MJ: The court-martial will come to order.

TC: This court-martial is convened by...

**5.6. Recess.** Use the following format for a recess:

MJ: The court-martial will be in recess for 15 minutes.

[The court-martial was recessed at 1645 hours, 14 August 2009.]

(Note: Insert Page Break between Sessions.)

[The court-martial was called back to order at 1700 hours, 14 August 2009, with all parties present who were present when the court-martial recessed.]

**5.7. Reconvening.** Those portions of the proceedings in which the military judge calls the court-martial to order and the trial counsel states all parties to the trial are present may be transcribed verbatim or summarized as shown in paragraph 5.6. The court reporter must account for the parties. If trial counsel fails to account for the parties, the reporter notes those present.

**5.8. Court Members.** When a member other than the president speaks, identify the member by the "MBR" abbreviation, abbreviated rank and last name. For example:

DC: Does any member of the court-martial know the accused?

MBR (CAPT SMITH): I do.

If the president of the court-martial is the member speaking, use only the abbreviation "PRES."

**5.9. Voir Dire.**

5.9.1. Note non-verbal responses by members, as a group or individually, when the questioning counsel fails to mention it. For example:

TC: Does any member know of any reason that would prevent him or her from sitting as a member?

[Negative response by all members.]

5.9.2. Challenges of Members. When a challenge against a court member is sustained, show it as follows:

[MBR CAPT SMITH, the challenged member, having been excused by the military judge, withdrew from the courtroom.], or

[The court-martial was called to order at 1700 hours, 14 August 2009, with all parties present, including the members. MBR CAPT SMITH was not present.]

**5.10. Interrupted Testimony.** The following example shows how to report an interruption.

**CROSS-EXAMINATION**

**Questions by Defense Counsel:**

Q. Mrs. Wilson, you stated on direct examination that you have known Airman Foster for 3 years and ----

A. Well, that was give or take a few months either way; I wasn't being precise on that point.

Q. ---- and that he had always paid his bills in a rather lax fashion. What do you have to say about these receipts? (Defense Exhibit B handed to the witness by the defense counsel).

A. Well, I ---

Q. You do admit that he paid these on time, at least on a monthly basis, perhaps not on the first of the month, but---

A. Yes, there was one period when he was prompt with his payments.

**5.11. "Stricken" Portion.** When a trial participant uses the phrase "strike that," transcribe all of the remarks, including the instruction to "strike" part of it. For example:

Q. Mr. Black, did you know it was Mr. Blue who--strike that--did you know it was Mr Brown who made that statement?.

**5.12. Testimony through an Interpreter.** In cases involving a witness speaking through an interpreter, transcribe the testimony as if the translation came directly from the witness, except when the interpreter makes a comment clearly not coming from the witness. Example:

Q. How long have you been acquainted with Frau Kugler?

A. Three years.

Q. What day does Frau Kugler bring in the company receipts for accounting purposes?

A. Donnerstag.

DC: Objection, the interpreter should use only English in his translation.

INT: Excuse me, sir, I mean Thursday.

**5.13. Non-response by a Witness.** Q. Then there is a doubt in your mind?

A. [No response.]

**5.14. Non-verbal Responses and Gestures.** Some gestures by counsel or witnesses may be essential to the meaning of oral testimony. For example, a statement by a witness, "He hit me here," or "I was about this far," does not provide an adequate basis for reviewing authorities to determine what happened at trial. Counsel and the military judge are primarily responsible for orally describing gestures. If they fail to do so, the reporter should include a general, factual description, e.g., "He tried to bite me here [witness pointed to the right side of her neck]" or "It was about this far apart [witness held her hands approximately 18 inches apart]." Do not include

an opinion or conclusion in the description. Descriptions, such as "The witness appeared surprised," or "She said in a loud, husky voice," are improper.

**5.15. Transcribing Quotes into the Record.** When legal references and other materials not being offered into evidence or marked for identification are read, place quotation marks around it in the transcript. Include the correct spelling and citation of the material. Lengthy material may be offered as an appellate exhibit.

**5.16. Excusing Witnesses from the Courtroom.** Annotate the military judge's excusal of witnesses from the courtroom as follows:

[The witness, after being instructed not to discuss his testimony, was excused and left the courtroom subject to recall.]

**NOTE:** If the witness was not instructed by the military judge regarding discussing his testimony, do not include that portion of the standard entry. If the witness was not held subject to recall, do not include that portion of the standard instruction. Summarize what instructions were given to the witness.

**5.17. Closing and Reopening the Court-Martial.** For example:

MJ: The court-martial will be closed.

[The court-martial closed at 1845 hours, 14 August 2009.]

(Note: Insert Page Break between Sessions.)

[The court-martial opened again at 2005 hours, 14 August 2009, with all parties present who were present when the court-martial closed.]

If, while the court-martial is closed, the military judge convenes an Article 39(a) session, annotate the session immediately after the date and time the court-martial closed. See paragraph 5.4.

**5.18. Reporter Reads the Record.** If the military judge directs the reporter to read a portion of the record from the notes, or replay a portion of the recorded session, transcribe it as follows: "The reporter read the portion of the proceedings between page \_\_, line \_\_ and page \_\_, line \_\_, at the direction of the military judge."

**5.19. Miscellaneous Examples for Summarized Transcripts.** The following are examples of summaries of standard parts of trial for use in summarized transcripts. These are examples only and the court reporter should take care to summarize what actually took place in the court-martial being transcribed and not substitute these examples.

5.19.1. Explanation of Stipulation of Fact to the Accused.

The military judge explained to the accused and ascertained that the accused understood the meaning and effect of the Stipulation of Fact, Prosecution Exhibit \_\_\_ for ID, and that the accused consented to its use as evidence by the court. The military judge further stated that the Stipulation of Fact would be used to determine the providence of the guilty plea. Prosecution \_\_\_ for ID was admitted into evidence, subject to the acceptance of the guilty plea.

#### 5.19.2. Post-Trial and Appellate Rights.

The military judge advised the accused of his post-trial and appellate rights. Appellate Exhibit \_\_\_ was provided by the defense counsel. It consisted of written advice, signed by the accused and defense counsel advising the accused of his post-trial and appellate rights.

#### 5.19.3. Stipulation of Expected Testimony.

The Stipulation of Expected Testimony was marked as Appellate Exhibit \_\_\_\_. The military judge explained to the accused and ascertained that the accused understood the meaning and effect of the Stipulation of Expected Testimony. The accused consented to the use of the Stipulation of Expected Testimony.

#### 5.19.4. Accused's Request that Defense Counsel Argue for a Bad Conduct Discharge.

Appellate Exhibit \_\_\_ was marked and provided to the military judge. The military judge explained to the accused and ascertained that the accused understood the meaning and effect of his request that his counsel argue for a bad conduct discharge. After extensive questioning of the accused, the military judge found that the accused made a knowing and intelligent decision to have the defense counsel argue for a bad conduct discharge. The military judge granted permission for such an argument.

#### 5.19.5. Pretrial Agreement.

The military judge ascertained that there was a pretrial agreement in this case. The pretrial agreement was marked as Appellate Exhibit \_\_\_\_, and Appendix A thereto was marked as Appellate Exhibit \_\_\_\_. The military judge inquired into and ensured that the accused fully understood the entire agreement and was satisfied with its terms; that he understood the meaning and effect of his pleas and desired to plead guilty; that the agreement was in substantial compliance with the requirements of the applicable regulations and law; that it was not contrary to public policy and the military judge's notion of fairness; and that the parties agreed to its terms.

#### 5.19.6. Acceptance of a Guilty Plea.

The military judge announced that each guilty plea of the accused was found to have been voluntarily made with the full knowledge of its meaning and effect and, specifically, that the accused knowingly and consciously waived his rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by and to cross-examine the witnesses against him. The military judge found the pleas of guilty to be voluntary and that they had an adequate factual basis. The military judge accepted the guilty pleas.

#### 5.19.7. Sentence Limitation of a Pretrial Agreement.

The military judge examined Appellate Exhibit \_\_\_\_, Appendix A to the pretrial agreement. The military judge questioned the accused with regard to the sentence to be approved by the convening authority and determined that the accused understood it. Thereafter, the military judge stated that he found Appendix A to comply with public policy and the law; that it was not ambiguous in its terms; and that it did not deny the accused his right to due process.

**5.20. Certificate of Correction.** A ROT that is found to be incomplete or in error may be corrected after authentication. A certificate of correction may be completed by the court reporter and authenticated by the military judge. RCM 1104(d) and MCM, Appendix 14, set forth the

procedure and provides the format for a certificate of correction. Place it in the ROT immediately before the Action of the Convening Authority. (See **Figure 4.1**)

## Chapter 6

### CLASSIFIED, CONTROLLED TEST AND SEALED MATERIALS IN THE ROT

**6.1. Procedures for Classified Materials.** Trial counsel and court reporter must ensure they are familiar with procedures for safeguarding and handling classified documents, tapes, the ROT, and all associated materials. Transcribe classified portions of a ROT on a computer designated for classified use only. When a ROT contains classified material that cannot be declassified, the ROT, or portions thereof, must be classified. Refer to AFPD 31-4, *Information Security*, and AFI 31-401, *Information Security Program Management*, to determine whether a particular record must be classified. Ensure the appropriate classified cover sheet is placed over the top of any classified volume. Handle and protect classified materials, to include court reporting equipment and other media used to compile the ROT, in accordance with current directives for such materials. Consult your unit security manager prior to any proceeding or activity involving classified materials.

6.1.1. Classified Testimony. Trial counsel notifies the court reporter of the beginning and termination of each classified portion of testimony. Transcribe these portions on separate pages and assemble them under separate cover. Annotate in the unclassified ROT, at the place where the classified testimony occurred, the pages containing classified information, the classification of those pages, and the fact that they are bound under separate cover.

6.1.2. Classified Materials. Include classified materials in the original record of trial only, with a copy maintained at the office of the servicing staff judge advocate in case the original is lost in the mail. All other copies, including the accused's copy, shall be expurgated copies of the record of trial with the classified information deleted or withdrawn and a certificate inserted in its place. (See RCM 1104). The certificate informs the accused that the complete ROT, including the classified material, may be examined in the Office of The Judge Advocate General under such conditions as AFLOA/JAJM may prescribe, consistent with RCM 1104(b)(1)(D)(iii).

**6.2. Procedures for Controlled Test Materials.** Safeguard and protect controlled test materials from further disclosure or unauthorized access. Controlled test materials include promotion testing materials, professional military education test materials, and career development course exams. AFI 36-2605, *Air Force Military Personnel Testing System*, requires the safeguarding of controlled test materials in accordance with the applicable provisions of AFI 31-401.

6.2.1. Label the DD Form 490 and each page containing controlled test material as follows:

CONTROLLED TEST MATERIAL

SPECIAL HANDLING REQUIRED

6.2.2. Assemble all controlled test materials in a separate volume of the ROT. Insert a sheet of paper in the ROT where each exhibit or testimony containing controlled test materials would otherwise be located with an annotation identifying the volume in which these materials are actually located.

6.2.3. Place controlled testing materials in a stout, opaque envelope, sealed completely with strapping tape. The envelope should be annotated "CONTROLLED TEST MATERIALS – SPECIAL HANDLING REQUIRED. SEALED PURSUANT TO AFMAN 51-203, CHAPTER 6 AND AFI 36-2605." If the military judge also ordered the controlled test materials to be sealed, add to the annotation "ORDERED SEALED BY THE MILITARY JUDGE, ROT PAGE(S)\_\_\_."

6.2.4. Place controlled test materials in the original ROT only, with a copy maintained by the office of the servicing staff judge advocate in case the original is lost in the mail. Do not include controlled test materials in the accused's copy and other copies of the ROT. In these copies, insert a certificate in place of the controlled test materials. The certificate informs the accused (and others) that the controlled test materials have been withdrawn, that the complete record is kept at AFLOA/JAJM, and that it may be examined under such conditions as the record custodian prescribes.

**6.3. Procedures for Sealed Materials.** The term "sealed materials" is defined as those items, other than classified and controlled test materials, that a military judge, in the interest of justice, orders sealed in the ROT. Sealed materials may include testimony, exhibits, and pretrial documents (e.g., exhibits to Article 32 investigations). Sealed materials will typically involve contraband materials, such as sexually explicit pictures, or matters involving a high privacy interest, such as sensitive victim photographs or testimony.

6.3.1. Military judges, on their own initiative, may order that specified materials in a ROT be sealed. In addition, when ROTs will contain matters for which sealing is appropriate, trial counsel should ask the military judge to order those matters sealed in the ROT. Matters ordered sealed by the military judge should also be labeled as appellate exhibits and included in the ROT. A summarized ROT should address the sealing action in a general sense that conveys the topic of the sealing and decision of the Court rather than the particulars sealed (e.g., if motions and testimony are sealed, discuss the decision of the Court in generalities).

6.3.2. Label the DD Form 490 and each page containing sealed materials as follows:

SEALED MATERIALS

SPECIAL HANDLING REQUIRED

6.3.3. Place matters ordered sealed by the military judge in a stout, opaque envelope, sealed completely with strapping tape. The envelope should be annotated "SEALED ITEM – SPECIAL HANDLING REQUIRED. SEALED BY MILITARY JUDGE, ROT PAGE(S) \_\_\_." If the sealed matters are too bulky to be included with the other appellate exhibits, create a separate volume for them and insert a sheet of paper in the ROT stating where the sealed matters are located. For example:

SEALED MATTERS

Appellate Exhibit \_\_\_ was ordered sealed by the military judge, ROT page \_\_\_. It is to remain sealed and opened only by order of the court. Appellate Exhibit \_\_\_ is found in Volume \_\_\_ of \_\_\_.

6.3.4. Place sealed matters in the original ROT only, with a copy maintained by the office of the servicing staff judge advocate in case the original is lost in the mail. Do not include

sealed materials in the accused's copy and other copies of the ROT. Withdraw the sealed materials and insert a certificate informing the accused and others that the complete record is kept at AFLOA/JAJM and that it may be examined under such conditions as the record custodian prescribes.

## Chapter 7

### ABBREVIATED RECORDS OF TRIAL

**7.1. Preparing Abbreviated ROTs.** The abbreviated ROT consists of the items listed in **Figure 7.1** and RCM 1103(e). Prepare abbreviated ROTs for the following GCMs and SPCMs:

- 7.1.1. Those resulting in an acquittal of all charges and specifications;
- 7.1.2. Those resulting in a finding of not guilty of all charges and specifications only by reason of lack of mental responsibility; and
- 7.1.3. Those terminated by withdrawal, mistrial, or dismissal before findings.

#### Figure 7.1.

##### GUIDE FOR ASSEMBLING ABBREVIATED RECORDS OF TRIAL

1. DD Form 490 - Front Cover.
2. Court reporter's chronology with transcription log.
3. Promulgating Order.
4. Result of Trial Memorandum
5. Master Index and Accused's Receipt (See **Attachment 3**).
6. Transcript (See **Attachment 3**). This is an abbreviated transcript reflecting the arraignment, pleas, findings on jurisdiction, if any, findings on the charges and specifications, and termination of the court-martial before findings with prejudice to the government. Jurisdiction will normally be apparent from the Charge Sheet. The following items must be included within this transcript:
  - a. Convening order and any amendments
  - b. DD Form 458, *Charge Sheet*
7. Authentication sheet, including trial counsel's certificate of review and defense counsel's examination of the record. (For suggested format, see **Figure 12.1**.)
8. Heavy Stock Divider

#### NOTE:

There is no requirement to attach exhibits to an abbreviated ROT.

## Chapter 8

### SUMMARIZED RECORDS OF TRIAL

**8.1. Preparing Summarized ROTs.** A summarized ROT is a ROT that contains a summarized report of the proceedings authorized under RCM 1103(b)(2)(C). The summarized report of proceedings must accurately reflect the substance of all the proceedings and must be sufficiently detailed and complete to permit resolution of any contested factual or legal issue upon review (See MCM, Appendix 13). Include a more detailed summary of Article 39(a) sessions held to discuss instructions for findings. If instructions are altered, added or omitted between what is agreed to during the Article 39(a) session and the actual delivery to the members, note that in a summary. **Attachment 2** is a sample summarized report of proceedings. ROTs containing a summarized report of proceedings should be assembled in accordance with the guidance in **Figure 4.1**

**8.2. Verbatim Portions.** The following parts of a summarized report of proceedings must be verbatim:

- 8.2.1. Findings on the jurisdictional basis for prosecution of the offenses, if any;
- 8.2.2. Findings;
- 8.2.3. Sentence;
- 8.2.4. Any other verbatim portions requested by reviewers (SJA, counsel, military judge, etc.).

**8.3. Video or Audio Recordings.** When an audio or video recording is introduced at trial, the ROT may include a verbatim transcript of the material played before the court, or, at the discretion of the military judge, the material on the tape or disc may be summarized. If a video is silent, the party offering the video evidence should describe what is depicted on the recording. Attach the tape or disc of the recording that was introduced at trial to the original ROT forwarded to AFLOA/JAJM. Attach a copy of the recording to the copy of the ROT maintained by the convening authority's SJA.

**8.4. Other Magnetic or Digital Media.** If evidence consisting of the contents of other magnetic or digital media (e.g., tapes of any kind, CDs, DVDs, cellular phones, computer hard drives, or any other recording device introduced at trial), the party offering the medium must prepare a written summary of the contents offered as an exhibit. This may be simply a list of sub-directories and files or the contents of a text message, for example. Attach the medium offered at trial (if it is a tape or a disc) and the summary to the ROT as an exhibit. The military judge may authorize substitution of exact copies of the contents of large media, such as the contents of a hard drive. Attach copies of all media made part of the original ROT to the copy of the ROT retained by the convening authority's SJA.

**8.5. Summarized Voir Dire.** Individual Voir Dire. Summarize the individual voir dire of a court member whose challenge for cause was denied by the military judge (see Appendix 13, MCM).

## Chapter 9

### SPECIFIC REQUIREMENTS FOR VERBATIM RECORDS

**9.1. Video or Audio Recordings.** When an audio or video recording is introduced at trial, include a verbatim transcript of the material played before the court in the ROT. It is the responsibility of the party offering the recording to prepare a summary of the scene and action depicted for the ROT. Attach the tape or disc of the recording that was introduced at trial to the original ROT as an exhibit and a copy of the recording to each copy of the ROT forwarded to AFLOA/JAJM. Also attach a copy of the recording to the copy of the ROT retained by the convening authority's SJA.

**9.2. Other Magnetic or Digital Media.** If evidence consisting of the contents of other magnetic or digital media (e.g., tapes of any kind, CDs, DVDs, cellular phones, computer hard drives, or any other recording device introduced at trial), include a verbatim transcript of the material introduced at trial in the ROT. If the material is graphic, summarize the description of the material. The party who offers the medium prepares a summary of the contents of the medium offered as an exhibit. This may be simply a list of sub-directories and files or the contents of a text message, for example. Attach the medium offered at trial (if it is a tape or a disc) and the summary to the original ROT as an exhibit. The military judge may authorize substitution of exact copies of the contents of large media, such as the contents of a hard drive. Attach copies of all media made part of the original ROT to the copy of the ROT retained by the convening authority's SJA.

**9.3. Instructions.** Include the full text of the instructions given by the military judge or president in the ROT. Parenthetical entries, such as "[The military judge read Appellate Exhibit I to the court.]" are not adequate.

## Chapter 10

### RECORDS OF TRIAL FOR SUMMARY COURTS-MARTIAL

**10.1. DD Form 2329.** Use DD Form 2329, *Record of Trial by Summary Court-Martial*, as the ROT in all summary courts-martial (SCM) (See Appendix 15, MCM). A complete SCM ROT shall include a DD Form 490 as the front cover, the DD Form 2329, along with the following documents: Convening Order, Charge Sheet with First Indorsement, Accused's Receipt for ROT, Action Memorandum, Clemency Submissions, Notice of Post-Trial Submissions, Exhibits, and other Allied Papers. An original and three copies of the DD Form 2329 are required pursuant to paragraph 3.5 of this manual.

**10.2. Numbering.** Number each SCM ROT at the top right corner of the DD Form 2329 and the top right corner of the first page of the ROT (the DD Form 490 cover page). SCM ROTs should be numbered serially in the order in which received for action. Use a number consisting of the first three letters of the name of the base where the case was tried, the last two digits of the year and the number of the court. (For example, BOL, 11-1, indicates the first SCM at Bolling AFB in 2011.) Do not just "JB" as part of your numbering system unless the next letter in the code will uniquely identify your base. For instance JBA could be Joint-Base Andrews, Arnold, or Andersen. Use codes like AND, ARN, or GUA instead.

**10.3. Authentication.** The ROT is authenticated by having the having the officer detailed to serve as the summary court-martial sign each copy of the DD Form 2329.

**10.4. Service of ROT and Post-Trial Submissions.** As soon as the ROT (DD Form 2329) is authenticated, serve a copy upon the accused and obtain a receipt (see MCM, Appendix 14, for format of receipt). If a copy of the ROT cannot be served on the accused, serve it on the defense counsel and attach to the ROT an explanation as to why it cannot be served on the accused. The accused may submit written matters to the convening authority in accordance with RCM 1105. Add such matters to the original and each copy of the ROT (except for the copy previously served upon the accused).

**10.5. Convening Authority Action.** Show the action of the convening authority on each copy of the DD Form 2329, except the copy previously served upon the accused, and distribute the action to the accused, defense counsel, the SCM officer, the accused's immediate commander, the local Military Personnel Flight (MPF), the local Finance Office, and the confinement facility, as appropriate. If at all possible and space permits, include the convening authority's action directly on the DD Form 2329 so that a separate document is not necessary. A promulgating order is not necessary unless the case results in a full acquittal or in cases where there is an error in the convening authority's initial action. See RCM 1306(b)(4).

**10.6. Post Action Review.** After convening authority action, forward the original and one copy of the ROT to the staff judge advocate for the general court-martial convening authority for review under Article 64(a), UCMJ. The Article 64(a) review should be annotated on each copy of the DD Form 2329 and on the front cover (DD Form 490). Upon completion, the original ROT containing the original DD Form 2329 should be forwarded to AFLOA/JAJM. Copies of the DD Form 2329 containing the Article 64(a) review are distributed, to the extent practical, in accordance with AFI 51-201, Figure 10.9 and paragraph 11.4.4.

## Chapter 11

### RECORDS OF GCMS OR SPCMS TERMINATED BY MISTRIAL, DISMISSAL OF ALL CHARGES OR OTHERWISE TERMINATED WITHOUT FINDINGS

**11.1. Retrial Intended.** If the accused may be retried on the same or corrected charges, prepare a verbatim ROT to the point of termination, authenticate it, and serve a copy on the accused. Attach the ROT of the first proceeding to the ROT of the second proceeding.

**11.2. Retrial Not Intended.** If the accused will not be retried on the same or corrected charges, prepare the ROT in the same manner as an acquittal. See [Chapter 7](#) and RCM 1103(e).

**11.3. Cases Not Tried.** When there is an Article 32 investigation and no court-martial follows, dispose of the report of investigation in accordance with the Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS).

## Chapter 12

### AUTHENTICATING GCM AND SPCM ROTS

**12.1. Authentication of Record and Trial Counsel's Certificate of Review.** Authenticate the ROT in accordance with RCM 1104. Before forwarding the ROT to the military judge or court reporter for authentication, trial counsel or assistant trial counsel must examine the ROT for accuracy. Trial counsel or assistant trial counsel (whichever one examines the ROT) shall sign a certificate to evidence the fact that such an examination was accomplished. See **Figure 12.1** for a suggested format for the authentication of record, including trial counsel's certificate of review.

**12.2. Court Reporter.** With the prior approval of the military judge, the court reporter may authenticate the ROT of a SPCM in which a BCD, confinement for more than 6 months, or forfeiture of pay for more than six months was not adjudged. See RCM 1104(a)(2)(A).

**12.3. Substitution of Military Judge or Court Reporter.** If a substitution of the military judge or court reporter occurs during the trial, each individual authenticates that portion of the ROT concerning proceedings at which the authenticator was present. Indicate the pages of the ROT covered by the authentication of each above the authenticator's signature. In the event the military judge is unavailable to authenticate the ROT, see RCM 1104.

**12.4. Forwarding the ROT Without the Article 32 Investigation.** The ROT of a GCM or SPCM may be sent to the military judge for authentication without the Article 32 investigation report and allied papers, unless those documents were introduced at trial as exhibits.

**12.5. AF IMT 135, Corrections to Record of Trial.** Include this errata sheet with ROTs forwarded to the military judge so the military judge can annotate the location and wording of any necessary corrections.

#### **12.6. Correcting Errors in ROTs.**

12.6.1. ROTs may not be authenticated "subject to correction." Correct errors before authentication. Except as provided in RCM 1104(d), do not retype a page in a ROT after authentication.

12.6.2. Minor corrections, misspellings, punctuation, and similar corrections may be made on the original copy of the record in pen or typewriter. The authenticator making the correction initials next to the correction. For major corrections requiring an entire page to be retyped, the authenticator, if other than the court reporter, contacts the court reporter and indicates the needed changes. The reporter types a new page with the corrections and sends it to the authenticator. If it becomes necessary to insert additional pages, number them as described in paragraph **1.8.1**

12.6.3. After receiving the original authenticated ROT from the military judge, photocopy the errata sheet (AF IMT 135), any pages with changes, and substitute them for the corresponding uncorrected pages in each copy of the ROT. The pages with corrections cannot be retyped after authentication. The corrected pages must remain part of the ROT.

12.6.4. After authentication, the court reporter ensures all copies of the ROT are complete and identical to the original authenticated ROT. The AF IMT 135 is placed in the ROT as shown in **Figure 4.1**

**12.7. Examination by Defense Counsel.**

12.7.1. Except when unreasonable delay will result, trial counsel shall permit the defense counsel to examine the ROT before authentication. Although examination of the ROT by defense counsel is not a part of the authentication, it is desirable that the ROT reflect defense counsel review. After examination of the record, defense counsel should complete a certificate of examination using the format in **Figure 12.1**. When defense counsel is not given the opportunity to examine the record before authentication, the reasons should be attached to the record. See RCM 1103(i)(1)(B) and Appendix 14, MCM. The reasons can be provided in a certificate signed by the trial counsel.

12.7.2. Defense counsel is entitled to respond to the recommendation of the SJA and to submit an Article 38(c), UCMJ, brief. Provide a copy of the ROT to the defense counsel responsible for clemency matters (as determined on the record by the military judge) no later than the date defense counsel is served the SJA's recommendations (RCM 1106(f)). Earlier transmittal is desirable. Defense counsel may retain this copy until submission of the RCM 1106(f)(4) response. If the copy is provided to defense counsel before authentication, furnish copies of any corrected pages and the AF IMT 135, which have been otherwise corrected, on or before the date of service of the SJA's recommendations. Defense counsel must return this copy of the ROT and corrected pages to the SJA of the command taking action not later than the time to submit the RCM 1106(f)(4) response to the SJA.

**12.8. Accused's Copy.** Give each person tried by court-martial a copy of the ROT, except for any classified materials, controlled test materials, sealed materials, or sexually explicit materials (see paragraph 4.5). Indicate disposition of the accused's copy of the ROT in the original. Accomplish this in the "Copies of Record" section of **Figure 4.2**

**12.9. Prisoners.** Ensure that prisoners receive their copy of the ROT. SJAs should advise Security Forces to establish procedures to counsel prisoners on the importance of the ROT and its retention. Transfer the ROT with prisoners as personal property.

**12.10. Delivery Impossible.** If a copy of the record cannot be delivered to the accused, give it to the defense counsel or forward it with the original record with an explanation of the reason for non-delivery. RCM 1104(b).

**Figure 12.1. Suggested Format for Authentication of Record of Trial, including Trial Counsel's Certificate of Review and Defense Counsel's Examination of Record.**

**AUTHENTICATION OF THE RECORD OF TRIAL**

**in the case of**

**United States v. \_\_\_\_\_**  
(Insert Accused's Rank and Name)

**TRIAL COUNSEL'S CERTIFICATE OF REVIEW**

In accordance with RCM 1103(i)(1)(A), MCM (2012), I reviewed the Record of Trial in the above-referenced case and determine it to be accurate and complete.

---

DATE

---

Trial Counsel**DEFENSE COUNSEL'S EXAMINATION OF RECORD**

I examined the Record of Trial in the above styled case in accordance with RCM 1103(i)(1)(B).

---

DATE

---

Defense Counsel

**NOTE: If defense counsel was not given the opportunity to examine the record before authentication, the reasons shall be attached to the record. See RCM 1103(i)(1)(B) and MCM, Appendix 14.**

**AUTHENTICATION OF RECORD**

I examined the Record of Trial in the above-referenced case and find that it accurately reports the proceedings. I authenticate the Record of Trial in accordance with RCM 1104.

---

DATE

---

Military Judge

## Chapter 13

### FORWARDING RECORDS OF TRIAL

**13.1. Cases Reviewed Under Article 66, UCMJ.** Forward the original ROT and two copies to AFLOA/ JAJM. Article 66, UCMJ review is required for cases in which the sentence, as approved, extends to death, dismissal of a commissioned officer (or cadet), dishonorable or bad conduct discharge, or confinement for one year or more, and, except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn. If special software is required to view any exhibit, the legal office must also provide a copy of the software and user license when forwarding the ROT. The preferred format is wfm viewer software.

**13.2. Cases Where Appellate Review is Waived or Withdrawn.** Forward the original ROT only to AFLOA/JAJM.

**13.3. Cases Reviewed Under Article 69, UCMJ.** Send only the original ROT to AFLOA/JAJM for the Article 69, UCMJ examination. An Article 69, UCMJ examination is required for each general court-martial that is not otherwise reviewed under Article 66 if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review. The convening authority's staff judge advocate retains one copy of the ROT at least until notified that post-trial examination is completed and the proceedings are final under Article 76, UCMJ. If TJAG directs review of the case by the Air Force Court of Criminal Appeals, AFLOA/JAJM will request two additional copies of the ROT from the convening authority. If special software is required to view any exhibit, the legal office must also provide a copy of the software and user license when forwarding the ROT.

**13.4. Remands.** If the original ROT is reviewed under Article 66 or 67, UCMJ, and is returned to a convening authority for a new action, always return the original ROT, the original and two copies of the new action, 10 copies of the new promulgating order, and two copies of the new SJA's Recommendation, if applicable, to AFLOA/JAJM.

**13.5. SPCMs with BCD Not Approved by the Convening Authority.** Forward the original ROT to AFLOA/JAJM after the GCM SJA completes the Article 64, UCMJ review.

**13.6. Method of Forwarding ROTs.** Send ROTs by a means that ensures some way of tracking it if lost. Forwarding ROTs to AFLOA/JAJM by overnight mail is rarely necessary. Ensure the ROT is packaged securely to safeguard against the record coming apart during shipment. Use of bubble wrap or some other similar single-piece packing material is recommended. Do not use Styrofoam "popcorn," shredded paper, or other loose materials as packing material. Use appropriate size boxes and indicate if the ROT is being shipped in multiple boxes (e.g., "Box 1 of 2"). Do not put too many volumes in one box as this may make the boxes too heavy for one person to lift. Box weight should be limited to 20 pounds.

**13.7. Disposition.** Refer to the Air Force Records Disposition Schedule in AFRIMS for ROT disposition instructions.

**13.8. Electronic Trial Transcripts.** In addition to forwarding the authenticated ROT, the electronic version from which the unsealed, unclassified authenticated trial transcript was printed will be saved from Word into a searchable Portable Document Format (PDF) file and uploaded

by the court reporter to FLITE in a secure electronic repository established by AFLOA/JAS for trial transcripts. A searchable PDF file allows key word searches within a stable format that prevents inadvertent changes. Court reporters must not manually scan the trial transcript into a PDF format because doing so would be unnecessarily time consuming and would result in a large, unsearchable document. Electronic trial transcripts uploaded to FLITE will be named by year, base, and case name (e.g., "2009-Barksdale-A1C William Johnson") so that appellate counsel and other Air Force personnel may access the files for official purposes. The location of the secure FLITE repository and any special instructions will be provided to the field through AFLOA/JAJM. If the FLITE repository is not available, court reporters are permitted to send the electronic trial transcript via encrypted email to authorized personnel for official purposes. Personnel who use the electronic trial transcript as an aid to their official duties must always check its contents against the authenticated ROT, which is the only official Air Force record of the proceedings.

## Chapter 14

### RETURN OF EXHIBITS TO RIGHTFUL OWNERS

**14.1. Generally.** Normally, property involved in courts-martial cannot be returned until after appellate review. Return all property involved in courts-martial or investigations to the owners as soon as possible, unless ownership is contested or the evidence is contraband. An owner, including the accused, does not lose ownership or right to possession of property used as evidence in a court-martial. If feasible, considering the potential for rehearings, make copies, descriptions, or photographs of the evidence for the ROT and return the property to the owners. If property that is made part of the ROT cannot be returned to the owner before completion of appellate review, attach a letter to the ROT from the installation SJA, through the GCM SJA to AFLOA/JAJM, requesting the return of the property to the command concerned or directly to specified persons after the sentence becomes final. As used in this paragraph, "contraband" means any property clearly made subject to confiscation or forfeiture by a U.S. statute or a state or foreign law.

**14.2. Conflicting Claims.** Courts-martial cannot adjudicate title to property. Where more than one person claims the property, the SJA should attempt to resolve the matter among the claimants. If the claimants cannot agree, dispose of the property according to the ruling of the appropriate civil court. Aside from acting as temporary custodian of the property, tell the claimants of the Air Force's position in the matter and suggest they seek a remedy in civil court.

## Chapter 15

### PREPARING AND ASSEMBLING ARTICLE 32 REPORTS

**15.1. Appointment of Article 32 Investigating Officer (IO).** The appointment of the Article 32 IO is done as a separate letter. Letterhead may be used. The appointment letter is never marked as an exhibit to the IO's report.

**15.2. Report.** Use DD Form 457, *Investigating Officer's Report*, to prepare the report. Use additional sheets of plain bond paper to complete the report if necessary. The IO's report is the first indorsement to the IO's appointment letter. See AFI 51-201, paragraph 4.1.13.

**15.3. Exhibits.** Include a list of exhibits in the report, but do not mark the exhibits list as an IO Exhibit.

15.3.1. A copy of the DD Form 458, *Charge Sheet*, is always IO Exhibit Number 1. Never mark the original charge sheet as an IO exhibit.

15.3.2. Each page of an IO exhibit should be numbered for the ease of reviewing the report. For example, the first page of IO Exhibit Number 5 should be numbered "IO Ex No. 5, page 1 of \_\_\_\_" and the second page should be numbered "IO Ex No. 5 page 2 of \_\_\_\_" and so forth throughout the document. If the document is printed on the front and backside of the page, number each side as a separate page.

15.3.3. A stamp should be available to the IO for the purpose of marking exhibits. The stamp should read "IO. Ex No. \_\_\_\_." Exhibits should be marked in the bottom right corner of the page if possible. Follow the same procedures for IO exhibits as are required for exhibits contained in the ROT when insufficient space at the bottom right corner for marking exists. Refer to paragraph [1.10.5](#)

## Chapter 16

### DUTIES AND RESPONSIBILITIES OF THE COURT REPORTER

**16.1. Generally.** The primary duty of the court reporter is to record verbatim all sessions of any proceeding to which he or she is detailed, and to accurately transcribe and assemble court-martial records, Article 32 Investigations, *DuBay* hearings, contingency confinement hearings, proceedings in revision, courts of inquiry, and other proceedings as required. Court reporters will be used in all GCMs and SPCMs.

**16.2. Neutrality of Court Reporter.** The court reporter is to remain neutral in any proceedings to which detailed. The court reporter must refrain from expressing personal opinions about the case before, during, or after trial. Counsel should provide court reporters a list of witnesses and a list of exhibits before trial. Court reporters must not share information received from one party with the other party in any proceeding to which the reporter is detailed. This includes witness lists and exhibit lists provided to the reporter in advance of trial to assist in the reporter's preparation.

**16.3. Court Reporter Recesses.** The court reporter should inform the military judge if feeling ill or fatigued so either a recess or a replacement court reporter, as appropriate, may be arranged.

**16.4. Interruption of Proceedings.** When anything interferes with the court reporter's ability to record the proceedings verbatim, the reporter must bring this to the attention of the military judge immediately. This includes the inability to hear the person who is speaking, or equipment malfunction. The court reporter must check the equipment periodically to ensure it is functioning properly.

**16.5. Court Reporter Tapes.** The use of cassette recording is prohibited except in cases of emergency where digital means of recording are unavailable. If cassette recorders are used, court reporters should label tapes used to record the proceedings with the accused's last name, type of proceeding, and date. Number the tapes for each proceeding starting at 1. Tapes should be labeled and numbered in advance of trial. For example: "Smith - 1 - GCM - 14 Aug 09." Back-up tapes should be labeled as follows: "Smith - 1 B/U -GCM - 14 Aug 09." If more than one reporter is detailed to a case, the reporter should initial the tapes he or she uses.

**16.6. Exhibits.** Court reporters should ensure that they have all of the exhibits at the close of trial.

**16.7. Court Reporter Checklist.** Court reporters should use a checklist to ensure all tasks are completed. **Figure 16.1** is a sample checklist. Court reporters should also maintain a log of all proceedings to which the court reporter is detailed. The use of computer generated logs is preferred.

**16.8. Court Reporter Attestation.** The detailed court reporter is ultimately responsible for attesting to the quality and authenticity of the transcript. Even when the record is transcribed by another court reporter, the detailed court reporter must still review the record for accuracy and sign an attestation (**Figure 16.2**) to be inserted in the record after the court reporter chronology.

**16.9. Methods of Reporting.** Digital recording will be used as the primary method of recording; stenotype may also be used, however, digital is preferred. Court reporters are also authorized to use stenomask (closed microphone), stenomask with computer aided transcription,

stenotype with computer aided transcription, and open microphone to record any proceeding to which they are detailed. Court reporters must use both a primary and backup system to ensure a record can be accurately prepared. The backup method for stenotype reporting will be digital recording.

16.9.1. Special Rules for Open Microphone Reporting. Court reporters reporting proceedings using the open microphone method of reporting must adhere to the following procedures in addition to the requirements included elsewhere in this manual.

16.9.1.1. Monitor the recording at all times by using the headset to ensure the proceeding is being recorded verbatim. If there is noise that prevents the reporter from hearing what is on the recording or a person is not speaking loudly enough for the recorder to pick up what is being said, interrupt the proceedings to inform the military judge of the problem immediately. This will ensure that a recording is made of everything being said.

16.9.1.2. If using a cassette recorder, make sure the equipment is properly set up to record by open microphone. Set the recorder counter to "0" at the beginning of the proceeding and each time the tape is changed. Label the tapes as described in paragraph **16.5**

16.9.1.3. Take detailed notes of what transpires during the course of the trial, by hand or on a laptop. For each item noted when recording on a cassette recorder, record the counter number and tape number for easy accessibility later. This will aid the court reporter if asked to play back some part of the proceedings. If using digital recording and computerized notes, the notes will be automatically time-stamped to allow for easy play back. Make a note of any gestures made by counsel or a witness whether or not described on the record. Also note case cites and terms with which the reporter is not familiar to check the spelling at a recess. Note the following list of items is not all inclusive:

The opening and closing times of all open sessions, all Article 39 (a) sessions, recesses, closing and opening for deliberations, and adjournment;

The detailing of counsel and counsel qualifications;

The detailing of the military judge;

Rights to counsel explained to the accused;

Nature of the charges;

Opportunity to challenge military judge;

Explanation of choice of forum to accused;

Arraignment;

Motions;

Pleas;

Explanation of guilty plea;

Maximum punishment authorized;

Elements of the offense;

*Care* inquiry;

Pretrial agreement, if any;

Announcement of findings;

Members called;

Swearing in of court members;

Assembly of court-martial;

Preliminary instructions to members;

Voir dire, en banc and individual;

Challenges;

Members informed of accused's pleas;

Distribution of charges to the members;

Opening statements;

The calling of each witness and direct and cross-examination, any objections and rulings, and excusal of each witness;

Any documentary or physical evidence introduced, objections, rulings, and place where admitted or rejected;

Resting of case by either side, rebuttal, and surrebuttal;

Rights in extenuation, mitigation, and right to make a statement;

Arguments on findings/sentence;

Instructions on findings/sentence;

Announcement of findings/sentence;

Personal data on accused introduced;

Sentence limitations contained in pretrial agreement;

Post-trial and appellate rights advisement; and

Adjournment.

16.9.1.4. If using cassette tapes, keep track of how much time is left on the tape. Change tapes during recesses if the tape is almost used up. If necessary, interrupt the proceedings to change the tape.

**16.10. Time Goals.** The time required to transcribe a record varies depending on a number of factors, such as the complexity of the case, the effectiveness of the court reporter's equipment, the quality of the court reporter's notes taken during trial, the court reporter's familiarity with the equipment and software, etc. As a general guideline, one hour of in-court proceedings should take no more than three hours to transcribe and, in more complex cases, no more than five hours to transcribe. In calculating in-court time include short recesses, deliberations, and other short delays. This goal is not an exact calculation but should be used as a guideline of what SJAs can expect. Historically, it has taken an average of 18 days to complete the ROT from the date that the sentence or an acquittal is announced.

**16.11. Safeguarding Recordings and Evidence.** The court reporter must safeguard their laptop, tapes (if used), and evidence during recesses and while preparing the record of trial. If a recording or evidence is lost, a verbatim transcript may not be able to be prepared. This may result in the convening authority not being able to approve all of an adjudged sentence. See RCM 1103(f). During recesses and overnight adjournments, court reporters should keep all transcription and evidence provided to them in a locked drawer or cabinet when not under their direct observation. If a problem arises, notify the military judge, trial counsel, or SJA immediately. Follow these security measures while preparing the ROT and continue until receiving an authenticated ROT.

**16.12. Retention of Trial Notes or Recordings:** Retain all reporter's notes, worksheets, relevant materials, copies of audio and videotapes, and digital and/or tape recordings of the original proceedings. Annotate the documents with the accused's name, date of trial and other pertinent data. Dispose of these items in accordance with the Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS).

**16.13. Transcribing Other Proceedings Under the MCM.** Court reporters may be detailed to transcribe depositions, Article 32 reports of investigation, *DuBay* hearings, contingency confinement hearings, and courts of inquiry. The following guidance is provided for these proceedings.

16.13.1. Depositions. Record and transcribe the deposition verbatim. Note the opening and closing times and dates, and the times and dates of any recesses or adjournments. The format for transcribing depositions is found in AFI 51-201, Figure 4.4. The witness need not sign the deposition. The deposition officer authenticates the deposition and the court reporter certifies it. See RCM 702(f). Refer to AFI 51-201, Figure 4.5, for the format for the

authentication and court reporter's certificate. Depositions may be recorded digitally, on audiotape or videotape. See RCM 702(g)(3). Depositions taken on written interrogatories are recorded and authenticated in the manner provided by DD Form 456, *Interrogatories and Depositions*. Mark deposition exhibits in the lower right corner of the exhibit as "Deposition Exhibit 1, 2, etc."

16.13.2. Article 32 Reports of Investigation. Court reporters may be detailed to take testimony in Article 32 pretrial investigations. Normally such testimony is summarized. AFI 51-201, paragraph 4.1.8 sets out the requirements for when verbatim testimony may be taken. The IO is responsible for the content of the summarized testimony of each witness. Whenever possible the witness should sign the summarized testimony. Refer to **Figure 16.3** for a suggested format for summarized Article 32 testimony.

16.13.3. *DuBay* Hearings. *DuBay* hearings are post-trial sessions ordered by an appellate court to find facts to assist the reviewer of the case. These proceedings are recorded verbatim unless otherwise directed. Use the same format as used for courts-martial. Number hearing exhibits numerically beginning with Hearing Exhibit 1. Authenticate the transcript in the same manner as the ROT. If documents are removed from the ROT and used in the hearing, place a blank sheet of paper in the ROT where the document was located and annotate where the document is now located. See AFI 51-201, paragraph 11.16, for additional requirements.

16.13.4. Contingency Confinement Hearings. AFI 51-201, paragraph 9.31, sets forth the procedures for hearings to impose confinement adjudged for failing to pay a fine. The proceedings may be summarized unless the convening authority directs a verbatim transcript. Transcribe the military judge's statement of evidence and findings verbatim if done on the record. If the military judge does a written statement of evidence and findings, attach this to the record as a hearing exhibit. The format for the transcript is the same as for courts-martial. Label exhibits numerically beginning with Hearing Exhibit 1. Prepare a cover page similar to the front cover of the DD Form 490 and an index of testimony and exhibits. Prepare an authentication sheet for the military judge similar to the authentication sheet used in ROTs, substituting "Contingency Confinement Hearing" for "Record of Trial."

16.13.5. Courts of Inquiry. AFI 51-201, paragraph 4.2, and Article 135, UCMJ, set out the requirements for courts of inquiry. The parties to a court of inquiry are the members (senior member is president), counsel for the court is the legal advisor, the "known party" is referred to as the respondent, his or her counsel is referred to as respondent's counsel, and the government representative is referred to as the recorder. The court reporter prepares a verbatim transcript of the proceedings, and the president of the court of inquiry and the counsel for the court authenticate it. Prepare a cover sheet that is similar to the DD Form 490 and include an index and list of exhibits. Label exhibits offered by the recorder numerically beginning with Government Exhibit 1. Label exhibits offered by the respondent alphabetically beginning with Respondent's Exhibit A. Label court exhibits with Roman numerals beginning with Court Exhibit I.

**Figure 16.1. Checklist Items for Court Reporters.****CHECKLIST ITEMS FOR COURT REPORTERS****PRIOR TO TRIAL**

Ensure digital recording equipment is set up properly  
If using cassette tapes, ensure tape supply is adequate  
Run tapes through tape eraser  
Label tapes  
Exhibit stamps available  
Stapler, staple remover, paper clips, pencils, paper  
Test recording equipment  
Set up exhibit worksheet  
Obtain exhibit and witness lists from counsel

**DURING TRIAL**

Record opening and closing times of sessions  
Check recording equipment following breaks to insure it is operating properly  
Keep accurate exhibit list  
Describe gestures (if not described by counsel)

**POST-TRIAL**

Ensure you have all exhibits discussed during trial  
In a summarized record, ensure those portions required to be verbatim are transcribed verbatim  
Properly mark all exhibits to show page offered and page admitted/rejected  
Ensure all copies of the ROT are legible and identical  
Forward the ROT and the electronic trial transcript (See Chapter 13)

**Figure 16.2. Court Reporter Attestation.**

ATTESTATION OF TRANSCRIPT

in the case of

U.S. v. \_\_\_\_\_

I hereby attest and affirm that I have reviewed the transcript of this record in its entirety and that it is an accurate reflection of the proceeding of the court.

\_\_\_\_\_  
Court Reporter Signature

\_\_\_\_\_  
Date

**Figure 16.3. Suggested Format for Summarized Article 32 Testimony.**

SUMMARIZED TESTIMONY OF (NAME AND RANK OF WITNESS)

(Rank and full name of witness), (organization, base, and state), appeared at the investigation, was sworn, and testified substantially as follows:

(Summarize Testimony.)

I declare under penalty of perjury that the foregoing is true and correct. Executed at \_\_\_\_\_ Air Force Base, \_\_\_\_\_, on \_\_\_\_\_.

\_\_\_\_\_  
(Full Name and Rank of witness)

I declare under penalty of perjury that the foregoing is a true and correct summary of the testimony given by the witness. Executed at \_\_\_\_\_ Air Force Base, \_\_\_\_\_, on \_\_\_\_\_.

\_\_\_\_\_  
(Name), (Rank), USAF  
Investigating Officer

**16.14. Adopted Forms.**

AF IMT 135, *Corrections to Record of Trial*

AF IMT 138, *Post Trial Clemency Evaluation*

AF IMT 304, *Request for Appellate Defense Counsel*

AF IMT 847, *Recommendation for Change of Publication*

AF IMT 1359, *Report of Result of Trial*

DD Form 456, *Interrogatories and Depositions*

DD Form 457, *Investigating Officer's Report*

DD Form 458, *Charge Sheet*

DD Form 490, *Record of Trial*

DD Form 494, *Court-Martial Data Sheet*

DD Form 1722, *Request for Trial Before Military Judge Alone*

DD Form 2329, *Record of Trial by Summary Court-Martial*

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

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Manual for Courts-Martial (MCM), United States, 2008

Air Force Policy Directive 31-4, *Information Security*, 1 September 1998

Air Force Instruction 31-401, *Information Security Program Management*, 1 November 2005

Air Force Instruction 36-2605, *Air Force Military Personnel Testing System*, 24 September 2008

Air Force Manual 33-363, *Management of Records*, 1 March 2008

Air Force Policy Directive 51-2, *Administration of Military Justice*, 7 September 1993

Air Force Instruction 51-201, *Administration of Military Justice*, 21 December 2007

***Abbreviations and Acronyms***

**ACC**—Accused

**ADC**—Assistant Defense Counsel

**ATC**—Assistant Trial Counsel (If there are two or more ATCs, use ATC1, ATC2, etc.)

**CIV DC**—Civilian Defense Counsel

**DC**—Defense Counsel

**DO**—Deposition Officer

**IMDC**—Individual Military Defense Counsel

**INT**—Interpreter

**IO**—Investigating Officer

**LA**—Legal Advisor

**MBR (Name)**—Member

**MJ**—Military Judge

**PRES**—President

**RC**—Respondent's Counsel

**REC**—Recorder

**REP**—Court Reporter

**RESP**—Respondent

**ROT**—Record of Trial

**TC**—Trial Counsel

**WIT**—Witness

*Terms*

**Allied Papers**—Other documents filed with the ROT dealing with the administration of the court-martial.

**Article 32 Report**—The completed DD Form 457, Investigating Officer's Report, with all of the items required in RCM 405 and this manual.

**Record of Trial**—The transcribed verbatim or summarized report of a court-martial and the items required in RCM 1103(b)(2)(D) and this manual.

**Attachment 2**

**SAMPLE SUMMARIZED REPORT OF THE PROCEEDINGS TRANSCRIPT**

**Figure A2.1. Sample Summarized Report of the Proceedings Transcript.**

**PROCEEDINGS OF A GENERAL COURT-MARTIAL**

The military judge called the Article 39(a) Session to order. The court met at Bolling Air Force Base, District of Columbia, at 0840 hours, 21 July 2009, pursuant to the following orders:

(INSERT CONVENING ORDERS AFTER THIS PAGE.)

[The convening order(s), Special Order \_\_\_\_\_, dated \_\_\_\_\_, and Special Order \_\_\_\_\_, dated \_\_\_\_\_, are numbered as pages 1.1 and 1.2. The USAF Trial Judiciary (AFLOA/JAT) memorandum dated \_\_\_\_\_ detailing the Military Judge is numbered as page 1.3.]

**PERSONS PRESENT**

**(List the names, ranks and position of Military Judge, Trial Counsel, Defense Counsel, Accused, Court Reporter, and others who are detailed to the court and are present, in bold print.)**

**PERSONS ABSENT**

Members named in the convening orders.

The trial counsel stated that the court-martial had been properly convened and that the convening orders were correct.

The trial counsel announced that he had been detailed to the court-martial by (name, rank, position, organization, and base of detailing authority); and that he had been qualified and certified under Article 27(b) and sworn under Article 42(a), respectively, of the Uniform Code of Military Justice; and that he had not acted in any disqualifying capacity.

The defense counsel announced that he had been detailed to the court-martial by (name, rank, position, organization, and base of detailing authority); that he had been qualified and certified under Article 27(b) and sworn under Article 42(a), respectively, of the Uniform Code of Military Justice; and that he had not acted in any disqualifying capacity.

The military judge informed the accused of his rights concerning counsel as set forth in Article 38(b) and RCM 901(d). The accused responded that he understood his rights and that he chose to be defended by (name and rank of defense counsel) as his only defense counsel.

The military judge stated that she had been detailed to the court-martial by (name, rank, position, organization, and base of detailing authority); that she had been certified and qualified under Articles 26(b) and (c) and previously sworn in accordance with Article 42(a), respectively, of the Uniform Code of Military Justice. The military judge had not acted in any manner which would tend to disqualify her from this case.

The trial counsel announced that the general nature of the charge was one specification of rape, in violation of Article 120; that the charge was preferred by (name of accuser) and forwarded with recommendations as to disposition by (name and rank of person(s) forwarding charge) and investigated by (name of investigating officer).

The military judge was not challenged for cause.

The military judge stated that at an earlier RCM 802 Conference, attended by all counsel and the military judge, the military judge was advised of the anticipated pleas, motions and composition of the court.

The accused was then advised of his right to a trial with a court-martial composed of members and his right to request trial by judge alone; the differences between a trial by judge alone and a court-martial with members; that a court-martial with members could, at the accused's written request, have one-third enlisted membership. The accused stated that he understood and requested trial by a court with members. The military judge ascertained that there was not a request for enlisted persons on the court. The accused waived the reading of the charge and was arraigned on the following charge and specification:

(INSERT CHARGE SHEET AFTER THIS PAGE.)

[The charge sheet is numbered as pages 3.1 and 3.2.]

(IF THERE ARE MOTIONS, SUMMARIZE THE MOTIONS AND DEFENSE COUNSEL'S POSITION. WHEN TRIAL COUNSEL STATES GOVERNMENT'S POSITION, YOU NEED ONLY MAKE A STATEMENT TO THE EFFECT THAT THE TRIAL COUNSEL STATED THE GOVERNMENT'S POSITION AND CITED SUCH AND SUCH A CASE. IF DEFENSE COUNSEL HAS A FURTHER POSITION, MERELY STATE THAT THE DEFENSE COUNSEL FURTHER STATED THEIR POSITION AND INCLUDE ANY ADDITIONAL CASE CITATIONS.)

There were no further motions.

### PLEAS

**DC: Your Honor, (name and rank of accused) pleads:  
to the Specification and the Charge: Not Guilty.**

Appellate Exhibit I, a copy of the charge and specification, was marked and submitted.

[The Article 39(a) Session adjourned at 0948 hours, 21 July 2009.]

END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS)

### PROCEEDINGS OF THE COURT

[The court was called to order at 0949 hours, 21 July 2009.]

The Military judge and all parties previously present were again present. The following members were also present:

**(List, in bold print, the court members in order by  
rank starting with the senior most member.)**

The convening orders were amended to reflect the following changes: (Note the changes that were made.)

The military judge instructed the members concerning their duties, the conduct of the proceedings, the fact that the accused had earlier pled not guilty of the charge and specification, matters regarding challenges and voir dire examinations, duties of counsel for both sides, and conduct during recesses or adjournments.

The members of the court-martial were sworn in accordance with RCM 807.

The military judge announced that the court-martial was assembled.

Appellate Exhibit I was published to the members of the court.

The trial counsel announced the general nature of the charge.

Voir dire examination was conducted of all members of the court-martial.

[The court recessed at 1028 hours, 21 July 2009.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS)

#### ARTICLE 39(A) SESSION

[The Article 39(a) Session commenced at 1029 hours, 21 July 2009, attended by the military judge, counsel for both sides, the accused, and the reporter.]

Individual voir dire examination was conducted on (all/ \_\_\_) members of the court.

(Name and rank of member), member, was questioned and stated under oath as follows:

I know (names and ranks of persons) as casual acquaintances... (Note: When a member is challenged for cause and the challenge is denied by the military judge, summarize the challenged member's statements concerning the matter in question. See MCM, Appendix 13).

The prosecution had no challenges for cause.

The defense challenged (name and rank of member) for cause on the basis that she had sat on the Company Grade Officer Board this past quarter and (name and rank) was selected. She had sought legal advice from the legal office. She had experience with Flexural and was familiar with its effect on people. Her husband worked a rape hotline and had discussed his counseling of victims with her.

The defense challenged (name and rank of member) for cause on the basis that he lived on the same street as (name and rank of person); he knew both counsel; and that he had taken

muscle relaxers, although not Flexural.

After the prosecution stated the Government's position in opposition to the challenges, the challenge against (name and rank of member) was granted. The challenge for cause against (name and rank of member) was denied. (Again, refer to MCM, Appendix 13.)

The prosecution peremptorily challenged (name and rank of member). The defense peremptorily challenged (name and rank of member).

[The Article 39(a) Session adjourned at 1113 hours, 21 July 2009.]

#### END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court was called to order at 1129 hours, 21 Jul 2009, with all parties present, including the court members.]

The challenged members, (names and ranks of members), were excused with the thanks of the court, and they left the courtroom.

The military judge further instructed the members concerning their duties, the conduct of the proceedings, their conduct during recesses or adjournments and instructed them with regard to the elements of the offense.

The trial counsel made an opening statement.

The defense counsel made an opening statement.

(NAME AND RANK/TITLE OF WITNESS)

was called as a witness for the prosecution, was sworn and testified substantially as follows:

**DIRECT EXAMINATION**

(Summarize testimony and any objections made to testimony.)

**CROSS-EXAMINATION**

(Summarize testimony.)

**REDIRECT EXAMINATION**

(Summarize testimony.)

**RE-CROSS-EXAMINATION**

(Summarize testimony.)

Appellate Exhibit II, court member question, was marked, examined by both sides and provided to the military judge.

**EXAMINATION BY THE COURT**

(Summarize testimony.)

(The witness, after being instructed not to discuss his testimony, was excused and left the courtroom subject to recall.)

Prosecution Exhibits 1-5 for Identification were offered and received into evidence without objection.

The prosecution rested.

Defense Exhibits A-C for Identification were offered and received into evidence without objection.

(NAME AND RANK/TITLE OF WITNESS)

was called as a witness for the defense, was sworn and testified substantially as follows:

**DIRECT EXAMINATION**

(Summarize testimony.)

**CROSS-EXAMINATION**

(Summarize testimony.)

Appellate Exhibit III, court member question, was marked, examined by both sides and provided to the military judge.

**EXAMINATION BY THE COURT**

(Summarize testimony.)

(The witness, after being instructed not to discuss his testimony, was excused and left the courtroom subject to recall.)

The defense rested.

The prosecution presented no matters in rebuttal.

[The court-martial recessed at 1441 hours, 21 July 2009.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

**ARTICLE 39(A) SESSION**

[The Article 39(a) Session was called to order at 1442 hours, 21 July 2009, attended by the military judge, counsel for both sides, the accused, and the reporter.]

Appellate Exhibit IV, Findings Worksheet, was marked and submitted.

A discussion was held between the military judge and counsel, in the presence of the accused, with respect to proposed instructions on findings to be given to the members of the court-martial. The military judge proposed to give instructions on the following: (Summarize

proposed instructions to be given.)

[The Article 39(a) Session adjourned at 1500 hours, 21 July 2009.]

END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court-martial was called to order at 1501 hours, 21 July 2009, with all parties present, including the court members.]

The trial counsel made an argument on findings.

The defense counsel made an argument on findings.

The trial counsel made rebuttal argument on findings.

The military judge instructed the members of the court-martial in accordance with RCM 920, including the elements of the offense, the presumption of innocence, reasonable doubt, and the burden of proof as required by RCM 920(e), and on the procedures for voting on the findings worksheet.

Prosecution Exhibits 1-5, Defense Exhibits A-C, and Appellate Exhibit IV were published to the court members.

[The court-martial closed at 1600 hours, 21 July 2009.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court-martial reopened at 1800 hours, 21 July 2009, with all parties present who were present when the court-martial closed.]

The military judge examined the findings worksheet and determined it was in proper form.

**FINDINGS**

**PRES: (Name and rank of accused), this court-martial finds you  
of the Specification and the Charge: Guilty.**

The military judge cautioned the members of the court not to discuss the case with anyone or amongst themselves during the overnight recess.

[The court-martial recessed for the evening at 1829 hours, 21 July 2009.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

**ARTICLE 39(A) SESSION**

[The Article 39(a) Session was called to order at 0830 hours, 22 July 2009, attended by the military judge, counsel for both sides, the accused, and the reporter.]

The military judge advised the accused as to his rights with respect to extenuation and mitigation, including the right to make a sworn or unsworn statement, or to remain silent.

The military judge advised the accused of his post-trial and appellate rights in accordance with RCM 1010.

Appellate Exhibit V, Sentence Worksheet, was marked and submitted.

[The Article 39(a) Session adjourned at 0844 hours, 22 July 2009.]

**END OF ARTICLE 39(A) SESSION**

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court-martial was called to order at 0928 hours, 22 July 2009, with all parties present, including the court members.]

(INCLUDE HERE ANY MATTERS THAT MAY HAVE BEEN PRESENTED BY  
THE GOVERNMENT.)

The prosecution rested.

(INCLUDE HERE ANY MATTERS THAT MAY HAVE BEEN PRESENTED BY

THE DEFENSE.)

The defense rested.

[The court-martial recessed at 0958 hours, 22 July 2009.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

#### ARTICLE 39(A) SESSION

[The Article 39(a) Session was called to order at 0959 hours, 22 July 2009, attended by the military judge, counsel for both sides, the accused, and the reporter.]

A discussion was held between the military judge and counsel, in the presence of the accused, with respect to proposed instructions on sentence to be given to the members of the court-martial. The military judge proposed to give instructions on the following: (Summarize proposed instructions on sentencing.)

[The Article 39(a) Session adjourned at 1007 hours, 22 July 2009.]

END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court-martial was called to order at 1022 hours, 22 July 2009, with all parties present, including the court members.]

The trial counsel made argument on sentence.

The defense counsel made argument on sentence.

The trial counsel made rebuttal argument on sentence.

The defense counsel made surrebuttal argument on sentence.

The military judge instructed the members of the court-martial that the maximum permissible punishment which could be adjudged for the offenses of which the accused had been found guilty was a dishonorable discharge, confinement for life, forfeiture of all pay and

allowances, and reduction to the grade of E-1. The military judge also instructed the members concerning the procedures for voting, the responsibility of the members, the matters the members should consider, including the matters in extenuation and mitigation as well as aggravation, and further instructed with respect to the specific facts of the case in accordance with RCM 1005.

Appellate Exhibit V was provided to the president.

[The court-martial closed at 1135 hours, 22 July 2009.]

(NOTE: INSERT PAGE BREAK BETWEEN COURT SESSIONS.)

[The court-martial reopened at 1306 hours, 22 July 2009, with all parties to the trial present who were present when the court closed.]

The military judge examined the sentence worksheet and determined it was in proper form.

#### SENTENCE

**PRES: (Name and rank of accused), this court-martial sentences you to be reduced to the grade of E-2 and to be confined for 45 days.**

[The court-martial adjourned at 1308 hours, 22 July 2009.]

**Attachment 3**

**SAMPLE ABBREVIATED RECORD OF TRIAL TRANSCRIPT**

**Figure A3.1. Sample Abbreviated Record Of Trial Transcript.**

**PROCEEDINGS OF A (GENERAL) (SPECIAL) COURT-MARTIAL**

The military judge called the Article 39(a) Session to order. The court met at Bolling Air Force Base, District of Columbia, at 0840 hours, 20 July 2009, pursuant to the following orders:

(INSERT CONVENING ORDERS AFTER THIS PAGE.)

[The convening order(s), Special Order \_\_\_\_\_, dated \_\_\_\_\_, and Special Order \_\_\_\_\_, dated \_\_\_\_\_, are numbered as pages 1.1 and 1.2. The USAF Trial Judiciary (AFLOA/JAT), memorandum dated \_\_\_\_\_ detailing the Military Judge is numbered as page 1.3.]

**PERSONS PRESENT**

**(List the names, ranks and position of Military Judge, Trial Counsel, Defense Counsel, Accused, Court Reporter, and others who are detailed to the court and are present, in bold print.)**

**PERSONS ABSENT**

Members named in the convening orders.

The accused was arraigned on 20 July 2009, pursuant to the following Charge and Specifications:

(INSERT CHARGE SHEET AFTER THIS PAGE.)

[The Charge Sheet is numbered as Pages 2.1 and 2.2.]

The accused pled as follows:

**To the Charge and Specification: Not Guilty.**

The findings were announced on 20 July 2009, as follows:

**PRES: (Accused's name and rank), this court-martial [finds you:  
Of the Specification and the Charge: Not Guilty.**

[The court-martial adjourned at 1700 hours, 20 July 2009.]

**Attachment 4**

**SAMPLE EXTRACTS OF VERBATIM TRANSCRIPTS**

**Figure A4.1. Sample Extracts of Verbatim Transcripts.**

**THE FOLLOWING DEPICTS AN INITIAL ARTICLE 39(a) SESSION:**

MJ: This Article 39(a) session will come to order.

ATC: Your honor, this court-martial is convened by Special Order AC-32, Headquarters, 11th Wing, Bolling Air Force Base, District of Columbia, dated 5 June 2009, copies of which have been furnished to the military judge, counsel and the accused; and which will be inserted at this point in the record.

The charges have been properly referred to this court for trial and were served on the accused on 20 July 2009. The prosecution is ready to proceed in the case of United States v. Staff Sergeant John Smith.

The accused and the following persons detailed to this court are present: **Colonel Edward Black**, military judge; **Captain Mary Green**, and **First Lieutenant Adam Brown**, trial counsel; and **Captain Frederick White**, defense counsel. The members are absent.

Jennifer Jones has been detailed court reporter and has previously been sworn. The members of the prosecution have been detailed to this court-martial by Colonel James Johnson, Staff Judge Advocate, 11th Wing. All members of the prosecution are qualified and certified under Article 27(b) and sworn under Article 42(a), Uniform Code of Military Justice. No member of the prosecution has acted in any manner that might tend to disqualify us in this court-martial.

MJ\*: Staff Sergeant John Smith, you do have the right to be represented by Captain White, your detailed military defense counsel. He is provided to you at no expense to you. If ...

**\*Note: Always insert a prefix to identify the speaker in the first new paragraph on a continuation page, even if it is a continuation of the same speaker from the previous page.**

**THE FOLLOWING DEPICTS HOW TO TRANSCRIBE PLEAS AND ELEMENTS OF THE OFFENSE IN GUILTY PLEA CASES:**

MJ: Staff Sergeant John Smith, how do you plead? Before receiving your plea, I advise you that any motion to dismiss any charge or grant other relief should be made at this time. Your defense counsel will speak for you in making motions and in entering your pleas.

DC: Your Honor, the defense does not have any motions.

### PLEAS

**DC: To the Charge and Specification, Staff Sergeant Smith pleads: Guilty.**

MJ: Please be seated.

[Accused and counsel resumed their seats.]

In the specification of the charge, you are charged with the offense of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice.

The elements of this offense are:

First, that at or near Bolling Air Force Base, District of Columbia, between on or about 16 August 2007 and 24 August 2007, you used cocaine;

Second, that you actually knew you used the substance;

Third, that you actually knew that the substance you used was cocaine or of a contraband nature; and

Fourth, that the use by you was wrongful.

MJ: In addition to those four elements, there are a number of definitions that I need to provide you. Use means the administration, ingestion or physical assimilation of a drug into one's body or system. Use includes such acts as smoking, sniffing, eating, drinking or injecting. To be punishable under Article 112a, use of a controlled substance must be wrongful...

**THE FOLLOWING DEPICTS HOW TO TRANSCRIBE WITNESS TESTIMONY  
USING "Q" AND "A" FORMAT:**

MJ: Government, do you have any witnesses?

TC: Yes, Your Honor. We call Technical Sergeant William Jones.

**TECHNICAL SERGEANT WILLIAM JONES**

**was called as a witness by the government, sworn, and testified as follows.**

**DIRECT EXAMINATION**

**Questions by the Trial Counsel:**

Q. Tech Sergeant Jones, would you please tell the military judge what your name, rank, duty position, and your place of work is?

A. I am Technical Sergeant William Jones. I am a Security Forces officer assigned to The 11th Security Forces Squadron at Bolling Air Force Base.

Q. How long have you been in the Air Force, Sergeant Jones?

A. A little over 18 years.

Q. Do you know the accused, Staff Sergeant John Smith?

A. Yes, I do, in my official capacity.

**THE FOLLOWING DEPICTS HOW TO TRANSCRIBE FINDINGS:**

MJ: Would the accused and counsel please rise.

[Accused and counsel complied.]

**FINDINGS**

**MJ: Staff Sergeant John Smith, in Accordance with your plea of guilty, this Court finds you: Of the Charge and Specification: Guilty.**

MJ: You may be seated.

[Accused and counsel resumed their seats.]

Staff Sergeant Smith, we are now entering the sentencing portion of this trial where you have the right to present matters in extenuation and mitigation, that is, matters about the offense or yourself which you want me to consider in deciding upon your sentence...

**THE FOLLOWING DEPICTS HOW TO TRANSCRIBE SESSIONS OF COURT BY  
INSERTING PAGE BREAKS AND HOW TO TRANSCRIBE ANNOUNCEMENT OF  
THE SENTENCE:**

MJ: Court will be closed.

[The court closed at 1013 hours, 16 December 2009.]

[END OF PAGE]

(Note: INSERT PAGE BREAK BETWEEN SESSION)

[The court reopened at 1110 hours, 16 December 2009. All parties were once again  
present.]

MJ: Please be seated. The court will come to order. All parties are present.

Accused and counsel please rise.

[Accused and counsel complied.]

**SENTENCE**

**MJ: Staff Sergeant John Smith, this court-martial sentences  
you to be discharged from the service with a bad  
conduct discharge; to be confined for 100 days; and to  
be reduced to the grade of E-1.**

MJ: Please be seated.

[Accused and counsel resumed their seats.]