



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

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MEMORANDUM FOR DISTRIBUTION C  
MAJCOMs/FOAs/DRUs

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

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

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

This memorandum clarifies procedures and requirements implemented in the Military Justice Act of 2016 and the 2019 Manual for Courts-Martial.

This Memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon incorporation by interim change to, or rewrite of AFI 51-201, whichever is earlier.

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Lieutenant General, USAF  
The Judge Advocate General

Attachment:  
Attachment 1

## Attachment 1

**1.2. Added: Templates.** All templates implementing the UCMJ and MCM that are referenced in this instruction can be found in their most current form on the AFLOA/JAJM Virtual Military Justice Deskbook.

1.2.1. Added: Mandatory Templates. With limited exceptions, all templates attached as Figures in AFI 51-201 are mandatory and must be used when accomplishing actions prescribed in this instruction. (T-1) The following exceptions apply:

1.2.1.1. Added: Figure A3.4, Sample Language Requesting Order for Non-Disclosure of Existence of Warrant or Order;

1.2.1.2. Added: Figure A5.1, GCM Pretrial Advice Pursuant to Article 34, UCMJ, and R.C.M. 406 and Convening Authority Selection of Court-Martial Members;

1.2.1.3. Added: Figure A5.2, Template General Court-Martial Convening Authority Decision Not to Refer Sex Offense Charge;

1.2.1.4. Added: Figure A5.3, Template Superior General Court-Martial Convening Authority Review Under Fiscal Year 14 National Defense Authorization Act, Section 1744(d);

1.2.1.5. Added: Figure A5.4, Template Secretary of the Air Force Review Pursuant to Fiscal Year 14 National Defense Authorization Act, Section 1744(c); and

1.2.1.6. Added: All templates found in Attachments 11-13.

1.2.2. Added: Modification of Mandatory Templates. Mandatory templates may be modified to address the facts and circumstances of each individual case.

3.3.6. Changed to read: Article 60, UCMJ, Authority. Use the version of Article 60 in effect on the date of the earliest offense resulting in a conviction only to determine the convening authority's ability to modify the findings and/or sentence for an entire case. In all cases, regardless of the date of the offense, the convening authority may suspend certain sentences upon the recommendation of the military judge pursuant to Article 60a(c).

4.6.3. Changed to read: See paragraph 4.12 for the exercise of convening authority over general officers.

4.12. Changed to read: General Officers. Only a commander of an Air Force MAJCOM, AFDW/CC, or a superior convening authority may exercise court-martial convening authority over an Air Force general officer. This limitation does not apply to the exercise of court-martial convening authority by the commanding officer of a unified or specified command. The Secretary of the Air Force has court-martial convening authority over the Chief of Staff of the Air Force, commanders of Air Force major commands, AFDW/CC, and Air Force generals and lieutenant generals not assigned to a MAJCOM or combatant command.

4.14.2. Changed to read: General and Special Courts-Martial. In any case in which the accused is a member of the Air Force Reserve or Air National Guard, trial counsel must introduce sufficient evidence to establish in personam (personal) jurisdiction over the accused at the time of the offense. (T-0) See *United States v. McDonagh*, 14 M.J. 415, 422, 424 (C.M.A. 1983); *United States v. Laws*, 11 M.J. 475, 476 77 (C.M.A. 1981). A member of an Air Reserve Component must be on active duty prior to arraignment at a general or special court-martial. (T-0). See R.C.M. 204(b)(1). Court-martial recalls require Secretary of the Air Force approval and processing in accordance with paragraph 4.14.6 to preserve the option of confinement.

4.14.6.8. Changed to read: A written legal review by the wing-level legal office requesting the recall. (T-1) Written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. However, MAJCOM coordination on the recall request is required and must be annotated in the recall package. (T-1)

4.16.1. Changed to read: Retired active duty personnel who are entitled to receive pay (Article 2(a)(4), UCMJ), retired members of a reserve component receiving hospitalization from an armed force (Article 2(a)(5), UCMJ), and retired reserve component members not receiving pay (see *Morgan v. Mahoney*, Misc. Dkt. No. 99-03, 1999 CCA LEXIS 173 (A.F.C.C.A. 15 Mar. 1999)), may be tried by court-martial for acts or omissions committed while on active duty or inactive duty training or in Federal status, if their conduct clearly links them with the military or is adverse to a significant military interest of the United States. Retired active duty personnel who commit misconduct after retirement will not ordinarily be tried by court-martial unless the alleged misconduct clearly links them to the military or is adverse to a significant military interest of the United States. See AFPD 51-2, paragraph 2.5.2.

5.7.4.1. Changed to read: Victim Preference for Civilian or Military Prosecution. Victims of any sex related offense that occurs in the United States have the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

5.7.4.1.1. Added: Sex Related Offense Defined. For purposes of this requirement, “sex related offense” is defined as any allegation arising under Articles 120, 120a, 120b, 120c, or 125, UCMJ, including attempts thereof, which occurred prior to 1 January 2019; or any allegation arising under Articles 120, 120b, 120c, or 130, UCMJ, including attempts thereof, which occurred on or after 1 January 2019.

5.7.4.1.2. Added: Obtaining Victim’s Preference. In all cases, including those arising in exclusive federal jurisdiction, where a sex related offense is alleged to have occurred in the United States, the SJA must obtain the victim’s preference as to whether the case should be prosecuted by the military or civilian prosecutors. (T-0) Such preference will be obtained on the template found at Figure A2.1. (T-1) If the victim refuses to complete the form, the SJA must document on the template that the victim refused to complete the form. (T-1) A copy of the

notification memorandum and the indorsement with the victim's preference must be maintained in the case file. (T-1)

5.7.4.3. Added: Civilian Prosecution Preferred.

5.7.4.3.1. Added: If the offense was committed in an area of concurrent jurisdiction and the victim indicates a preference for civilian prosecution, the SJA should determine whether the victim has a preference for prosecution by the state or federal government or has no preference.

5.7.4.3.2. Added: If the offense was committed in an area of exclusive federal jurisdiction and the victim indicates a preference for civilian prosecution, the SJA must notify the United States Attorneys' Office. In the event the victim indicates he or she prefers civilian prosecution of the sex related offense, the SJA must notify the prosecutorial agency or agencies in that jurisdiction of the victim's preference using Figure A2.2. (T-1) The SJA must then notify the victim of the civilian agency's response using Figure A2.3. (T-1)

5.7.4.4. Added: Although the victim's preference is not binding, the initial disposition authority must consider the victim's views before taking action. (T-1)

5.7.5.2. Changed to read: When final disposition of the alleged offense is complete, the GCMCA signs the written acknowledgment of the initial disposition authority's action. This responsibility is not delegable. A template review is included at Figure A2.8. A copy of this review serves as a notice of disposition and is forwarded by the legal office supporting the SPCMCA to AFOSI. Refer to Chapter 15 for additional information on disposition data submission to law enforcement.

5.7.6.1. Changed to read: In cases where an Air Force Reserve member is accused of committing a covered offense, as listed in paragraphs 5.7.1.1-5.7.1.3, while on active duty, the RegAF SPCMCA to whom the accused is assigned is responsible for obtaining victims views on disposition as detailed in paragraphs 5.7.4.1-5.7.4.2. The RegAF SPCMCA and RegAF GCMCA to whom the accused is assigned are responsible for making and reviewing the initial disposition decision for covered offenses, as detailed in paragraphs 5.7.5.1 and 5.7.5.2. The servicing legal office responsible for advising the RegAF SPCMCA and GCMCA regarding the initial disposition is the RegAF legal office that services the RegAF SPCMCA to whom the accused is assigned, unless such provision of advice has been withheld to the RegAF GCMCA legal office level. **Note:** Air Force Reserve Command (AFRC) is not responsible for the processes defined in paragraph 5.7.4.1-5.7.4.3. or 5.7.5.1-5.7.5.2. However, servicing RegAF legal offices should consult with AFRC/JA prior to making a recommendation as to initial disposition.

5.14.3. Added: If the deposition is taken by agreement of both trial and defense counsel, the convening authority is not required to produce an order, but must still detail a deposition officer as noted in paragraph 5.14.2.

**6.3.3. Changed to read: Exception to Article 30(a) Proceeding Requirement.** Prior to referral, government counsel may also seek authorization from the GCMCA to issue an

investigative subpoena. See R.C.M. 703(g)(3)(D)(v). However, blanket authorizations for investigative subpoenas are not authorized (i.e. one subpoena for the entirety of a case). Government counsel must request authorization from the GCMCA for each pre-referral investigative subpoena. Authorization by the GCMCA to government counsel must be in writing. (T-1) The GCMCA may delegate the authority to approve pre-referral investigative subpoenas to subordinate SPCMCAs, but such delegation must be in writing. (T-1) Grant of a subpoena under this provision does not require an Article 30a proceeding.

6.3.6. Added: Nothing in paragraph 6.3., *et seq.*, is intended to limit the ability of a trial counsel to issue an investigative subpoena for evidence after referral of charges, in accordance with R.C.M. 703(g)(3)(D).

6.14. Added: Post-Referral Requests for Warrants or Orders. Article 46, UCMJ, and RCM 703A allow for military judges to issue court orders or search warrants both pre-referral (and pre-preferred) and post-referral. An Article 30a, UCMJ, proceeding is only required pre-referral. Requests for court orders or search warrants post-referral would instead require an Article 39(a), UCMJ, hearing.

9.4.1.5. Added: A copy of the referred charge sheet must be served upon the accused in accordance with R.C.M. 602.

9.11.1. Changed to read: In cases where the GCMCA refers no covered specifications, as listed in paragraph 5.7, as to a victim of such an offense, the GCMCA forwards the decision to a superior convening authority for review as described below. (T-0) See paragraph 5.7; Fiscal Year 2014 National Defense Authorization Act, Section 1744(d).

**9.11.3. Changed to read: Secretary of the Air Force Review of Non-Referral Decision.** In any case where the GCMCA SJA's pretrial advice recommends referring a covered charge or specification to a court-martial and the GCMCA non-concurs, such that the effect of that non-concurrence is that no covered offense as to that victim would be referred to trial, then the GCMCA forwards the non-referral decision and the corresponding case file, as defined in paragraph 9.11.4, to the Secretary of the Air Force for review. The case file is transmitted to AFLOA/JAJM through functional channels. Figure A5.4 is a template for the Secretary of the Air Force's response.

9.12.2. Changed to read: Notice to Accused and Opportunity to Object. Inclusion of the special language in paragraph 9.12.1 and service of the memorandum discussed in paragraphs 9.12.2.1 and 9.12.2.2 serve as notice to the accused that the charges are being referred to a special court-martial by military judge alone. Prior coordination between accused's counsel, if represented, and the SJA or detailed trial counsel is encouraged.

**9.14. Added: Special Order Convening Courts-Martial.** Convening orders are prepared in accordance with R.C.M. 504, 1302, and this chapter. A sample convening order is provided at Figure A7.2.

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

**9.14.2. Added: Amendments.** Convening orders may be amended. A sample amended convening order is provided at Figure A7.3. The original order should be amended to reflect changes in court members, except when members are excused without replacement. If excusal of a member without replacement is not reduced to writing, the military judge or trial counsel announces the excusal on the record. No more than two amendments to the original order may be issued. (T-1) If it is necessary to further amend the convening order, a new order should be published with a savings clause that transfers all cases in which the court has not yet been assembled to the new order. A sample order with a savings clause is included at Figure A7.4. All amendments to a convening order and all convening orders with a savings clause should cite all prior orders. Copies of all convening orders and amendments to convening orders should be provided to the military judge and included in all copies of the ROT.

**9.14.3. Added: Numbering Convening Orders.** Orders convening courts-martial are special orders that are numbered consecutively on a fiscal year basis, starting with number 1. The number follows an A-series letter prefix. Use an A letter prefix for general courts-martial, an AB letter prefix for special courts-martial, an AC letter prefix for summary courts-martial, and an AD letter prefix for special courts-martial by military judge alone under Article 16(c)(2), UCMJ.

**9.14.4. Added: Identification of Members.** Special orders convening a court-martial should contain the name, rank and unit of all persons detailed. Do not include personal information (e.g., social security number). If a detailed member is not under the command of the convening authority, ensure the special order clearly indicates that the member was detailed with the concurrence of the member’s commander.

9.14.5. Added: If the convening authority directs the military judge to appoint alternates, it must be so annotated on the convening order. A sample convening order including the authorization to impanel alternates is located at Figure A7.2.

9.14.6. Added: If the convening authority convenes a special court-martial by military judge alone, it must be so annotated on the convening order. A sample convening order is located at Figure A7.6.

## **9.15. Added: Convening Order Logs.**

9.15.1. Added: Have a separate convening order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log each for GCMs, SPCMs, SPCMs by military judge alone, and SCMs. Each SPCMCA will have his/her own log for SPCMs, SPCMs by military judge alone, and SCMs.

9.15.2. Added: The log should reflect the convening order number assigned to a particular case. Hard copies, as opposed to electronic copies, of the original convening orders are stored with the convening order log.

9.15.3. Added: This log should be kept separately from the log for supplemental and final orders.

10.13. Deleted.

11.5.4. Changed to read: Escort or Attendant for an Active Duty Sexual Assault Victim. A sexual assault victim is authorized an escort or attendant when required to travel to testify or participate in proceedings (e.g., an Article 32, UCMJ, preliminary hearing; pretrial motion hearing; or court-martial) in connection with the sexual assault. See Joint Travel Regulations, paragraph 030704. Funding for such travel is provided by the convening authority.

12.3.3. Added: Notification to the Accused. If charges are withdrawn and dismissed prior to the announcement of findings, the trial counsel must notify the accused, through the accused's counsel, of such withdrawal and dismissal.

**12.5.1. Changed to read: Pretrial Agreements.** Permissible terms of pretrial agreements are governed by Article 60, UCMJ, R.C.M. 705 and R.C.M. 910 in the 2019 MCM, along with relevant case law. Pretrial agreements apply only to cases in which all of the charged offenses occurred prior to 1 January 2019, regardless of when the case was referred to trial. In cases with straddling offenses, only a plea agreement may be used (not a pretrial agreement). (T-1) A sample pretrial agreement is available on the Virtual Military Justice Deskbook as Template 1201.

**12.9.2.2. Changed to read: Sentencing Range.** The parties can agree to a limit on the maximum and minimum amount of punishment. See R.C.M. 705(d)(1). An agreement including an exact agreed upon term of confinement (e.g., no more than one year confinement and no less than one year confinement) is prohibited. **Note:** R.C.M. 705 prohibits disclosure of the existence of a plea agreement to the members unless one of the enumerated exceptions applies. In the event of sentencing by members, the military judge provides appropriate instruction on any sentencing limitations that exist in a case.

***Section 12G—Deleted.***

12.42.2. Changed to read: Default Military Judge Sentencing. For cases applying the Military Justice Act sentencing rules, if an accused elects members for findings but does not affirmatively elect members for sentencing, a military judge will determine sentencing by default. See Article 53(b)(1)(B).

13.3.4. Added: Summary Courts-Martial. Completion of the DD Form 2329, *Record of Trial by Summary Court-Martial*, by the SCMCO serves as the statement of trial results. There is no need to issue a separate document. The SJA's indorsement must be attached to the DD Form 2329. A template SJA indorsement can be located on the Virtual Military Justice Deskbook.

13.3.5. Added: Full Acquittals in Special and General Courts-Martial. In a full acquittal, only an entry of judgment and first indorsement must be completed. The entry of judgment and first indorsement are then promptly distributed in accordance with paragraph 13.39.

13.7.5.9. Changed to read: That the accused is entitled to request a copy of the recording and copy of, or access to, the exhibits to assist in the preparation of their matters. **Note:** There is no audio recording in a summary court-martial.

13.23.1. Changed to read: **Action in a GCM or SPCM.** The convening authority may either take action to reduce the findings or sentence, in accordance with Article 60, UCMJ, or take no action. The convening authority does not need to take action to approve the findings or sentence.

13.23.2. Changed to read: If the convening authority decides to take no action in a GCM or SPCM, the convening authority's decision must be in writing. (T-1) No rationale is required. If the convening authority decides to take action in a GCM or SPCM, the convening authority's decision must be in writing and must include a written statement explaining the reasons for the action. (T-0)

13.23.3. Changed to read: The convening authority's written decision to take action or no action in a GCM or SPCM must be attached to the record of trial. (T-1) A template is provided at A9.5 and sample action language is provided at A9.8. At a minimum, the convening authority's written decision on action must:

13.23.4. Added: The convening authority's decision on action memorandum must include any reprimand language in cases in which a reprimand was adjudged by the court.

**13.23.5. Added: Action in an SCM.** The convening authority's decision to take action in an SCM is documented on the DD Form 2329.

13.23.5.1. Added: The convening authority may take action on the findings or sentence in accordance with Article 60b, UCMJ, and R.C.M. 1306.

13.23.5.2. Added: The action shall state whether the sentence adjudged by the court-martial is approved. (T-0). If only part of the sentence is approved, the action shall state which parts are approved. (T-0). See R.C.M. 1306(d).

13.23.5.3. Added: There is no requirement to provide advice regarding action to the convening authority in writing. However, an optional template is provided at Figure A9.10. Any legal advice informing a convening authority of his or her options on action must be served on the accused and accused's counsel.

13.24. Changed to read: **Service of the Convening Authority's Decision on Action.**

13.24.1. Added: GCMs and SPCMs. The SJA must promptly serve the convening authority's decision to take action or no action on the military judge, counsel for the accused, and counsel for the victim. (T-0) In the event the accused or victim is not represented by counsel, the convening authority's decision must be served on the accused or victim, as applicable. (T-1) If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. (T-0)

13.24.2. Added: SCMs. A copy of the convening authority's action shall be served on the accused or on defense counsel (T-0) and on the victim(s) or victim's counsel (T-1). Service of the completed DD Form 2329 satisfies this requirement.

13.27.1.1. Deleted.

13.27.2.5. Changed to read: Waived forfeitures cannot be applied beyond a member's expiration of term of service because the pay entitlement ceases at that point. Practitioners shall always verify the accused is entitled to pay before recommending the convening authority waive forfeitures as a part of the plea agreement. (T-1)

***Section 13G—Changed to read: Notification of Adjudged Sentence, Entry of Judgment***

**13.35. Changed to read: 14 Day Memorandum and 24 Hour Memorandum.** If the Entry of Judgment is completed within 14 days, a 14 Day Memorandum is not required. Instead, a 24 Hour Memorandum (paragraph 13.35.2), must be accomplished and distributed. If the Entry of Judgment is not complete within 14 days, both a 14 Day Memorandum (13.35.1), and a 24 Hour Memorandum (paragraph 13.35.2) must be accomplished and distributed.

13.35.1. Added: 14 Day Memorandum. In all courts-martial with automatic forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade (enlisted only), the SJA of the office that prosecuted the case must send a memorandum 14 days after the sentence is announced or within 24 hours of the entry of judgment, whichever is earlier, via email to the local finance office, DFAS ([afcourtmartials@dfas.mil](mailto:afcourtmartials@dfas.mil), [michael.j.heil5.civ@mail.mil](mailto:michael.j.heil5.civ@mail.mil), and [Jackie.a.hammes.civ@mail.mil](mailto:Jackie.a.hammes.civ@mail.mil)); HQ AFPC/DP1SS ([afpc.dp1sp.EnlistedPromotions@us.af.mil](mailto:afpc.dp1sp.EnlistedPromotions@us.af.mil)); and the Air Force Security Forces Services Center ([afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil)). (T-1) If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. (T-1) A template memorandum is Figure A9.7.

13.35.2. Added: 24 Hour Memorandum. In all courts-martial with automatic forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade (enlisted only), in which the Entry of Judgment is published more than 14 days after the sentence is announced, the SJA of the office that prosecuted the case must send a memorandum within 24 hours after the entry of judgment via email to the local finance office, DFAS ([afcourtmartials@dfas.mil](mailto:afcourtmartials@dfas.mil), [michael.j.heil5.civ@mail.mil](mailto:michael.j.heil5.civ@mail.mil), and [Jackie.a.hammes.civ@mail.mil](mailto:Jackie.a.hammes.civ@mail.mil)); HQ AFPC/DP1SS ([afpc.dp1sp.EnlistedPromotions@us.af.mil](mailto:afpc.dp1sp.EnlistedPromotions@us.af.mil)); and the Air Force Security Forces Services Center ([afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil)). (T-1) If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. (T-1) A template memorandum is Figure A9.7. In every scenario in which the Entry of Judgment is published more than 14 days after the sentence is announced, the SJA will be required to send both a 14 Day Memorandum and a subsequent 24 Hour Memorandum.

13.36. Deleted.

13.37.2. Changed to read: The convening authority's action in a SCM serves as the entry of judgment. Unless the DD Form 2329 requires correction, there is no requirement to complete a separate document. Sample action language for SCMs is available at Figure A9.8. In the event the DD Form 2329 requires correction, a corrected DD Form 2329 or certificate of correction may be required. Either of these corrective actions will necessitate the publication of a supplemental order to ensure the record is accurate.

13.37.3. Added: In GCMs and SPCMs resulting in a full acquittal, the entry of judgment must be completed. See paragraph 13.3.5.

13.38.4. Added: Full Acquittals in Special and General Courts-Martial. In a full acquittal, only an entry of judgment and first indorsement must be completed. The entry of judgment and first indorsement are then promptly distributed in accordance with paragraph 13.39.

13.38.5. Added: Cases Resulting in a Discharge in Lieu of Courts-Martial. In cases in which a discharge in lieu of courts-martial is granted, only an entry of judgment and first indorsement must be completed.

13.40.4. Added: These procedural processes do not invalidate or prevent post-trial confinement or the receipt of prisoners. See Articles 11 and 13, UCMJ.

13.43.1.2. Changed to read: Attachments to the ROT. Certain additional items are not considered part of the ROT, but they must be attached to the ROT for NAF/appellate review. (T-0) See R.C.M. 1112(f). Refer to AFMAN 51-203 and the ROT Assembly Checklist on the AFLOA/JAJM Virtual Military Justice Deskbook for a full list of required attachments. The ROT is not considered complete for purposes of appellate review, AMJAMS, or metrics and milestones until the attachments and allied papers required by R.C.M. 1112(f), AFMAN 51-203, and the ROT Assembly Checklist are attached to the record.

13.44.1.1. Changed to read: Examination by Trial Counsel. Prior to certification of the transcript by the court reporter, the court reporter must forward the transcript to the trial counsel, who examines it for accuracy and signs a memorandum verifying the examination was accomplished. (T-1). A sample certification is located in AFMAN 51-203.

13.44.1.2. Changed to read: Examination by Defense Counsel. The SJA must generally permit the defense counsel the reasonable opportunity to examine the transcript before certification. (T-1)

13.45.3.1.1. Changed to read: The victim of an offense of which the accused was charged if the victim testified during the proceedings, without regard to the verdict, automatically receives a copy of the ROT.

13.45.3.1.2. Changed to read: Any victim named in a specification of which the accused was charged, upon request, without regard to the verdict.

13.52. Added: Appellate Leave/Excess Leave Notification to Air Force Security Forces Center in Cases with Sex Offender Registration. Notification that the accused must register a sex offender is accomplished via the First Indorsement on the Statement of Trial Results and Entry of Judgment. Notification that the accused is placed in excess or appellate leave status is accomplished via the Convening Authority Decision on Action Memorandum, which is attached to the Entry of Judgment. As noted in the Statement of Trial Results/Entry of Judgment Distribution List on the AFLOA/JAJM Virtual Military Justice Deskbook, a copy of the Statement of Trial Results and Entry of Judgment, to include attachments and the First Indorsements, must be distributed to the Air Force Security Forces Center, [afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil).

### **Section 13L—Added: Correcting or Modifying Post-Sentencing Paperwork and the Record of Trial**

#### **13.53. Added: Correcting the Statement of Trial Results, Convening Authority Decision on Action Memorandum, Entry of Judgment, and Record of Trial.**

13.53.1. Added: Correcting the Statement of Trial Results.

13.53.1.1. Added: Contents of the Statement of Trial Results. The prescribed Statement of Trial Results form contains data required by R.C.M. 1101 and additional information required by policy. This additional information includes social security numbers, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

13.53.1.2. Added: Except as provided in paragraph 13.53.1.4, errors on the Statement of Trial Results identified prior to the entry of judgment are corrected in accordance with R.C.M. 1104(b). (T-0)

13.53.1.3. Added: Errors to the Statement of Trial Results identified after the entry of judgment may only be corrected in accordance with R.C.M. 1112(d). (T-0) In such cases, the errors may render the Record of Trial defective. Defective records of trial must be forwarded by the superior competent authority to the Chief Trial Judge, AF/JAT. (T-1)

13.53.1.4. Added: Errors to administrative data listed on the Statement of Trial Results but not required under RCM 1101 (e.g., the member's social security number, rank, date, etc.) will be corrected on the Statement of Trial results in the manner prescribed in paragraph 13.53.4. (T-1)

13.53.1.5. First Indorsement. The SJA may make corrections to the first indorsement at any time. Corrections require redistribution of the First Indorsement in accordance with paragraph 13.53.4.4.

13.53.2. Added: Correcting the Convening Authority's Decision on Action.

13.53.2.1. Added: Contents of the Convening Authority's Decision on Action Memorandum. The prescribed Convening Authority's Decision on Action Memorandum includes the convening

authority's action (or decision to take no action) as well as other administrative matters. Such administrative matters include ordering the member on appellate leave. These matters are included in the memorandum in order to provide the accused notice of any administrative requirements (e.g., appellate leave) executed by the convening authority.

13.53.2.2. Added: Errors in the Action Language. Errors in the convening authority's action may be corrected prior to the entry of judgment in accordance with R.C.M. 1104(b). (T-0) Any corrections made by the convening authority must be memorialized in writing and attached to the original Convening Authority Decision on Action memorandum. (T-1) In the event corrections are made by the military judge in accordance with R.C.M. 1104(b)(2)(B), the military judge memorializes those corrections on the Entry of Judgment. (T-0)

13.53.2.3. Added: Errors in the Memorandum. Errors in the Convening Authority's Decision on Action Memorandum that do not relate to or affect the convening authority's action (or no action) on the findings or sentence will be corrected in the manner described in paragraph 13.53.4.

13.53.3. Added: Correcting the Entry of Judgment.

13.53.3.1. Contents of the Entry of Judgment. The template Entry of Judgment form contains data required by R.C.M. 1111(b) and additional information required by policy. This additional information includes social security numbers, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

13.53.3.2. Added: Within 14 Days of Initial Completion of the Entry of Judgment.

13.53.3.2.1. Added: The military judge may make computational or clerical modifications to the data required by R.C.M. 1111(b). After 14 days of the entry of judgment, the military judge may only make these modifications consistent with any remand from a court of appeal or superior competent authority. See R.C.M. 1111(c)(3) and R.C.M. 1112(d)(2).

13.53.3.2.2. Added: The military judge may make corrections to other portions of the Entry of Judgment form prior to forwarding the ROT for review in accordance with Articles 64-67a or 69, UCMJ.

13.53.3.2.3. First Indorsement. The SJA may make corrections to the first indorsement at any time. Corrections require redistribution of the First Indorsement in accordance with paragraph 13.53.4.4.

13.53.3.3. Added: More than 14 Days after Initial Completion of the Entry of Judgment.

13.53.3.3.1. Added: TJAG, the Air Force Court of Criminal Appeals, and CAAF may make modifications to the findings, sentence, deferment, waiver of automatic forfeitures, action of the convening authority on the recommendation to suspend any portion of the sentence, or reprimand. Such superior competent authorities may also return the ROT back to the Chief Trial Judge, AF/JAT, for correction of any defective record.

13.53.3.3.2. Added: The military judge may make modifications to the other portions of the Entry of Judgment form prior to the ROT being forwarded for review in accordance with Articles 64-67a or 69, UCMJ, but may not modify the findings, sentence, deferment, waiver of automatic forfeitures, action of the convening authority on the recommendation to suspend any portion of the sentence, or reprimand, more than 14 days after the entry of judgment, unless such matters are remanded back to the military judge for action. R.C.M. 1111(c)(3).

13.53.3.4. Added: Refer to paragraph 13.53.4 for directions on making corrections to the Entry of Judgment.

13.53.4. Added: How to Make Corrections.

13.53.4.1. Added: General Rule. If corrections are made to the Statement of Trial Results or Entry of Judgment, the original and copies of each corrected copy of the Statement of Trial Results or Entry of Judgment must be included in the original, JAJM copies 1 and 2, and office copies of the ROT. (T-1) See the GCM/SPCM ROT Assembly Checklist on the AFLOA/JAJM Virtual Military Justice Deskbook. Originals and prior corrected copies may not be destroyed. (T-1) Corrected copies must be redistributed in accordance with the Statement of Trial Results/Entry of Judgment Distribution list on the AFLOA/JAJM Virtual Military Justice Deskbook. (T-1) If corrections are made to the first indorsement only, the entire Statement of Trial Results or Entry of Judgment, including the first indorsement, must be redistributed in accordance with the Statement of Trial Results/Entry of Judgment Distribution list on the AFLOA/JAJM Virtual Military Justice Deskbook. (T-1)

13.53.4.2. Added: Header. If changes are made to the Statement of Trial Results or Entry of Judgment form, the phrase “corrected copy – destroy all others” must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**). If changes are only made to the first indorsement, the phrase “corrected copy – destroy all others” must be included in the header in bold and all caps (**CORRECTED COPY – DESTROY ALL OTHERS**) only on the first indorsement. If multiple corrected copies are required, the corrected copies must be numbered (e.g., **SECOND CORRECTED COPY, THIRD CORRECTED COPY, FOURTH CORRECTED COPY**, etc.)

13.53.4.3. Added: Making Corrections on the Statement of Trial Results and Entry of Judgment. Incorrect information being corrected should remain on the form but be struck through. The correct information should follow and be underlined. For example, if the accused’s social security number was incorrectly listed on the Statement of Trial Results, it should be corrected as follows: ~~111-22-4444~~ 111-22-3333. **NOTE:** The date listed in the “Date” block on the Statement of Trial Results and Entry of Judgment must be updated for each corrected copy. The date does not need to be struck through or underlined when updated.

13.53.4.4. Added: Making Corrections on the First Indorsement. Incorrect information may be corrected on the first indorsement without any strikethrough or underlining. The corrected first indorsement should simply reflect the corrected determination as to whether each type of criminal indexing is required. The date should be updated to reflect the date the corrected first

indorsement was issued. Corrected copies must be distributed in accordance with the Statement of Trial Results/Entry of Judgment Distribution list on the AFLOA/JAJM Virtual Military Justice Deskbook. (T-1)

13.53.4.5. Added: Signatures: Corrected copies of the Statement of Trial Results and Entry of Judgment must be signed by the same military judge or by the military judge directed by the Chief, Trial Judiciary. Corrected copies of the first indorsement must be signed by the SJA or person Acting as the SJA.

**13.54. Added: Correcting the Record of Trial.** A defective ROT is corrected in accordance with R.C.M. 1112(d).

14.6.3. Changed to read: In the event of waiver or withdrawal, the base legal office must forward the original ROT and attachments to the GCMCA SJA for an Article 65(d), UCMJ, review conducted in accordance with R.C.M. 1201. (T-1) A judge advocate appointed by the SJA to the GCMCA over the accused at the time of trial conducts the review. A memorandum must be prepared addressing issues in R.C.M. 1115, inserted in the original and all copies of the ROT, and served on the accused. (T-1) The case will be forwarded to TJAG, through AFLOA/JAJM, for corrective action if the judge advocate who reviewed the case recommends corrective action.

14.14. Changed to read: An Article 65(d), UCMJ, review is required for any GCM or SPCM where the accused waived or withdrew an Article 66 appeal to the Air Force Court of Criminal Appeals, failed to file a timely Article 66 appeal, or where the case did not result in a sentence eligible for an Article 66 appeal.

14.16.3. Changed to read: If the judge advocate conducting the Article 65(d) review states that corrective action is required as a matter of law, the matter shall be forwarded to TJAG through AFLOA/JAJM. (T-1)

14.24. Changed to read: The United States Court of Appeals for the Armed Forces (CAAF) Review (Article 67, UCMJ; R.C.M. 1204). In accordance with The Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, CAAF reviews the record in the following situations:

14.24.1. Changed to read: Decisions by AFCCA appealed by the accused in which CAAF has granted a review;

**Note:** This includes appeals by the government under Article 62, UCMJ.

14.24.2. Changed to read: Cases certified to the court by TJAG;

**Note:** This includes appeals by the government under Article 62, UCMJ.

14.24.3. Added: Cases in which the death penalty was adjudged, approved, and affirmed by AFCCA;

14.24.4. Added: Decisions by AFCCA on petitions for extraordinary relief in which writ-petitions have been filed and CAAF has granted a review.

14.24.5. Added: If TJAG refers a case to the Court of Appeals for the Armed Forces, then AFLOA/JAJM will cause a copy of the order forwarding the case to be served on the accused and on appellate counsel. (T-0)

14.24.6. Added: Any petition the accused wishes to file with the Court of Appeals for the Armed Forces must be filed directly with the Court in accordance with their rules of practice. (T-0)

**14.33.1. Changed to read: Certification of Final Review.** Upon receipt of the order from the appellate court, AFLOA/JAJM notifies the SJA of the convening authority at the time of the trial (or the current court-martial convening authority if the original convening authority is no longer the responsible convening authority). If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the accused's current convening authority with the authority to convene the type of court-martial involved. (T-1)

14.42. Added: Distribution of the Certification of Final Review. The Notification of Final Review must be completed by the convening authority's SJA and distributed in accordance with the Statement of Trial Results/Entry of Judgment Distribution List within 14 days of receipt of notification of completion of final review from AFLOA/JAJM. (T-1) The checklist can be located on the AFLOA/JAJM Virtual Military Justice Deskbook.

## **Section 14K—Added: Supplemental Order Logs**

### **14.43. Added: Supplemental Order Logs.**

14.43.1. Added: Have a separate supplemental order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log for SPCMs and one log for general courts-martial. Each SPCMCA will have his/her own log for SPCMs.

14.43.2. Added: The log should reflect the supplemental order number assigned to a particular case. Hard copies, as opposed to electronic copies, of the original supplemental orders are stored with the supplemental order log.

14.43.3. Added: This log should be kept separately from the log for convening orders.

15.8.3. Added: Disposition Data. The Air Force, through AFOSI or Security Forces, is responsible for updating disposition data for any qualifying offense for which there was probable cause. This disposition data is specifically listed in the Interstate Identification Index (III) or NCIC, as required, and merely states what the ultimate outcome of any action (or no action) taken was regarding each qualifying offense. The disposition includes no action, acquittals, convictions, sentencing, nonjudicial punishment, certain administrative actions, and certain types of discharge.

15.12. Changed to read: Process for Submission of Criminal History Record Data. After the probable cause determination is made, the investigating agency (e.g., AFOSI or Security Forces) submits the required data for inclusion in III or NCIC, as applicable, in accordance with DoDI 5505.11.

15.13.1. Changed to read: The final disposition (e.g., conviction at GCM or SPCM, acquittal, conviction of a lesser included offense, sentence data, etc.) is submitted by AFOSI or Security Forces for each qualifying offense reported in III or NCIC. AFOSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). If an accused was arraigned at a court-martial, this final disposition is memorialized on a Report of Result of Trial or Statement of Trial Results, and on the Court-Martial Order or Entry of Judgment, whichever is applicable. A first indorsement signed by the SJA must accompany the Statement of Trial Results and Entry of Judgment. (T-1)

**15.15.** Changed to read: **General Provision.** The Air Force, through AFOSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Index System (CODIS), through the U.S. Army Criminal Investigations Laboratory (USACIL), when there is probable cause to believe an identified individual committed a qualifying offense. (T-0) See DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*; 10 U.S.C. 1565; 34 U.S.C. § 40702, Collection and Use of DNA identification information from certain Federal Offenders; 28 C.F.R. 28.12.

**15.27.** Changed to read: **General Provision.** 18 U.S.C. § 922 prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person that fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement, etc.). Commanders may waive this prohibition for members of the Armed Forces for purposes of carrying out their official duties, unless the conviction is for a misdemeanor crime of domestic violence or felony crime of domestic violence, prohibited under 18 U.S.C. §§ 922(g)(9) and (g)(1), respectively. See 18 U.S.C. § 925; DoDI 6400.06, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*.

15.28.1. Changed to read: Persons convicted of a crime punishable by imprisonment for a term exceeding one year. If a service member is convicted of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1). **Note:** This category of prohibition would not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged at that forum.

15.34.5. Changed to read: Entry of Judgment and first indorsement, or in the case of an SCM, the final completed DD Form 2329 and first indorsement; (T-1)

15.34.7. Changed to read: Outcome of any cases as to qualifying offenses litigated at or disposed of via magistrate court; and

15.34.8. Added: Order pursuant to Article 73, UCMJ, for a new trial;

15.34.9. Added: Order for a rehearing on the merits of the case, pursuant to Article 63, UCMJ; **Note:** This does not apply to an order for a rehearing merely on the sentence of a case.

15.34.10. Added: Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under Sections 15B-15D of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with paragraph 5.7; nonjudicial punishment records in accordance with AFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for resignation or retirement in lieu of trial by court-martial, etc.). (T-1)

16.3.1.2. Changed to read: When a victim is incompetent, incapacitated, deceased, or under 18 years of age but not a member of the armed forces, the detailed military judge may designate a representative of the estate of the victim, a family member, or another suitable person who may assume the victim's rights under the UCMJ. (T-0) See Article 6b; R.C.M. 801(a)(6).

Delete paragraphs 16.11.2 through 16.11.4 and replace with the following:

16.11.2. Changed to read: Victims of any offense referred to trial after 1 January 2019 who have suffered direct physical, emotional, or pecuniary harm as a result of the commission of the offense have the following additional rights:

16.11.2.1. Changed to read: The right to petition for an Article 30a, UCMJ, hearing before a military judge for matters arising under Article 6b(c) and (e).

16.11.2.2. Changed to read: The right to petition for an Article 30a, UCMJ, hearing before a military judge for relief or quashing of an investigative subpoena.

16.11.2.3. Changed to read: If represented by counsel, the right to be interviewed by defense counsel only in the presence of counsel, trial counsel, or victim advocate (VA). If unrepresented by counsel, the right to be interviewed by defense counsel only in the presence of trial counsel or VA.

16.11.2.4. Changed to read: If named in a specification being considered in an Article 32, UCMJ, preliminary hearing, the right to submit supplemental materials for consideration by the PHO and convening authority within 24 hours after the PHO closes the hearing.

16.11.2.5. Changed to read: Regardless of the findings:

16.11.2.5.1. Added: The right, upon request, to receive a copy of the ROT, provided the victim was named in a specification of which the accused was charged. **Note:** Redactions may be required to protect the privacy interests of third parties.

16.11.2.5.2. Added: The right to receive a copy of the ROT if the victim testified, regardless of the findings. **Note:** Redactions may be necessary to protect the privacy interests of third parties.

16.11.2.5.3. Added: The right to receive a copy of any action taken by the convening authority, if applicable.

16.11.2.5.4. Added: The right to receive a copy of the Entry of Judgment.

16.11.2.6. Deleted.

16.11.2.7. Deleted.

16.11.2.8. Deleted.

16.11.2.9. Deleted.

16.11.3. Changed to read: Victims of any offense referred to trial after 1 January 2019 who have suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty, and on which the convening authority may take action under R.C.M. 1109 and 1110 also have the right, upon request, to receive a copy of the recording of all open sessions of the court-martial, subject to the limitations in paragraph 13.14.1.

16.11.3.1. Deleted.

16.11.3.2. Deleted.

16.11.3.3. Deleted.

16.11.3.4. Deleted.

16.11.4. Changed to read: Victims of a Sex Offense. Victims of an offense occurring prior to 1 January 2019 under Articles 120, 120a, 120b, 120c, or, 125, UCMJ, and attempts thereof under Article 80, and victims of an offense occurring on or after 1 January 2019 under Articles 120, 120b, 120c, or 130, UCMJ, or attempts thereof under Article 80, have the following additional rights:

16.11.4.1. Added: In cases where the offense occurs in the United States, or any political subdivision, possession or territory, thereof, the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

16.11.4.2. Added: Provided the victim is eligible for assistance, the right to consult with a Special Victims' Counsel in accordance with 10 U.S.C. § 1044e.

16.11.4.3. Added: The right to have the victim's counsel, including Special Victims' Counsel, provided with reasonable, accurate, and timely notice of the same proceedings the victim is entitled to be apprised of under Article 6b, UCMJ.

16.11.4.4. Added: Non-Participating Victims. If the victim declines to participate in an investigation or prosecution, commanders and SJAs should refer to AFI 90-6001, *Sexual Assault Prevention and Response Program*, and DoDI 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, Enclosure 4.

16.11.5. Added: If a victim of an offense under the UCMJ other than those listed at paragraph 16.11.4 requests SVC representation, refer the request to AFLOA/CLSV.

16.13.4.1. Changed to read: Restitution may be available from, or offered by, an accused as a condition in the terms of a plea agreement, during the sentencing process, or as a part of post-trial mitigation, or as a term or condition of parole or clemency. (T-1) Local responsible officials or their designee should provide general information on possible restitution from local, state or federal crime victims' funds, including procedures for applying for such funds.

16.13.9. Added: Assist victims with requesting expedited transfers where the expedited transfer request does not fall within the scope of the SAPR or Family Advocacy programs.

**16.18. Changed to read: Victim Interviews.** There are requirements related to interviews of the victim. For cases involving a victim of an offense under Articles 120, 120a, 120b, 120c, or 125, UCMJ, and attempts thereof under Article 80, where the charges were referred before 1 January 2019, the following rights apply. These same rights apply to victims of any crime where charges were referred on or after 1 January 2019.

16.18.4. Added: Trial counsel should ensure that qualifying victims have received an initial notification of SVC availability from a qualifying party before conducting an interview. See 10 U.S.C. § 1565b(a)(3). SVC qualification criteria is found at 10 USC § 1044e.

16.25.5. Added: Trial counsel should serve any motions affecting a victim's rights or privileges on the victim's counsel, if the victim is represented.

## **Section 16J—Added: Expedited Transfers**

**16.37. Added: VWAP Responsibilities.** In cases where an expedited transfer request does not fall within the scope of the SAPR or Family Advocacy programs, VWAP victim witness liaisons are authorized to assist with expedited transfer requests. Such requests may include, but are not limited to the following scenarios:

16.37.1. Added: Service members who are victims of stalking; indecent viewing, visual recording or broadcasting; forcible pandering; and/or indecent exposure;

16.37.2. Added: Service members who are victims of domestic violence; and

16.37.3. Added: Service members whose dependent was sexually assaulted by another service member to whom the victim is not related.

17.1. Changed to read: **Purpose.** The purpose of AMJAMS is to collect data pertaining to investigations, nonjudicial punishment imposed pursuant to Article 15, UCMJ, trials by court-martial, and related military justice activity. Use of AMJAMS is required. (T-1) The use of any other case management system is not authorized. The information collected is required for the following reasons:

17.2. Changed to read: **Uses.** AMJAMS collects detailed information on offenses and processing timelines as well as demographic information on subjects of the judicial and nonjudicial punishment process. The information in AMJAMS provides effective management tools for use by Headquarters, MAJCOMs, general and special court-martial jurisdictions, the judiciary, and the appellate divisions. When used properly, the information will assist in eliminating or highlighting excessive processing delays and in monitoring the current status of military justice actions from the investigation stage through completion of the appellate process. AMJAMS data is for official use only and may only be accessed by personnel for an official purpose.

17.5.4. Added: JAS has primary responsibility for granting legal practitioners access to AMJAMS.

17.10. Deleted.

### **Section 17E—Added: Requesting Access to AMJAMS**

17.17. Added: Overview. AMJAMS access is not automatic and all users must be granted access by the office where they will be performing military justice actions. To ensure that AMJAMS is being used for official purposes, all requests must be submitted, via email, to AFLOA/JAS.

17.17.1. Added: Office of Assignment. Before a person can be given AMJAMS access, the individual must be assigned to the requesting office in Roster.

17.17.2. Added: Contents of the Request. All requests must be submitted via email to [afloa.helpdesk@us.af.mil](mailto:afloa.helpdesk@us.af.mil). The email must originate from one of the following personnel within the office: Staff Judge Advocate, Deputy Staff Judge Advocate, Law Office Superintendent (or Legal Office NCOIC), Chief of Military Justice, or NCOIC of Military Justice. The email must include the name/rank of the person being granted access.

17.17.3. Added: Temporary Access to AMJAMS. When a member is deployed or TDY to an office and needs AMJAMS access, the same requirements for requesting an account shall apply. Additionally, the individual will need to create a temporary role in Roster and that temporary

role will need to be gained into the requesting office before the request can be processed. Temporarily assigned individuals will have their AMJAMS access removed automatically at the end of the temporary tour.

**Chapter 18. Amended to read:**

**EXPLANATION OF THE UCMJ (ARTICLE 137, UCMJ) AND STATUS OF DISCIPLINE**

**Section 18A—Article 137 Briefings**

**18.1. Responsibilities.**

18.1.1. The FSS/CC identifies enlisted and officer personnel on the installation required to complete an Article 137 briefing.

18.1.2. The Staff Judge Advocate, in coordination with the FSS/CC, must ensure that base personnel are briefed on the UCMJ as required by Article 137, UCMJ, (T-0) and this section (T-0).

**18.2. Article 137 Briefing Standards.** The following standards apply to Article 137 briefings given to enlisted members, officers, and commanders.

18.2.1. A judge advocate, a Department of the Air Force civilian attorney, or a 5-level or higher paralegal, provides an Article 137, UCMJ, briefing to personnel within the command who require training. (T-1) For the purposes of this provision, a “5-level or higher paralegal” includes a civilian paralegal who:

18.2.1.1. Carries a 5-level paralegal certification as a Reservist, or

18.2.1.2. Prior to entering civilian service, served as a Regular Air Force paralegal with a 5-level or higher certification.

18.2.2. Members should receive the briefing in person when practicable. Instructional aids may be used, provided a qualified briefer is present to answer questions. If it is not practicable for a member to receive the briefing in person, the member may be briefed by a qualified briefer via telephone, video teleconference or other remote means.

18.2.3. Record attendance for all enlisted members, officers, and commanders through sign-in sheets or other means to allow for verification that specific individuals received the mandatory training. (T-1)

18.2.4. Frequency, Content and Duration. The SJA determines the frequency content, and duration of training sessions, provided they meet the requirements of paragraphs 18.3 through 18.6. (T-1)

**18.3. Content.** The Article 137 briefings described in paragraphs 18.4 and 18.5 cover, at a minimum, the following topics:

- 18.3.1. Articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139, UCMJ (T-0);
- 18.3.2. Types of punitive and administrative discharges (T-1);
- 18.3.3. Bases for characterizing service (T-1);
- 18.3.4. The benefits, disadvantages, and possible future effects of each type of service characterization (T-1);
- 18.3.5. The denial of certain benefits to most persons who fail to complete at least two years of an original enlistment (Title 38 United States Code § 5303A) (T-1); and
- 18.3.6. A detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces (T-1).

#### **18.4. Briefings for Enlisted Members.**

- 18.4.1. Complete the initial explanation within 14 calendar days of the entry of enlisted personnel on active duty; (T-0)
- 18.4.2. Complete the six-month explanation for enlisted personnel within 30 calendar days of the last day of the month in which the individual completed six months of active duty; (T-0) and
- 18.4.3. Complete the reenlistment explanation within 30 calendar days of an individual's reenlistment. (T-1)
- 18.4.4. Enlisted members of the Reserve or Air National Guard receive the initial explanation within 14 calendar days of initial entrance on a duty status with an air reserve component, again after completing basic training, and at the time of reenlistment.

#### **18.5. Briefings for Officers.**

- 18.5.1. Complete officer training within six months of commissioning, regardless of whether initial commissioning is in a reserve component or active duty. (T-0)
- 18.5.2. The SJA for the Holm Center, Maxwell Air Force Base, ensures trainees in the Total Force Officer Training and Commissioned Officer Training receive the required briefing prior to graduation. (T-1)
- 18.5.3. The SJA at each Training Wing ensures officers that commission through the Reserve Officers' Training Corps (ROTC) receive the required briefing during training. (T-1)

18.5.4. The SJA for the United States Air Force Academy ensures cadets receive the required briefing from instructors at the United States Air Force Academy within 14 calendar days of entry on active duty. (T- 1)

## **18.6. Briefings for Commanders.**

18.6.1. Timing. SJAs ensure commanders receive an Article 137 briefing prior to conducting the legal sufficiency reviews of their G-series orders, when practicable. In the event an officer is not able to receive an Article 137 briefing prior to being placed on G-series orders, this training must be accomplished within 30 days of each time an officer begins an assignment which has such authority. (T-1)

18.6.2. Content. The following information, at a minimum, should be covered: Articles 2, 3, 7-15, 25, 31, 37, 55, 77-134, and 137-139, UCMJ; search authorization under M.R.E. 315; and “no-contact” orders, MPOs, and CPOs. (T-1) The training does not necessarily need to cover the list of Articles required for an enlisted or officer briefing, but it must cover the parts of the UCMJ that are pertinent to the command function and to the exercise of disciplinary authority. (T-1)

18.6.3. Temporary Commanders. Where an officer is placed on “temporary” orders when the appointed unit commander is off-station or otherwise unavailable for a period of time, that “temporary commander” should receive Article 137 training prior to or within 30 days of being temporarily appointed to or assuming command. If the officer is temporarily appointed or temporarily assumes command repeatedly, the officer need only receive the Article 137 training once every 365 calendar days.

## **Section 18B—Status of Discipline Briefings**

**18.7. Status of Discipline Briefings.** A Status of Discipline (SOD) briefing will be conducted by the legal office on behalf of the wing commander or equivalent installation authority on at least a quarterly basis. (T-1)

18.7.1. The SJA facilitates the SOD briefing. Wing commanders and SJAs should consider inviting host and tenant commanders and first sergeants. Pursuant to the direction of the wing commander, the SJA may invite additional personnel to all or specific SOD briefings. For example, vice and deputy commanders, superintendents, and AFOSI and Security Forces senior investigators may be invited to all SOD briefings while the SARC or ADC may be invited to participate in a portion of a specific SOD briefing. The SJA and legal office staff will create the SOD briefing materials and coordinate as necessary and appropriate.

18.7.2. The following items will be discussed at the Status of Discipline briefing (T-1):

18.7.2.1. Results of trial for courts-martial closed in the quarter. Do not disclose the name of an accused who was acquitted of all charges and specifications.

18.7.2.2. Court-martial processing times for courts-martial completed through Record of Trial forwarding in the quarter and for the wing, Numbered Air Force if applicable, major command, and Air Force for the year-to-date.

18.7.2.3. Information on nonjudicial punishment actions completed through SJA review in the quarter. Do not disclose any names of individuals who were offered or received nonjudicial punishment. The SJA should consider having the responsible commander brief his or her squadron's nonjudicial punishment actions.

18.7.2.4. Nonjudicial punishment processing times for nonjudicial punishment actions completed through SJA review by squadron, wing, NAF if applicable, MAJCOM, and Air Force for year-to-date.

18.7.2.5. Information on involuntary discharge cases completed through discharge or retention in the quarter. Do not disclose any names of individuals notified of discharge, discharged, or retained. The SJA should consider having the responsible commander brief his or her squadron's discharge cases.

18.7.2.6. Discharge processing times for enlisted notification and board cases for discharge cases completed through discharge by squadron, wing, NAF if applicable, MAJCOM, and Air Force for year-to-date.

18.7.2.7. At least once per calendar year, rates per thousand overall and by officer/enlisted, gender, and race for courts-martial and nonjudicial punishment by wing, NAF if applicable, MAJCOM, and Air Force for the year.

18.7.2.8. Special interest items identified by the wing commander or equivalent authority or the SJA, such as alcohol-related incidents, drug offenses, and unlawful command influence.

18.7.3. AMJAMS and Web-Based Administrative Separation Program (WASP) are used to generate SOD briefing slides.

20.2.2. Changed to read: Sentence/Acquittal to ROT Completion and Moreno.

20.2.2.1. Changed to read: ROT Completion Defined. ROT completion is defined as the completing and compilation of the ROT, including all attachments and allied papers as prescribed by R.C.M. 1112(f), AFMAN 51-203, and the ROT Assembly Checklist on the Virtual Military Justice Deskbook. Note: The ROT may be forwarded for review without receipts from the accused and victim, if the legal office subsequently forwards the receipts to be included in the ROT during the review process.

20.2.2.2. Changed to read: The completed ROT, as defined in paragraph 20.2.2.1, must be completed within 120 days of announcement of sentence or acquittal. (T-1)

20.2.3. Changed to read: ROT Completion to ROT Forwarding. A complete and accurate ROT, as defined in paragraph 20.2.2.1, must be forwarded to the appropriate office for processing appellate review within 14 days of the completion of the ROT and all attachments. (T-1)

20.2.3.1. Deleted.

20.2.3.2. Deleted.

20.4.7. Changed to read: Sentence/Acquittal to ROT Completion. The ROT, including all attachments and allied papers as defined in paragraph 20.2.2.1, must be complete within 64 days of announcement of the sentence or acquittal. (T-1)

20.4.7.1. Deleted.

20.4.7.2. Deleted.

20.4.8. Deleted.

20.4.9. Changed to read: ROT Completion to ROT Forwarding.

20.4.9.1. Changed to read: A complete and accurate ROT, including all attachments and allied papers as defined in paragraph 20.2.2.1, must be forwarded to the appropriate office for processing appellate review within 14 days of the completion of the ROT and all attachments. (T-1)

20.4.9.2. Deleted.

20.5.6. Changed to read: Sentence/Acquittal to ROT Completion. Complete the ROT, including all attachments and allied papers as defined in paragraph 20.2.2.1, within 38 days of announcement of the sentence or acquittal. (T-1)

20.5.6.1. Deleted.

20.5.6.2. Deleted.

20.5.8. Changed to read: ROT Completion to ROT Forwarding. A complete and accurate ROT, including all attachments and allied papers as defined in paragraph 20.2.2.1, must be forwarded to the appropriate office for processing appellate review within 14 days of the completion of the ROT and all attachments. (T-1)

**20.7. Changed to read: Summary Court-Martial Processing.** SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through referral. Early and regular judge advocate investigative assistance to agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results.

**Section 22B—Delete Section 22B and replace with the following:**

**Section 22B—Special Victim Investigation and Prosecution (SVIP) Capability**

**22.8. SVIP Capability and SVIP Team.** Fiscal Year 2013 National Defense Authorization Act, Section 573, required the Services to establish special victim capabilities. In the Air Force, the SVIP capability is comprised of the legal office’s SVIP Team; the detailed SVU-CTC or CTC; and the case agent or other investigator assigned to the investigation of a qualifying offense.

**22.9. Qualifying Offenses.** Offenses that require activation of the SVIP capability are (1) unrestricted reports of adult sexual assault, (2) unrestricted reports of domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, and (3) child abuse involving sexual assault and/or aggravated assault with grievous bodily harm. (T-0)

**22.10. Composition of the SVIP Team.** The Staff Judge Advocate must appoint, in writing, the members of the SVIP Team. (T-1) The SVIP Team can be designated as a standing team or may be appointed on a case-by-case basis. The SVIP Team must consist of, at a minimum:

22.10.1. Judge advocate(s). At least one judge advocate appointed to the team must be certified, unless no certified judge advocate (other than the SJA and DSJA) is assigned to that legal office, or other exceptional circumstances apply. (T-1) If a qualifying certified judge advocate is assigned and available but no certified judge advocate is appointed to the SVIP Team, the SJA must indicate the reasons for this in writing. (T-1) If no certified judge advocate is appointed to the SVIP Team, the uncertified judge advocate appointed to the team must consult with the CTC or SVU-CTC, at a minimum, at the points designated in paragraph 22.11.1.5. (T-1).

22.10.2. Paralegal(s). At least one paralegal appointed to the team must have completed the Paralegal Craftsman Course.

22.10.3. VWAP victim liaison(s).

**22.11. Members of SVIP Capability External to the Legal Office.**

22.11.1. Special Victims Unit, Circuit Trial Counsel (SVU-CTCs). SVIP capability prosecutors are CTCs designated as members of the Special Victims Unit by the Chief, Government Trial and Appellate Counsel Division (AFLOA/JAJG).

22.11.1.1. The Chief, AFLOA/JAJG, must certify that each SVU-CTC possesses the requisite litigation skills, professionalism, and leadership ability to provide the highest quality of legal representation for the government and support to victims. (T-1) SVU-CTCs must be capable of supervising, mentoring, and training junior counsel while providing candid, independent legal advice and expert prosecutorial support to responsible legal offices. (T-1)

22.11.1.2. Prior to being designated as a member of the Special Victims Unit, a CTC will generally have completed one year as either CTC or CDC, attended two or more advanced litigation skills courses, received specialized training in prosecuting or defending sexual assaults, and demonstrated an ability to prosecute or defend a variety of sexual assault and/or complex cases.

22.11.1.3. Based upon the severity of the case, as determined by the Chief, AFLOA/JAJG or the CCTC, SVU-CTCs are detailed to qualifying cases. (T-1) When possible, SVU-CTCs will be detailed in the early stages of the investigation to provide support to local trial counsel and AFOSI case agents.

22.11.1.4. If an SVU-CTC is not detailed to the case at the outset, SVU-CTCs will be available to consult and provide litigation support to local trial counsel remotely.

22.11.1.5. If an SVU-CTC is detailed to the case, the legal office should consult with the SVU-CTC throughout trial preparation and prior to the following:

22.11.1.5.1. First legal office interview of the victim;

22.11.1.5.2. Preferral of charges, to include subsequent preferral of additional charges; and

22.11.1.5.3. Any Article 32 preliminary hearing; and

22.11.1.5.4. Referral of charges, if such referral involves any changes to the charges previously preferred, to include referral of additional charges.

22.11.1.6. If an SVU-CTC is detailed to the case, the legal office should notify the SVU-CTC of withdrawal and dismissal of charges and specifications.

22.11.2. Military Criminal Investigative Organizations (MCIO) Personnel. The investigator or agent assigned to an investigation into a qualifying offense is part of the SVIP capability. The SVIP Team and CTC, where assigned, must advise and support the investigator or agent on investigative activities undertaken in furtherance of the case.

## **22.12. Required Training for SVIP Team.**

22.12.1. All personnel detailed as members of an SVIP Team are required to have completed the SAPR Program training requirements listed in DoDI 6495.02, to include annual training and first responder training. (T-1) All judge advocates must have also completed the judge advocate training requirements detailed in DoDI 6495.02. (T-1) Where possible, SJAs should consider appointing judge advocates who have attended specialized training in sexual assault investigations and prosecutions, such as the Sex Crimes Investigations Training Program, or other advanced litigation course.

## **22.13. Triggers for Activation of SVIP Capability.**

22.13.1. Notification by MCIO investigator of initiation of a substantive investigation into a qualifying offense. If a qualifying allegation is made to an MCIO, such that the MCIO initiates an investigation into the alleged offense, the investigator or agent must notify the SJA or designated SVIP Team of the receipt of the allegation within 24 hours. (T-1)

22.13.2. Receipt of jurisdiction from local authorities. If a qualifying allegation is made to non-DoD law enforcement, such that the MCIO does not initiate substantive investigative steps and the military has not exerted jurisdiction over the offense, the SVIP Team is not activated until the earlier of either: (1) non-DoD law enforcement cease their investigation and the MCIO becomes the primary investigative agency; or (2) the Air Force requests and receives jurisdiction from the local authorities. Whichever party of the SVIP capability (MCIO agent or investigator or legal office personnel) is notified that either of these events has occurred is required to notify the others within 24 hours.

#### **22.14. SVIP Process.**

22.14.1. Designation and Notification of SVIP Activation. Within one duty day of receiving notification of a qualifying allegation as discussed in paragraph 22.13.1, the SJA will ensure the SVIP Team is designated in writing and that such designation is communicated to the members of the SVIP Team and the investigator. (T-1) If the SVIP Team was previously designated as a standing team, the SJA must ensure the SVIP Team is notified of the activation of the SVIP capability. (T-1) This designation and notification may only be made by the SJA or person acting as the SJA.

22.14.2. MCIO Case Consultation. Within one duty day of being designated to the SVIP Team or being notified of the activation of the SVIP capability for a specific case, the attorney(s) on the SVIP Team must conduct a case consultation with an agent or MCIO investigator in order to obtain the facts and circumstances of the case and provide initial legal advice on the investigation. (T-1) Case update consultations must occur on at least a weekly basis thereafter. (T-1) The case paralegal or judge advocate should document these weekly meetings in the case file or AMJAMS entry.

22.14.3. CTC Consultation. If no certified counsel are appointed to the SVIP Team, the judge advocate(s) on the SVIP Team must consult with a CTC regarding the qualifying allegations within five duty days of notification of the activation of the SVIP capability. (T-1) The counsel must continue to consult with the detailed CTC, or to a CTC if no specific CTC is detailed, throughout the investigation, as noted in paragraph 22.11.1.5. (T-1)

22.14.4. Throughout the case's development, the SVIP Team must work with the case agent or investigator to identify appropriate investigative steps and legal hurdles. (T-1) The SVIP Team must also provide assistance to the case agent or investigator with any requests for investigative subpoena, immunity, or other judicial process. (T-1)

22.14.5. The SVIP Team is required to also complete the Investigative Support Team tasks identified in Section 22A of this instruction. (T-1) This includes drafting and continually updating the proof analysis. (T-1)

#### **22.15. Victim Support.**

22.15.1 Victim Access to Legal Assistance. If a victim is eligible for legal assistance, the victim liaison must notify them of their eligibility during their initial meeting.

22.15.2. Victim Access to Special Victims' Counsel. If a victim is not represented by a Special Victims' Counsel but is eligible for representation, the SVIP Team is responsible for notifying the victim of their eligibility during their initial meeting. This notification will typically be accomplished by the victim liaison.

22.15.3. Victims' Rights. In cases where victims are not represented by a Special Victims' Counsel, crime victims must be notified by the SVIP Team of their rights, as discussed in Section 16D of this instruction. Where applicable, this includes the additional rights afforded to victims of sexual assault, as noted in Section 16C. This notification will typically be accomplished by the victim liaison during the initial meeting with the victim.

22.15.4. Pediatric Forensic Interviewers. The SVIP Team should request specially trained pediatric forensic interviewers to support the investigations and prosecution of complex child abuse and child sexual abuse cases.

22.15.5. Coordination with Key Organizations and Victim Support Services. Legal offices must establish and maintain active liaisons with the following organizations and key individuals to ensure appropriate victim support:

22.15.5.1. Local AFOSI Detachment; (T-1)

22.15.5.2. Local civilian law enforcement and prosecutors' offices; (T-1)

22.15.5.3. Local civilian victim advocacy organizations; (T-1)

22.15.5.4. SARC and SAPR victim advocates; (T-1)

22.15.5.5. SVC; (T-1)

22.15.5.6. FAP clinicians, FAP managers, and domestic abuse victim advocates; (T-1)

22.15.5.7. Military chaplain offices; (T-1)

22.15.5.8. Medical and mental health providers; (T-1) and

22.15.5.9. Commanders and first sergeants. (T-1)

**23.1. Changed to read: Mandatory Use of Court-Martial Checklists.** The base legal office responsible for prosecuting a court-martial must use the applicable AFLOA/JAJM court-martial checklists, to include checklists for completion of post-sentencing paperwork and distribution, available on AFLOA/JAJM's Virtual Military Justice Deskbook. (T-1) Legal offices must begin using the checklists as soon as they start reviewing a case with an eye toward the earlier of pretrial confinement, preferral of charges, or an Article 30a pre-preferral judicial proceeding. (T-1) Supplemented checklists may only be used if reviewed and approved by AFLOA/JAJM. (T-1) Checklists used for an individual court-martial case are maintained and disposed of in accordance with the disposition schedule for the ROT and are kept with the base copy of the ROT. (T-1)

**Figure A9.7. Changed to read: Notification of Adjudged Sentence, Action, or Entry of Judgment**

(Date)

MEMORANDUM FOR HQ AFPC/DP1SSP (enlisted only)  
 AFSFC/SFC  
 DFAS-IN/FLTBA  
 (Local Servicing Finance Office)

FROM: (Judge Advocate Office)

SUBJECT: (Adjudged Sentence)(Entry of Judgment) (SPCM or General Court-Martial) –  
*United States v. (Accused's Rank and Name)*

1. Request you update personnel and pay data as the result of sentence on:

- a. (Rank)
- b. (First Name)(Middle Initial)(Last Name)
- c. (SSN)
- d. (Unit)

2. On (Date of Sentence)(Date of Entry of Judgment), the following sentence was (adjudged)(approved) (entered into the record):

- a. DISCHARGE: (Dismissal)(DD)(bad conduct discharge)(N/A)
- b. CONFINEMENT: \_\_\_\_\_ (years)(months)(N/A)
- c. FORFEITURE: (Total)(\$\_\_\_\_\_ pay per month for \_\_\_\_\_ months)(N/A)
- d. FINE: (\$\_\_\_\_\_)(N/A)
- e. REDUCTION TO: (Grade)(N/A)
- f. DATE ADJUDGED: (Date)

*Use the following paragraph with the 14 day message:*

3. [(Adjudged forfeitures)(Reduction in grade)(Automatic forfeitures of (2/3)(total) pay and allowances)(took effect)(will take effect) on (date) (were deferred until action).] (and/or) [Automatic forfeitures in the amount of (total)(\$\_\_\_\_\_ per month) pay and allowances were waived from (date) until (date).][(List out portion of punishment) is (suspended for )(set aside)(disapproved.)]

*Use the following paragraphs in the message after action is taken or the entry of judgment is signed:*

3. Entire sentence was ordered executed (except discharge/dismissal)(except discharge and the following portions, which were suspended: \_\_\_\_\_)(except \_\_\_\_\_). Automatic forfeitures of (total)(\$\_\_\_\_\_ per month) pay and allowances (took effect on (date)) (were deferred)(were waived) (from (date) until (date)). [(List out portion of punishment) is (suspended for )(set aside)(disapproved.)]

*Use the following paragraph for cases where charges were referred to the court-martial prior to 1 January 2019:*

4. Action was promulgated by [(Special Court-Martial Order)(General Court-Martial Order) No. \_\_\_\_\_, Headquarters (Convening Authority)], dated XX XXX XX.

*Use the following paragraph for cases where charges were referred to the court-martial on or after 1 January 2019:*

4. Judgement entered on XX XXX XX.

#### SIGNATURE BLOCK

#### **Figure A9.10. Changed to read: Memorandum for Convening Authority on Action (Summary Court-Martial)**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Action: United States v. (Rank and Name of Accused)

1. On (date), you referred the case of (rank and name of accused), (accused's organization), to trial by summary court-martial. The court convened on (date). The DD Form 2329, Record of Trial by Summary Court-Martial, is attached. Also attached is a personal data sheet on the accused for your consideration prior to taking action on the sentence. In addition, you may consider the record of trial, personnel records of the accused, and such other matters as you deem appropriate. However, if you consider matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused must be notified and given an opportunity to rebut.

2. Pursuant to Article 60a and R.C.M. 1306, UCMJ, the accused has submitted the attached matters (Atchs 2, 3, and 4) for your consideration prior to taking final action in this case. You must consider all written matters submitted by the defense and may consider any other matters submitted by the defense prior to taking action on the findings and sentence.

OR

2. Pursuant to Article 60a and R.C.M. 1306, UCMJ, the accused may submit matters for your consideration prior to taking final action in this case. However, (the accused did not submit clemency matters.)(the accused has chosen to waive his right to submit clemency matters (Atch 2).)(the accused has chosen to waive his right to submit clemency matters and has also waived the remaining portion of his time to submit clemency matters (Atch 2).)

3. Further, pursuant to Article 60a, UCMJ, and R.C.M. 1106A, the victim has submitted the attached matters (Atchs 2, 3, 4 and 5) for your consideration prior to taking final action in this case. You must consider all written matters submitted by the victim and may consider any other matters submitted by the victim prior to taking action on the findings and sentence.

OR

3. Pursuant to Article 60a and R.C.M. 1306a, UCMJ, the victim may submit matters for your consideration prior to taking final action in this case. However, (the victim did not submit matters.)(the victim has chosen to waive his right to submit matters (Atch 2)).

4. A proposed Action of the Convening Authority (Atch 1) approving the findings and sentence of the court has been prepared for your signature. Should you desire to take some other action in this case, we will prepare the appropriate document at your direction. If you concur, please sign the Action of the Convening Authority.

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

6 Attachments:

1. (Proposed Action of the Convening Authority)( DD Form 2329 with Proposed Action)
2. DD Form 2329 (add if separate page action is used)
3. Defense Counsel Ltr, dtd \_\_\_\_
4. Accused's Ltr, dtd \_\_\_\_
5. Mr. \_\_\_\_ Ltr, dtd \_\_\_\_
6. Personal Data Sheet

OR

4 Attachments:

1. (Proposed Action of the Convening Authority)(DD Form 2329 with Proposed Action)
2. DD Form 2329 (add if separate page action is used)
3. Waiver of Clemency Matters, dtd \_\_\_\_ (if used)
4. Personal Data Sheet

1st Ind., (Convening Authority)

(Date)

MEMORANDUM FOR (Judge Advocate Office)

I considered the attachments before taking action on this case.

(NAME), (Rank), USAF  
 Commander

**Figure A9.15. Added: First Indorsement for DD Form 2329**

1st Ind., DD Form 2329, Name and Rank of Accused, dated \_\_\_\_\_.

FROM: <<Staff Judge Advocate>>, <<Unit/Installation>>

MEMORANDUM FOR: ALL REVIEWING AUTHORITIES

The following criminal indexing is required, following the completion of the Statement of Trial Results, according to the references listed:

Firearm Prohibition Triggered Under 18 U.S.C. § 922: \_\_\_\_\_  
 Fingerprint Card and Final Disposition in accordance with DoDI 5505.11: \_\_\_\_\_

LAWYER A. PERSON, Colonel, USAF  
 Staff Judge Advocate

Distribution:

1 – List All Required Parties

(ADD NEW) A11.25.3. Added: Reprimand. If a reprimand is approved, the reprimand language should be located one space below the action language.

**Table A11.1. Changed to read: Relationship between Adjudged and Mandatory Forfeitures**

FORFEITURE PERIOD	ADJUDGED FORFEITURES	MANDATORY FORFEITURES (See Note 1)
DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)	Not in effect. Accused continues to be paid unless post expiration of term of service	Not in effect. Accused continues to be paid unless post expiration of term of service

14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED TO ACTION	In effect, except for any portion the convening authority defers. (See Note 2)	In effect, except for any portion the convening authority defers (See Note 2), and/or waives and directs payment to the accused's qualifying dependents.
ACTION TO END OF FORFEITURE PERIOD	The amount the convening authority approves is still in effect. The convening authority may approve, disapprove, commute or suspend the adjudged forfeitures in whole or in part.	Still in effect, except any portion the convening authority waives or has waived. (See Notes 4 & 5)

## NOTES:

1. Mandatory forfeitures only apply when the three conditions listed in paragraph A11.27.2.1. exist.
2. If the accused applies for deferment, the convening authority may defer all or a portion of the adjudged forfeitures and/or mandatory forfeitures 14 days after the date on which the sentence was adjudged until the convening authority takes action. The accused should specify whether the deferment requested is for adjudged forfeitures, mandatory forfeitures, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused will be paid a sum equal to entitled pay and allowances, minus any amounts forfeited (adjudged forfeitures and/or mandatory forfeitures not deferred). The convening authority may rescind a deferment (adjudged forfeitures and/or mandatory forfeitures) at any time.
3. The convening authority may waive available mandatory forfeitures with or without a request from the accused. The convening authority may waive mandatory forfeitures to the extent that the accused is entitled to pay and allowances (see Note 1 above).
4. Mandatory forfeitures may be waived until the earlier of: 1) a period not to exceed six months; 2) the accused's release from confinement; or 3) the last day the accused is otherwise entitled to pay and allowances (See Note 1 above).
5. At action, the convening authority may waive all or a portion of the available mandatory forfeitures for the benefit of the accused's dependents. The convening authority may disapprove, commute or suspend all or a portion of the adjudged forfeitures to increase the amount of mandatory forfeitures available for the convening authority to waive.

**A11.35. Changed to read: 14 Day Memorandum and 24 Hour Memorandum.** If the Entry of Judgment is completed within 14 days, a 14 Day Memorandum is not required. Instead, a 24 Hour Memorandum (paragraph 13.35.2), must be accomplished and distributed. If the Entry of

Judgment is not complete within 14 days, both a 14 Day Memorandum (13.35.1), and a 24 Hour Memorandum (paragraph 13.35.2) must be accomplished and distributed.

A11.35.1. Added: 14 Day Memorandum. In all courts-martial with automatic forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade (enlisted only), the SJA of the office that prosecuted the case must send a memorandum 14 days after the sentence is announced or within 24 hours of the entry of judgment, whichever is earlier, via email to the local finance office, DFAS ([afcourtmartials@dfas.mil](mailto:afcourtmartials@dfas.mil), [michael.j.heil5.civ@mail.mil](mailto:michael.j.heil5.civ@mail.mil), and [Jackie.a.hammes.civ@mail.mil](mailto:Jackie.a.hammes.civ@mail.mil)); HQ AFPC/DP1SS ([afpc.dp1sp.EnlistedPromotions@us.af.mil](mailto:afpc.dp1sp.EnlistedPromotions@us.af.mil)); and the Air Force Security Forces Services Center ([afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil)). (T-1) If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. (T-1) A template memorandum is Figure A9.7.

A11.35.2. Added: 24 Hour Memorandum. In all courts-martial with automatic forfeitures under Article 58b, UCMJ, adjudged forfeitures, or reduction in grade (enlisted only), in which the Entry of Judgment is published more than 14 days after the sentence is announced, the SJA of the office that prosecuted the case must send a memorandum within 24 hours after the entry of judgment via email to the local finance office, DFAS ([afcourtmartials@dfas.mil](mailto:afcourtmartials@dfas.mil), [michael.j.heil5.civ@mail.mil](mailto:michael.j.heil5.civ@mail.mil), and [Jackie.a.hammes.civ@mail.mil](mailto:Jackie.a.hammes.civ@mail.mil)); HQ AFPC/DP1SS ([afpc.dp1sp.EnlistedPromotions@us.af.mil](mailto:afpc.dp1sp.EnlistedPromotions@us.af.mil)); and the Air Force Security Forces Services Center ([afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil)). (T-1) If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. (T-1) A template memorandum is Figure A9.7.

A11.36. Deleted.

A13.10. Changed to read: The United States Court of Appeals for the Armed Forces Review (Article 67, UCMJ; R.C.M. 1204). In accordance with The Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, the United States Court of Appeals for the Armed Forces reviews the record in the following situations:

A13.10.1. Added: Decisions by AFCCA appealed by the accused in which CAAF has granted a review;

**Note:** This includes appeals by the government under Article 62, UCMJ.

A13.10.2. Added: Cases certified to the court by TJAG;

**Note:** This includes appeals by the government under Article 62, UCMJ.

A13.10.3. Added: Cases in which the death penalty was adjudged, approved, and affirmed by AFCCA;

A13.10.4. Added: Decisions by AFCCA on petitions for extraordinary relief in which writ-petitions have been filed and CAAF has granted a review.

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

**AIR FORCE INSTRUCTION 51-201**

**18 JANUARY 2019**



**LAW**

**ADMINISTRATION OF MILITARY  
JUSTICE**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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Certified by: AF/JAA  
(Mr. Conrad Von Wald)

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Pages: 395

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This instruction implements the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial (MCM), and Air Force Policy Directive (AFPD) 51-2, *Administration of Military Justice*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the UCMJ, MCM, including the Rules for Courts-Martial (R.C.M.) and Military Rules of Evidence (M.R.E.) and applicable Department of Defense (DoD) Directives. It applies to individuals at all levels, including Regular Air Force and Air Force Reserve Component. It applies to members of the Air National Guard who committed violations of the UCMJ while in Title 10 status. Commands may supplement this instruction only with the prior, written approval of Air Force Legal Operations Agency, Military Justice Division (AFLOA/JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820. This publication requires the collection and or maintenance of information protected by 5 United States Code (U.S.C.) § 552a, *The Privacy Act of 1974*. The authorities to collect or maintain the records prescribed in the publication are Title 10 United States Code § 8013, *Secretary of the Air Force*; Title 10 United States Code § 8037, *Judge Advocate General*; Title 10 United States Code § 854, *Record of Trial*; Title 10 United States Code § 865, *Transmittal and Review of Records*; and Executive Order 9397 (SSN). The applicable SORN, F051 AFJA I, Military Justice and Magistrate Court Records, is available at: <http://dpcl.d.defense.gov/Privacy/SORNsSearchResults/tabid/7541/Category/277/Default.aspx>. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the Air Force Form 847, *Recommendation for Change of Publication*; route Air Force Forms 847 from the field through major command (MAJCOM) functional managers.

Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual 33-363, *Management of Records*, and disposed of in accordance with Air Force Records Information Management System Records Disposition Schedule. The authorities to waive wing/unit level requirements in this publication are identified with a Tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. Refer to AFI 33-360, *Publications and Forms Management*, Table 1.1, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through command channels to the appropriate waiver authority, or alternatively, to the requester’s commander for non-tiered compliance items.

### **SUMMARY OF CHANGES**

This document has been substantially revised to implement the National Defense Authorization Act for Fiscal Year 2016, Division E (Military Justice Act of 2016) and must be completely reviewed. Except as otherwise noted in this Instruction, the Military Justice Act of 2016 generally applies to cases referred on or after 1 January 2019. However, this Instruction applies equally to all cases, regardless of the date of referral. If a provision within this Instruction applies only to a certain subset of cases (i.e. cases referred prior to 1 January 2019, or cases referred on or after 1 January 2019), then that provision will specify. Unless otherwise noted, citations to the MCM, UCMJ, R.C.M., and M.R.E. refer to the rules as promulgated in the 2019 MCM. References are not to the 2016 MCM unless specifically stated.

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## Chapter 1

### OVERVIEW

**1.1. The military justice system promotes justice, assists in maintaining good order and discipline, and promotes military efficiency and effectiveness, thereby strengthening the national security of the United States.** This instruction implements requirements for the administration of military justice in the Air Force. The primary sources of direction and guidance on military justice are the UCMJ, Title 10 United States Code § 801 et seq., and the MCM (which may be found at Air Force e-Publishing library, under the 4 tabs “Publications,” “Air Force,” “Departmental,” and “Miscellaneous”), including the R.C.M. and M.R.E. Compliance is mandatory with the UCMJ as federal law, and with the MCM as an Executive Order. (T-0)

## Chapter 2

### ROLES AND RESPONSIBILITIES

**2.1. Secretary of the Air Force.** Exercises Air Force secretarial authorities set out in the UCMJ and MCM. Is a general court-martial convening authority (GCMCA) pursuant to Article 22, UCMJ. Designates commanders with convening authority pursuant to R.C.M. 504. Issues AFPD 51-2 and other regulations to implement the UCMJ, MCM, and Department of Defense policy. Authorizes The Judge Advocate General (TJAG) to issue Air Force publications establishing procedures to administer military justice in the Air Force.

**2.2. The Judge Advocate General.** Exercises TJAG authorities set out in the UCMJ and MCM for the Air Force. Conducts inspections to supervise the administration of military justice pursuant to Article 6, UCMJ. Advises the Secretary of the Air Force on military justice matters. Provides oversight of the Air Force military justice system. Issues Air Force publications establishing procedures to administer military justice in the Air Force.

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

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

**2.5. Air Force Trial Judiciary (AF/JAT).** Provides support to military courts-martial throughout the Air Force. Details trial judges to courts-martial. Dockets courts-martial. Provides oversight of military judges and court reporters throughout the Air Force. Prescribes guidance for military judges regarding procedural and substantive aspects of trials by courts-martial.

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

**2.7. Commander.** Exercises authorities of a commanding officer set out in the UCMJ and MCM.

**2.8. Staff Judge Advocate (SJA).**

2.8.1. Performs the duties of the SJA set out in the UCMJ and MCM. Directly reports to and advises the Court-Martial Convening Authority or commander on military justice matters. Supervises the administration of military justice for the command. Forwards court-martial

disposition data for criminal indexing to the appropriate points of contact. Ensures individuals identified by the Force Support Squadron Commander (FSS/CC) receive Article 137 briefings.

2.8.2. To maintain unfettered access to military justice legal advice, avoid conflicts of interest, execute delegations of convening authority prerogatives, and maintain confidentiality, officers designated as SJAs by TJAG in accordance with Article 6(a), UCMJ, shall report to and be rated by the commander who has been designated as a convening authority. For these same reasons, TJAG-designated SJAs, assigned to units where the commander is not designated as a convening authority, should ordinarily report to and be rated by the commander.

**2.9. Force Support Squadron Commander.** Identifies individuals that require Article 137 briefings.

**2.10. Special Victims' Counsel Division (AFLOA/CLSV).** Provides policy guidance on legal representation of victims in accordance with Title 10 United States Code § 1044e.

## Chapter 3

### MILITARY JUSTICE ACT OF 2016

#### *Section 3A—Effective Dates*

**3.1. Military Justice Act of 2016 Effective Dates.** Executive Order 13825 prescribed the effective dates for the Military Justice Act of 2016. To the extent this section is inconsistent with the executive order, the executive order is controlling.

**3.2. Cases Referred Before 1 January 2019.** The Military Justice Act of 2016 generally does not apply to cases where charges were referred before 1 January 2019. Proceedings in such cases shall be held in the same manner as before the Military Justice Act of 2016 took effect. (T-0) However, Article 60a(c), which allows the convening authority to suspend certain sentences upon the recommendation of the military judge, applies to all cases regardless of the referral date. (T-0) See paragraph 3.3.6.

**3.3. Cases Referred On/After 1 January 2019.** All of the provisions of the Military Justice Act of 2016 apply to cases referred on/after 1 January 2019, with the following exceptions:

**3.3.1. Substantive Provisions.** The amendments to Articles 2 (personal jurisdiction), 56(d) (Government appeal of sentences), and 63 (rehearings) apply only to cases where all of the specifications allege offenses that occurred on or after 1 January 2019. (T-0)

**3.3.2. Special Court-Martial by Military Judge Alone.** A convening authority shall only refer a case to a special court-martial by military judge alone under Article 16(c)(2) if all of the specifications allege offenses committed on or after 1 January 2019. (T-1)

**3.3.3. Sentencing Procedures.** The new sentencing provisions in Articles 53 and 56(c) and R.C.M. 1002 apply to cases where all of the charged offenses occurred on or after 1 January 2019. In a case where charged offenses occurred both before and after 1 January 2019 (“straddling cases”), the convening authority may:

3.3.3.1. Refer the charges to two different courts-martial;

3.3.3.2. Apply the “old” sentencing rules in the 2016 MCM to the entire case; or

3.3.3.3. The accused may opt in to the new Article 56(c) sentencing framework for the entire case. If all offenses occurred before 1 January 2019, the accused may not opt in to the new Article 56(c) sentencing framework and only the 2016 MCM sentencing rules apply. See R.C.M. 902A, 1007 and 1009.

**3.3.4. Plea Agreements.** The new provisions in Article 53a, R.C.M. 705, and R.C.M. 910 apply to cases where all of the specifications allege offenses on or after 1 January 2019. (T-0) See Section 12D of this publication. Where a case with straddling offenses (as defined in Attachment 1) involves a plea agreement or pretrial agreement:

3.3.4.1. The convening authority may refer the charges to two different courts-martial; or

3.3.4.2. The accused may opt in to the new Military Justice Act sentencing framework. or the accused may opt-in to the new Article 56(c) sentencing framework.

3.3.4.3. The convening authority shall not apply pre-Military Justice Act pretrial agreement rules to a single court-martial with straddling offenses. (T-1)

**3.3.5. Punitive Articles.** Use the punitive article in effect at the time each alleged offense occurred. The lesser included offenses prescribed in Article 79 and Appendix 12A of the 2019 MCM apply only to offenses committed on or after 1 January 2019.

**3.3.6. Article 60 Authority.** Use the version of Article 60 in effect on the date of the earliest offense resulting in a conviction to determine the convening authority's ability to modify the findings and/or sentence for an entire case. In all cases, regardless of the date of the offense, the convening authority may suspend certain sentences upon the recommendation of the military judge pursuant to Article 60a(c).

**3.4. Pre-Referral Matters.** Changes to the Article 32 preliminary hearing and Article 34 pretrial advice apply to all preliminary hearings started and advice given on or after 1 January 2019, regardless of when the offense occurred.

#### *Section 3B—Military Magistrates*

**3.5. Military Magistrates Not Authorized.** The Secretary of the Air Force has not authorized the utilization of military magistrates as defined in Article 26a.

#### *Section 3C—"Victim" Defined*

**3.6. Definition of Victim.** The definition of "victim" varies throughout the military justice process. The definition governs what rights are afforded the victims, as defined. Practitioners must consult the MCM to determine which definition of victim applies at each stage to determine which definition applies.

## Chapter 4

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

#### *Section 4A—Court-Martial Convening Authority (Articles 22, 23, and 24, UCMJ; R.C.M. 504)*

#### **4.1. General Court-Martial Convening Authority (GCMCA).**

4.1.1. The following Air Force commanders may exercise general court-martial convening authority:

4.1.1.1. Commanders of organizations designated in Article 22(a)(7), UCMJ, who have been authorized by the Secretary of the Air Force to convene general courts-martial (GCMs) or have received the express authorization of TJAG to convene GCMs under Article 22(a)(7), UCMJ.

4.1.1.2. Commanders of organizations not designated by Article 22(a)(7), UCMJ, but who are authorized and designated to convene GCMs by the Secretary of the Air Force under Article 22(a)(8) or who are empowered by the President under Article 22(a)(9), UCMJ.

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

#### **4.2. Special Court-Martial Convening Authority (SPCMCA).**

4.2.1. The following Air Force commanders may exercise special court-martial convening authority:

4.2.1.1. Commanders authorized to convene GCMs under paragraph 4.1. See Article 23(a)(1), UCMJ.

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

4.2.1.3. Commanders of organizations designated in Article 23(a)(4), UCMJ, who are not authorized by the Secretary of the Air Force to exercise special court-martial convening authority, but who are authorized by the superior commander of an Air Force major command (MAJCOM) to convene special courts-martial (SPCMs). Prior to exercise of special court-martial convening authority by a commander pursuant to this paragraph, the SJA of the authorizing MAJCOM sends a copy of the authorization to AFLOA/JAJM.

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

4.2.1.4.1. The commander of an Air Force component of a unified or specified combatant command may only authorize subordinate commanders to exercise special court-martial convening authority if the subordinate commander commands an organization identified by Article 23, UCMJ, and that organization or unit is assigned

or attached to the superior component commander's command. See AFI 38-101, *Air Force Organization*.

4.2.1.4.2. Prior to the exercise of special court-martial convening authority by a commander pursuant to this paragraph, the SJA of the authorizing Air Force component commander sends a copy of the authorization to AFLOA/JAJM.

4.2.2. A request for authorization to exercise special court-martial convening authority or a superior commander's authorization for a subordinate commander to exercise special court-martial convening authority is forwarded through functional channels with commanders' indorsements to AFLOA/JAJM to process the Secretary of the Air Force's acknowledgement. **Note:** This does not apply to organizations identified in paragraph 4.2.1.3.

4.2.3. Special court-martial convening authority includes the authority to refer cases to a special court-martial by military judge alone as defined in Article 16(c)(2)(A). An SPCMCA may not refer a case to a special court-martial by military judge alone if the accused objects to the forum, subject to the limitations in paragraph 9.12. (T-1)

**4.3. Summary Court-Martial Convening Authority (SCMCA).** Any person who may convene a GCM or SPCM may convene a summary court-martial (SCM) under Article 24(a)(1), UCMJ. Also, the commanding officer of a detached squadron or other Air Force detachment may convene an SCM under Article 24(a)(3), UCMJ, but only with the express authorization of the superior GCMCA for the detached squadron or other detachment consistent with R.C.M. 504(b)(2)(B). Prior to the exercise of summary court-martial convening authority by a commander pursuant to this paragraph, the SJA of the authorizing GCMCA sends a copy of the authorization to AFLOA/JAJM.

***Section 4B—UCMJ Jurisdiction (Articles 2 and 3, UCMJ; R.C.M. 201, 202, 203, and 204)***

**4.4. Exercise of UCMJ Jurisdiction.** This section details the exercise of UCMJ jurisdiction and general, special, and summary courts-martial convening authority in the Air Force. No other order, document, or implementing agreement is required unless otherwise stipulated below. This section applies to Regular Air Force members, Air Reserve Component members when subject to the UCMJ in accordance with Article 2, and Airmen on temporary duty with, or otherwise attached to, the relevant organization. In this regulation, the term Regular Air Force members may be used interchangeably with "active duty" to refer to Airmen in an active, federal status under Title 10. "Air Reserve Component" refers to the Air Force Reserve and Air National Guard while in Title 10 status.

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

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

paragraph does not serve to divest any commander from the lawful exercise of convening authority. See paragraph 4.5.5.

4.5.2. All members of an Air Force Reserve unit are attached to the host command of the nearest Regular Air Force wing and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See R.C.M. 204(a). Additional guidance on court-martial jurisdiction over Air Force Reserve members is provided at paragraph 4.14.

4.5.3. Air National Guard members who commit UCMJ offenses while in federal status, or on Title 10 orders, will ordinarily be tried by the Regular Air Force unit to which they are assigned or attached, if applicable. Once recalled to federal active duty, Air National Guard members not assigned or attached to a Regular Air Force unit will be attached to the host command of the nearest Regular Air Force wing and its appropriate subordinate and higher commands for the exercise of court-martial convening authority. See R.C.M. 204(a). Additional guidance on court-martial jurisdiction over Air National Guard members is provided at paragraph 4.14.

4.5.4. Members of a tenant unit, Air Force Element, or Air Force Reserve or Air National Guard unit include personnel on temporary duty with or otherwise attached to such unit. See also AFI 90-1001, *Planning Total Force Associations (TFAs)*.

4.5.5. Jurisdiction pursuant to paragraph 4.5 is concurrent jurisdiction to be shared between the command chain of the relevant tenant, Air Force Element, Air Force Reserve, or Title 10 Air National Guard unit and the relevant Regular Air Force unit or host command. Air National Guard units in Title 32 status lack UCMJ jurisdiction over members who committed misconduct while in Title 10 status. Attachment for the exercise of court-martial convening authority does not serve to divest any commander from the exercise of such authority over a member of an Air Force tenant unit or Air Force element or a member of the Air Force Reserve or Air National Guard. Instead, the exercise of such authority by the Regular Air Force host command is preferred to resolve the matter expeditiously, preserve resources, and retain command prerogatives pertaining to matters affecting the maintenance of good order and discipline within the Air Force. Convening authorities with concurrent jurisdiction must coordinate before disposition is determined. (T-1) When it is necessary or desirable to deviate from this jurisdiction arrangement, it must be documented in a support agreement or similar document signed at the GCMCA level or a superior level of command with a copy provided to AFLOA/JAJM. (T-1)

**4.6. Jurisdiction of Air Force District of Washington (AFDW).** The commander, AFDW (AFDW/CC), as GCMCA, and the Commander, 11th Wing (11 WG/CC), as the SPCMCA, are authorized to exercise court-martial convening authority over Air Force members whose organization is not subordinate to an Air Force MAJCOM and who are not stationed on a military installation with an Air Force commander authorized to exercise general or special court-martial convening authority. Such organizations include, but are not limited to, Air Force field operating agencies; Air Force direct reporting units; and Air Force Elements of DoD activities, DoD field agencies, and other departments and agencies of the United States Government. See paragraph 4.7 for a discussion of the applicable convening authorities for personnel assigned to AFLOA.

4.6.1. Personnel stationed or otherwise performing duty at or near Fort Meade, Maryland, but not assigned, attached, or detailed to the 70th Intelligence, Surveillance, and Reconnaissance Wing or its subordinate units are attached to AFDW and its subordinate units for the exercise of court-martial convening authority.

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

4.6.3. See paragraph 4.11 for convening authority over general officers.

**4.7. Airmen in the Air Force Legal Operations Agency (AFLOA).** Generally, convening authority over AFLOA personnel will operate in accordance with paragraph 4.5.5. However, the following members assigned to AFLOA are not attached to a host command but are attached to AFLOA for the exercise of special and general court-martial convening authority:

4.7.1. Circuit Trial Counsel, Circuit Defense Counsel, and Circuit Special Victims' Counsel;

4.7.2. Area Defense Counsel and defense paralegals; and

4.7.3. Special Victims' Counsel and Special Victims' Paralegals. See AFPD 51-2.

**4.8. Military Judges.** Military judges assigned to AF/JAT, regardless of base of assignment, and AF/JAH are attached to AFDW for exercise of court-martial convening authority. See AFPD 51-2.

**4.9. Airmen in Headquarters Air Force, Joint Staff, or Office of the Secretary of Defense.** Air Force members assigned or attached to Headquarters Air Force, including the Air Staff and the Office of the Secretary of the Air Force; Joint Staff, including the Office of the Chairman of the Joint Chiefs of Staff; and the DoD, including the Office of the Secretary of Defense, are attached to AFDW and subordinate units for the exercise of court-martial convening authority. See AFPD 51-5, *Administrative Law, Gifts, and Command Relationships*.

**4.10. Airmen in the North Atlantic Treaty Organization.** Air Force members assigned or attached to North Atlantic Treaty Organization and stationed in Europe are attached to the United States Air Forces in Europe and Air Forces Africa for the exercise of court-martial convening authority and other disciplinary purposes. See AFPD 51-2.

**4.11. Airmen in Joint Commands and Non-Air Force Organizations.** Pursuant to R.C.M. 201(e), a commander of a unified or specified combatant command may convene courts-martial over any armed forces member. Also, a convening authority of one armed force may convene a court-martial to try a member of another armed force. Nonetheless, a joint or non-Air Force commander normally allows the appropriate Air Force commander to exercise court-martial convening authority over an Air Force member. See AFI 38-101, *Air Force Organization*.

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

4.11.2. Air Force convening authorities exercise court-martial jurisdiction over members of other armed forces only when warranted by R.C.M. 201(e)(3). Prior to exercising such authority, the convening authority's SJA must coordinate with AFLOA/JAJM. (T-1)

**4.12. General Officers.** Only a commander of an Air Force MAJCOM or a superior convening authority may exercise court-martial convening authority over an Air Force general officer. This limitation does not apply to the exercise of court-martial convening authority by the commanding

officer of a unified or specified command. The Secretary of the Air Force has court-martial convening authority over the Chief of Staff of the Air Force, commanders of Air Force major commands, AFDW/CC, and Air Force generals and lieutenant generals not assigned to a MAJCOM or combatant command.

**4.13. United States Air Force Academy Cadets.** United States Air Force Academy cadets are considered Regular Air Force personnel under Title 10 United States Code § 8075, and are subject to the UCMJ. See Article 2(a)(2), UCMJ. For purposes of courts-martial jurisdiction and limitations on punishments, cadets are treated as officers. See R.C.M. 1003(c)(2)(A). However, cadets cannot serve as members on a court-martial.

**4.14. Air Force Reserve and Air National Guard Members.**

4.14.1. Air National Guard members in Federal status and Air Force Reserve members, including retired members of the Air National Guard or Air Force Reserve (collectively referred to as “Air Reserve Component members”), are subject to UCMJ jurisdiction for offenses committed while in federal status on active duty or on inactive duty training. On or after 1 January 2019, Air Reserve Component members are also subject to UCMJ jurisdiction during travel to and from inactive duty training sites of the member that is pursuant to regulations or orders, during intervals between consecutive periods of inactive duty training on the same day, and during intervals between inactive duty training on consecutive days. See Article 2(a)(3), UCMJ.

4.14.2. **General and Special Courts-Martial.** In any case in which the accused is a member of the Air Force Reserve or Air National Guard, trial counsel must introduce sufficient evidence to establish *in personam* (personal) jurisdiction over the accused at the time of the offense. (T-0) See *United States v. McDonagh*, 14 M.J. 415, 422, 424 (C.M.A. 1983); *United States v. Laws*, 11 M.J. 475, 476 77 (C.M.A. 1981). A member of an Air Reserve Component must be on active duty prior to arraignment at a general or special court-martial. (T-0). See R.C.M. 204(b)(1).

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

4.14.2.2. **Air National Guard.** Jurisdiction attaches when Air National Guard members are on Title 10 orders, in accordance with R.C.M. 202(c). However, because Air National Guard Title 10 orders cannot ordinarily be administratively extended for investigations into UCMJ violations, the supporting Regular Air Force legal office contacts the legal office supporting the Air National Guard Readiness Center (NGB/JA) to discuss the timing of exercising jurisdiction and options for maintaining jurisdiction.

4.14.3. **Recall of an Air Force Reserve Member.** Subject to the consultation requirement of paragraph 4.14.2.1, the following individuals may recall a Reserve member to active duty:

4.14.3.1. A GCMCA for the Regular Air Force unit to which the member is attached for training purposes;

4.14.3.2. A GCMCA for the Regular Air Force unit in which the member performed Federal service, active duty, or inactive duty training when the offense occurred;

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

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

4.14.3.5. A GCMCA for the Regular Air Force host command described in paragraph 4.5.2. See Article 2(d), UCMJ.

4.14.4. **Recall of an Air National Guard Member.**

4.14.4.1. **Recall Authority.** If an Air National Guard member reverts to Title 32 status before UCMJ action commences, the member must be recalled to active duty under Title 10 United States Code § 802(d). (T-0) Subject to the consultation requirement of paragraph 4.14.2.2, the following individuals would ordinarily recall an Air National Guard member to Title 10 active duty:

4.14.4.1.1. A GCMCA for the Regular Air Force unit to which the member was attached for duty (supported commander);

4.14.4.1.2. A GCMCA for the Regular Air Force unit to which the member was attached for training;

4.14.4.1.3. A GCMCA for the host command of the nearest Regular Air Force wing and its appropriate subordinate and higher commands as described in paragraph 4.5.3; or

4.14.4.1.4. Any GCMCA pursuant to an agreement with or a request by 201 MSS/CC.

4.14.4.2. **Air National Guard Recall Process.**

4.14.4.2.1. The GCMCA evaluates recall decisions using the probable cause standard;

4.14.4.2.2. Court-martial recalls require Secretary of the Air Force approval and processing in accordance with paragraph 4.14.6 to preserve the option of confinement.

4.14.4.2.3. The GCMCA signs the order recalling the member to Title 10 status for UCMJ action;

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

4.14.4.2.5. The member's home station creates the pay order(s);

4.14.4.2.6. The GCMCA who recalls the member to active duty funds travel-related entitlements in accordance with the *Joint Travel Regulations*. See *Joint Travel Regulations* Chapter 7, Part K. A copy can be located at <https://www.defensetravel.dod.mil/site/travelreg.cfm>.

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

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

4.14.6.1. Concurrence of the GCMCA for the Air Force unit convening the court-martial. (T-1)

4.14.6.2. The preferred or anticipated charges and specifications. If charges have been preferred, include a copy of the charge sheet and personal data sheet. (T-1)

4.14.6.3. A summary of the evidence relating to each offense. Include copies of any reports of investigation, witness statements, or documentary evidence. (T-1)

4.14.6.4. A description and copies of any records of the member's prior court-martial convictions and nonjudicial punishments, if any. (T-1)

4.14.6.5. Whether the member refused an offer of nonjudicial punishment for any of the charged offenses at issue in the case. (T-1)

4.14.6.6. The member's background, including civilian employment, family circumstances, and character of military service. (T-1)

4.14.6.7. Documentation of consultation with the member's Air Reserve Component chain of command. (T-1) **Note:** For Air National Guard members, the state Adjutant General must be informed and consulted. (T-1) Consultation requires the Adjutant General or chain of command be provided with the general nature of the charges, copies of reports of investigation, and other evidence in the government's possession used to support a finding of probable cause.

4.14.6.8. A written legal review by the wing-level legal office requesting the recall. (T-1) Written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Otherwise, written coordination indicating concurrence is all that is required unless the relevant MAJCOM legal office requires otherwise.

4.14.7. **Release from Active Duty.** At the final adjournment of the court-martial, the reserve component member ordered to active duty for the purpose of conducting disciplinary proceedings should be released from active duty within one working day, unless the order to active duty was approved by the Secretary of the Air Force and confinement was adjudged. The Court-Martial Convening Authority who convenes the court funds the active duty orders

of the reserve component member being court-martialed, including the duration of confinement.

4.14.7.1. **Air Force Reserve.** Any other unserved punishments, including a restriction on liberty, may be served during subsequent periods of inactive duty training or active duty. See Article 2(d)(5), UCMJ; R.C.M. 204(b) and 1003(c)(3).

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

4.14.8. **Summary Courts-Martial.** An Air Force Reserve or Air National Guard member may be tried by SCM during the member's period of Title 10 active duty or normal period of Reserve inactive-duty training. All punishments remaining unserved at the end of a period of Title 10 active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of inactive-duty training or Title 10 active duty. See Article 2(d)(4), UCMJ; R.C.M. 204(b)(2). Recall of an Air National Guard member to Title 10 active duty for trial by SCM requires Secretary of the Air Force approval.

4.14.9. **Nonjudicial Punishment.** A recall authority may approve the involuntary recall of Air National Guard or Air Force Reserve members for nonjudicial punishment in accordance with paragraphs 4.14.3 through 4.14.4. Recalls of Air National Guard members for nonjudicial punishment require consultation with The Adjutant General of the state for which the member serves in Title 32 status, include a description of the anticipated charges, and evidence sufficient to support a probable cause determination. Further guidance on nonjudicial punishment is available in AFI 51-202, *Nonjudicial Punishment*.

#### 4.15. Completion of Military Service.

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

4.15.2. Jurisdiction over active duty military personnel normally continues until the member receives a valid discharge certificate, there is a final accounting of pay, and the member has completed administrative clearance processes required by the Secretary of the Air Force. See *United States v. Christensen*, 78 M.J. 1 (C.A.A.F. 2018) (reaffirming the three-part test and applying a "reason or policy" standard); *United States v. Nettles*, 74 M.J. 289 (C.A.A.F. 2015) (pertaining to discharge of reservists); *United States v. Hart*, 66 M.J. 273 (C.A.A.F. 2008). In any individual case, an exception to this general rule may apply, such as regaining military jurisdiction for members upon reentry into military service or recalling to active duty retired members receiving pay. See Article 2(a), UCMJ, R.C.M. 202(a), discussion (2)(B)(iii), and R.C.M. 204(d). An Airman separated or discharged prior to the expiration of a term of service on active duty remains subject to UCMJ jurisdiction and may be recalled if the Airman retains military status in a reserve component.

#### 4.16. Retired Personnel.

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

4.16.2. If a retiree meeting the qualifications of paragraph 4.16.1 is to be recalled to active duty to be tried by court-martial, the commander seeking the recall should consider the location of the alleged offense, whether the alleged offense occurred outside the United States, the current location of the retired member, and the current location of the victim, if any, to determine the appropriate recall authority.

4.16.3. Secretary of the Air Force approval is required to recall a retired member to active duty prior to preferral of charges. The supporting legal office of the command seeking the member's recall forwards the request for Secretary of the Air Force approval via functional channels to AFLOA/JAJM. (T-1) The request should include coordination with the GCMCA and the additional information described in paragraph 4.14.6. If there is an immediate issue regarding the statute of limitations (Article 43, UCMJ) and the time prescribed by the relevant statute of limitations is about to expire, the SJA coordinates immediate preferral of charges and a request for Secretary of the Air Force approval of the retiree's recall as soon as possible.

#### 4.17. Jurisdiction Involving Federal Agencies.

4.17.1. **Department of Justice.** DoD Instruction (DoDI) 5525.07, *Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, sets forth DoD and Department of Justice responsibilities for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction. As with state (non-Federal) nonexclusive jurisdiction, the determination of whether civilian federal or military authorities will exercise jurisdiction is made through consultation or prior agreement between appropriate Air Force and civilian authorities. Convening authorities and SJAs foster relationships with local civilian authorities with a view toward maximizing Air Force jurisdiction.

4.17.2. **United States Secret Service.** The United States Secret Service exercises primary investigative responsibility for all cases involving alleged threats against the President or successors to the Presidency. Title 18 United States Code § 3056. The Chief, AFLOA/JAJM, or a designee, coordinates with representatives of the Department of Justice and the Secret Service to determine which department will exercise jurisdiction in any case involving an Air Force subject and Secret Service investigative responsibility.

4.17.3. **Military Extraterritorial Jurisdiction Act of 2000 (MEJA), Title 18 United States Code § 3261 et seq.** Pursuant to MEJA, military members subject to the UCMJ as well as civilians employed by or accompanying the armed forces outside the United States may be subject to United States civilian federal jurisdiction for offenses committed while overseas. The court-martial convening authority with jurisdiction reports any potential MEJA cases through command channels, and the supporting SJA reports the same through functional

channels to AFLOA/JAJM. AFLOA/JAJM coordinates potential MEJA cases with the DoD Office of General Counsel and Department of Justice. AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction Over Civilians and Dependents Overseas*, provides guidance and procedures relevant in MEJA cases.

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

#### **4.18. Jurisdiction Involving State or Foreign Prosecution Interest (R.C.M. 201(d)).**

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

4.18.1.1. A member who is pending trial or has been tried by a state or foreign court, regardless of the findings, should not ordinarily be tried by court-martial or subjected to nonjudicial punishment for the same act or omission, except upon Secretary of the Air Force approval (see paragraph 4.18.3). This policy is based on comity between the federal government and state and foreign governments and is not intended to confer additional rights upon the accused. See *United States v. Kohut*, 44 M.J. 245, 247 (C.A.A.F. 1996) (quoting Manual of The Judge Advocate General of the Navy § 0124, JAGINST 5800.7C (Change 1, 1992)).

4.18.1.1.1. This limitation does not apply to action or vacation proceedings under R.C.M. 1109 and MCM, Part V, paragraph 6a(4).

4.18.1.1.2. A member may be considered to be “pending trial” when state or foreign authorities have expressed their intention to try the member, even if formal charges have not yet been brought (e.g., upon arrest of the member or a representation by civilian authorities that they intend to pursue the case).

4.18.1.1.3. A member is deemed “tried” if jeopardy has attached. Follow the state or foreign law to determine when this occurs. At a minimum, jeopardy attaches when the jury is impaneled and sworn, or when the first witness testifies in a judge alone trial. See *Crist v. Bretz*, 437 U.S. 28 (1978).

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

- 4.18.1.1.5. A member is not deemed “tried” in situations where jeopardy attached without resolution of the case, if further prosecutorial action is authorized under state or foreign law (for example, in the case of a mistrial).
- 4.18.1.2. If the state or foreign proceedings end without jeopardy attaching or if the Air Force receives clear indication in writing from an authorized state or foreign government representative that the state or foreign proceedings will not continue pending military authorities taking UCMJ action, the principle of comity is satisfied and the Air Force may proceed with court-martial or nonjudicial punishment.
- 4.18.2. When a member is subject to both the UCMJ and state or foreign jurisdiction, Air Force authorities must determine whether the exercise of jurisdiction is in the best interests of the Air Force. If the exercise of jurisdiction is sought, Air Force authorities (normally the SJA or delegate) contact appropriate civilian authorities; notify them of the Air Force desire to exercise jurisdiction; and, if civilian authorities have primary jurisdiction, request a waiver of jurisdiction to the Air Force (additional procedures for seeking jurisdiction from foreign authorities are discussed in paragraph 4.18.2.6). If state or foreign authorities decline or waive the right to exercise jurisdiction, the Air Force may proceed with action, up to and including court-martial or nonjudicial punishment.
- 4.18.2.1. Generally, Air Force requests for waivers of jurisdiction from state or foreign authorities should be in writing with written responses requested. Any written request and response should be maintained with the case file and documented in the Automated Military Justice Analysis and Management System (AMJAMS).
- 4.18.2.2. **Cases Involving Sexual Assault Occurring Within the United States.** Air Force authorities must solicit the preference of the victim as to whether cases involving the following offenses should be prosecuted by court-martial or a civilian court: (T-0)
- 4.18.2.2.1. Any offense in violation of Article 120, UCMJ;
  - 4.18.2.2.2. Stalking, committed prior to 1 January 2019, in violation of Art 120a, UCMJ;
  - 4.18.2.2.3. Stalking, committed on or after 1 January 2019, in violation of Article 130, UCMJ;
  - 4.18.2.2.4. Any offense in violation of Art 120b, UCMJ;
  - 4.18.2.2.5. Any offense in violation of Art 120c, UCMJ;
  - 4.18.2.2.6. Forcible sodomy, committed prior to 1 January 2019, in violation of the form of Article 125, UCMJ, that existed prior to 1 January 2019; and
  - 4.18.2.2.7. Attempts to commit the above offenses, in violation of Article 80, UCMJ.
- 4.18.2.3. Victim preference as to prosecution by a court-martial or a civilian court must be documented in writing. (T-1) See Attachment 2 for templates.
- 4.18.2.4. If the Air Force intends to seek jurisdiction from state authorities, victim’s preference should be obtained prior to requesting jurisdiction.
- 4.18.2.5. This requirement only applies to cases where the alleged sexual assault occurred in the United States.

4.18.2.6. The victim may be heard through victim's counsel, if any. The victim's preference, although not binding, is considered by Air Force authorities when deciding whether to refer the case for trial by court-martial. If the victim expresses a preference for civilian jurisdiction, the SJA ensures the proper civilian authority is informed of the victim's preference in cases where the offense alleged occurred within the United States. (T-1) The SJA must ensure the victim is notified once the civilian authority makes a decision whether to prosecute. (T-1) See R.C.M. 306(e)

4.18.3. **Foreign Criminal Jurisdiction.** The procedures to determine whether United States military authorities or foreign (host nation) authorities will exercise criminal jurisdiction over military members present in foreign countries vary from country to country. The Status of Forces Agreement, or a similar agreement, should address procedures for dealing with nonexclusive or concurrent jurisdiction offenses. Comply with AFI 51-402, *International Law*.

4.18.4. **Secretarial Approval.** Only the Secretary of the Air Force may approve initiation of court-martial or nonjudicial punishment action against a member previously tried by a state or foreign court for substantially the same act or omission, regardless of whether the member was convicted or acquitted of the offense. (T-1) Secretary of the Air Force approval will be granted in only the most unusual cases when justice and good order and discipline can be satisfied in no other way. A request may be submitted only after the member has been tried in a state or foreign court. Submit the request with full justification and commanders' indorsements through functional channels to AFLOA/JAJM.

**4.19. Department of Defense (DoD) Civilian Employees, Department of Defense (DoD) Contractor Personnel, and Other Persons.** For authorities and procedures related to DoD civilian employees, DoD contractor personnel, and other persons, refer to AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*.

## Chapter 5

### PRETRIAL MATTERS, INITIAL DISPOSITION AND PREFERRAL OF CHARGES

#### *Section 5A—Search, Seizure, and Apprehension*

**5.1. Authorization for Search, Seizure, and Apprehension.** Per the Secretary of the Air Force, military judges are empowered to grant search authorizations in accordance with M.R.E. 315. Only military judges and qualified commanders have the authority to grant search authorizations. This authority is not delegable. Qualifying Air Force commanders and military judges may authorize searches, seizures, and apprehensions based upon probable cause for personnel and locations within the military span of control. Qualifying commanders are defined at paragraph 5.4.1.1.

**5.1.1. Order of Preference.** When attempting to obtain a search authorization, legal offices should first attempt to identify a qualifying commander before seeking authorization from a military judge. This reduces the chance that the military judge will be conflicted out of being detailed to subsequent proceedings related to the search authorization.

**5.1.2. Obtaining Search Authorization from a Military Judge.** Government counsel may request a search authorization from a military judge in accordance with the Uniform Rules of Practice Before Air Force Courts-Martial.

**5.1.3. Forms.** Air Force Form 1176, *Authority to Search and Seize*, is used to document authorization for a search of a person, location, or property and seizure of property pursuant to M.R.E. 315(d). Air Force Form 3226, *Authority to Apprehend in Private Dwelling*, is used to document authorization to apprehend someone in a private dwelling pursuant to R.C.M. 302(e)(2)(C) and M.R.E. 315(d). When required by circumstances, oral or verbal authorization may be given but should be followed by written documentation.

#### **5.2. United States Mail and Government Information Systems.**

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

**5.2.2. Government Information Systems.** Government information systems are subject to monitoring, interception, search, and seizure for all authorized purposes in accordance with the DoD Consent Banner placed on government information systems.

**5.2.2.1.** The DoD Consent Banner does not extend to include the content of privileged communications or work product related to personal representation or services by attorneys, psychotherapists, or clergy, to include their assistants. Users should annotate their privileged communications in e-mails and documents to ensure such information is kept confidential and not inappropriately accessed or read during authorized search, seizure, interception, or monitoring activities. **Note:** Failure to annotate that a communication is privileged does not, per se, waive the privilege. Investigators should consult with the appropriate legal office or AFOSI/JA prior to and during such activities to ensure privileged communications are appropriately protected and remain confidential.

5.2.2.2. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. See M.R.E. 314(d). However, if the totality of the facts and circumstances indicate that the subject has a reasonable expectation of privacy, usually because the government property was issued for exclusive personal use, obtaining a search authorization is warranted.

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

5.3.1. The base-level SJA informs AFLOA/CC, or the Director, AFLOA/JAJ, before such a search is executed pursuant to authorization under M.R.E. 315(d) or as soon as possible if exigent circumstances exist pursuant to M.R.E. 315(g). (T-1)

5.3.2. The purpose of this notification is to provide information, not to seek assistance in obtaining or authorizing a search of defense counsel property. If a search is authorized, it should be conducted so as to minimize disruption to the operation of the defense counsel's office and should occur at a time when defense clients are unlikely to be present. It is further recommended that additional precautions, such as having an investigator and judge advocate unaffiliated with the installation conduct the search, ordering the searchers not to disclose the matters discovered and to seal evidence recovered, and have a military judge review papers seized to determine what matters are responsive to the search authorization and how to handle other seized material. See *United States v. Calhoun*, 49 M.J. 485 (C.A.A.F. 1998).

#### **5.4. Search Authorizations (M.R.E. 315).**

5.4.1. **Search Authority.** Only military judges and qualified commanders have the authority to grant search authorizations. This authority is not delegable. A commander is only qualified to grant a search authorization if the commander has control over the place where the property or person to be searched is situated or found, or, if the place is not under military control, if the commander has control over persons subject to military law or law of war. See M.R.E. 315.

5.4.1.1. **Requirement for Neutral and Detached Commander Acting as Search Authority.** A commander issuing a search authorization must be neutral and detached. This excludes commanders that exhibit bias or appear to be predisposed to one outcome or another. However, the participation of a commander in investigative activities in furtherance of command activities does not per se disqualify that commander from authorizing a search under M.R.E. 315. See *United States v. Huntzinger*, 69 M.J. 1 (C.A.A.F. 2010); *United States v. Freeman*, 42 M.J. 239 (C.A.A.F. 1995). Prior to utilizing a commander for granting search authorization, counsel for the government should determine whether the commander's involvement may preclude them from preferring or referring charges in the same case. Law enforcement members shall not exercise authority to grant search authorizations under M.R.E. 315.

5.4.1.2. **Air Force Reserve Command Jurisdiction.** Commanders acting as search authority for Air Force Reserve Command installations must be serving a period of inactive duty training or active duty.

5.4.1.3. **Non-Air Force Military Installations.** Qualifying Air Force commanders may exercise search authority for matters involving Air Force personnel on the installation.

Based on probable cause, qualifying commanders may authorize search and seizure (and apprehension) involving Air Force personnel at non-Air Force military installations to the extent the commander has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. M.R.E. 315(d)(1); R.C.M. 302(e)(2). This commander exercises concurrent search and seizure authority with the non-Air Force commander. Nothing in this paragraph is intended to negate or diminish the authority of a non-Air Force commander, military judge or civilian magistrate to authorize searches consistent with M.R.E. 315.

**5.4.1.4. Pentagon Reservation.** AFDW/CC is a GCMCA and may authorize searches involving Air Force controlled or occupied spaces of the Pentagon Reservation or Air Force personnel located, assigned or attached therein, pursuant to M.R.E. 315(d)(1). Additionally, any other Air Force commander located in the Pentagon may authorize searches over people or places under that specific commander's control. Generally, authorized searches within the Pentagon Reservation are coordinated with Washington Headquarters Services and the Pentagon Force Protection Agency prior to execution. The failure to coordinate with the Washington Headquarters Services and Pentagon Force Protection Agency does not create any right or benefit for any Air Force member.

**5.4.1.5. Tenant Units.** A tenant unit commander may exercise search authority for matters involving Air Force personnel to the extent the commander has control over the place where the property or person to be searched is situated or found, or over the person to be apprehended. Depending on the place to be searched, the installation commander may be the more appropriate choice to exercise search authority.

**5.4.2.** SJAs and government counsel advising on the decision as to whether to request a search authorization from a military judge or commander must carefully review the facts in each instance to determine whether an impartial commander is qualified to grant a search authorization without conflicting that commander out of other parts of the courts-martial process (e.g., preferral, referral, etc.). SJAs and government counsel must also determine whether a commander is qualified to act as a search authority each time a request arises (e.g., whether the commander has control over the place where the person or property to be searched is situated or found, or over the person to be apprehended).

### ***Section 5B—Pretrial Confinement and Restraint***

**5.5. Pretrial Confinement (R.C.M. 305).** No person may be ordered into pretrial confinement except for probable cause as defined in R.C.M. 305(d). (T-0) Normally, offenses to be disposed of by a SCM do not warrant pretrial confinement. **Note:** Imposition of pretrial confinement or restraint will trigger the speedy trial clock under R.C.M. 707.

**5.5.1.** Military members may not be placed in confinement in immediate association with enemy prisoners or foreign nationals detained under the law of war who are not otherwise members of the armed forces. (T-0)

**5.5.2. Required Victim Notifications.** In cases involving a victim as defined by Article 6b, UCMJ, the SJA must ensure said victim is notified:

**5.5.2.1.** Upon the confinee's entering pretrial confinement (T-0)

**5.5.2.2.** Upon the confinee's release from pretrial confinement. (T-0)

5.5.2.3. Additionally, the Pretrial Confinement Review Officer (PCRO), through the SJA or government representative, is required to ensure the victim has the opportunity to make a statement either personally or through counsel at the pretrial confinement review hearing. (T-0). See R.C.M. 305(i)(2). A template, Victim Notification of Pretrial Confinement Proceedings, is provided on the AFLOA/JAJM Virtual Military Justice Deskbook (hereinafter referred to as the “Virtual Military Justice Deskbook”) as Template 0504. The Virtual Military Justice Deskbook is located at at <https://kmjas.jag.af.mil/moodle/course/view.php?id=87>.

5.5.3. **Procedures.** Once a member is ordered into pretrial confinement, follow the procedures required in R.C.M. 305, to include providing initial notifications to the accused.

5.5.4. **48-Hour Probable Cause Determination.** Within 48 hours of the imposition of confinement under military control, a neutral and detached officer must review the adequacy of probable cause to continue pretrial confinement. (T-0) R.C.M. 305(i)(1); *Gerstein v. Pugh*, 420 U.S. 103, 124–25 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44, 45 (1991). The determination should be in writing and included in the record of trial (ROT). A template is available on the Virtual Military Justice Deskbook as Template 0501. If the probable cause determination is not made within 48 hours, the government may have to establish the existence of a bona fide emergency or other extraordinary circumstances.

5.5.4.1. An officer is neutral and detached if he has not demonstrated personal bias or involvement in the investigative or prosecutorial process against the accused. *United States v. Haley*, 2007 CCA Lexis 92 (A.F.C.C.A. 2007). Factors to consider in determining whether an officer is neutral and detached include whether the officer is the formal accuser on the charge sheet, the officer who ordered the accused into confinement, or is directly or particularly involved in the command’s law enforcement functions. *United States v. Rexroat*, 38 M.J. 292, 298 (C.M.A. 1993); *United States v. Lynch*, 13 M.J. 394, 397 (C.M.A. 1982).

5.5.4.2. The PCRO’s 7-day review in paragraph 5.5.6.5 may satisfy the 48-hour probable cause determination requirement if the PCRO’s decision memorandum is completed within 48 hours of the imposition of confinement. In such cases, the PCRO’s memorandum must specifically state when the probable cause determination was made. (T-0) Likewise, the 72-hour commander’s decision and memorandum in paragraph 5.5.5. may satisfy the 48-hour probable cause requirement if the commander’s memorandum is completed within 48 hours of the imposition of confinement.

5.5.4.3. When a military member is transferred from civilian confinement to military pretrial confinement, a 48-hour probable cause determination is still required regardless of whether civilian authorities made a probable cause determination. (T-0) If civilian authorities made a probable cause determination, include that in the ROT in addition to the 48-hour determination required under R.C.M. 305(i).

5.5.5. **72-Hour Commander’s Decision and Memorandum.** The commander shall decide whether to continue pretrial confinement no later than 72 hours after a military member is ordered into pretrial confinement, or after receipt of a report that a member of the commander’s unit or organization has been confined. (T-0) The commander must address the requirements for confinement in R.C.M. 305(h)(2)(B) and should consider the factors in the Discussion to that section. (T-1) When deciding to continue pretrial confinement, the commander must

prepare a written memorandum in accordance with R.C.M. 305(h)(2)(C). (T-1) The memorandum is then forwarded to the PCRO, through the SJA and SPCMCA. If a court-martial results, the commander's memorandum is included in the ROT. A template is available on the Virtual Military Justice Deskbook as Template 0502.

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

5.5.6.1. Appointment of a Pretrial Confinement Review Officer (PCRO) (R.C.M. 305(i)(2)). The SPCMCA appoints, in writing, a reasonable number of qualified officers to serve as PCROs. Chaplains, legal office personnel, law enforcement personnel, and court-martial convening authorities may not serve as PCROs. When the situation warrants, a PCRO from another military service may be appointed. Similarly, an otherwise qualified Air Force member may serve as a PCRO for another military service. SJAs must ensure PCROs are briefed on their duties when appointed, and updated as appropriate thereafter. (T-1)

5.5.6.2. The PCRO reviews the 72-hour commander's decision to continue pretrial confinement, and considers any matters submitted by the pretrial confinee.

5.5.6.3. Hearing. The PCRO conducts a hearing at which the pretrial confinee and defense counsel, if practicable, are allowed to appear and make a statement before the PCRO. Defense counsel may also represent their client at the hearing via telephone or video teleconference technology. A government representative, usually a judge advocate, may also make a statement, if practicable. Although the pretrial confinement review is not an adversarial proceeding, the PCRO may exercise discretion by allowing the pretrial confinee, defense counsel or government representative to present evidence and cross-examine witnesses. The PCRO completes a written summary of the relevant testimony of any witnesses, including information elicited by defense counsel. The only rules of evidence that apply are M.R.E. 302, 305, and 501-514.

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

5.5.6.3.2. The pretrial confinee, defense counsel, or both may present evidence related to confinement conditions in apparent violation of Articles 12 or 13, UCMJ. If such evidence is presented, the PCRO summarizes the evidence in the PCRO memorandum and informs the SJA. The SJA reviews the evidence pertaining to allegedly illegal confinement conditions and works with the member's commander and the local Security Forces Commander or other confinement officials to remedy the situation as necessary.

5.5.6.4. Upon completion of the PCRO's review, the PCRO approves continued confinement or orders immediate release. The PCRO must find the requirements of R.C.M.

305(h)(2)(B) have been proven by a preponderance of the evidence in order to continue pretrial confinement. (T-0) If the requirements of R.C.M. 305(h)(2)(B) have not been proven, the PCRO orders immediate release of the pretrial confinee. The PCRO may not impose conditions on release but may recommend the commander impose a less severe form of pretrial restraint.

5.5.6.5. The PCRO must convey his or her pretrial confinement decision within seven days of the imposition of confinement. See R.C.M. 305(h)(2)(C). Within 24 hours of conveying the pretrial confinement decision, the PCRO must complete a memorandum of the PCRO's conclusions and the findings on which they are based. See R.C.M. 305(h)(2)(D). A copy of all documents and summaries of all oral statements considered by the PCRO are attached to the memorandum. The memorandum with attachments is provided to the SPCMCA, the SPCMCA's SJA, the confinement officer, the pretrial confinee, and the pretrial confinee's defense counsel. A sample format for the PCRO's memorandum is listed as Template 0503 on the Virtual Military Justice Deskbook.

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

**5.5.8. Suicide Prevention.** Preventing an accused from committing suicide is not valid as the sole basis for ordering the accused into or continuing pretrial confinement or pretrial restraint. Such an accused should be referred to mental health practitioners for evaluation and treatment and, if necessary, involuntary commitment in a mental health facility. *United States v. Doane*, 54 M.J. 978, 982 (A.F.C.C.A. 2001).

**5.5.9. Pretrial Determination of Mental Competence.** A convening authority may determine the place and condition of pretrial detention, including confinement in a civilian facility, for the purpose of evaluating the competency of the accused, subject to review by a military judge for abuse of discretion. The conditions may not be more harsh than necessary to ensure the accused's presence at trial, and the facility must be capable of conducting the competency evaluations and providing care and treatment of the accused. Article 13, UCMJ; R.C.M. 706, 909; *Short v. Chambers*, 33 M.J. 49, 52 (C.M.A. 1991); Title 18 United States Code § 4241.

### ***Section 5C—Initial Disposition***

**5.6. Disposition Other Than Trial—Notifications to Victims and Witnesses.** In cases where allegations against a suspect are disposed of other than by trial, a victim or witness may want to be informed of the alternate disposition. Victims and witnesses should be provided as much relevant information as possible, consistent with the privacy rights of the accused. In accordance with 5 U.S.C. § 552a (the Privacy Act), records and information related to administrative disposition, including nonjudicial punishment and administrative discharge proceedings, may potentially be disclosed as a routine use to victims and witnesses for consistency with the requirements of the Victim and Witness Assistance Program (VWAP); Article 6b, UCMJ; and Title 42 United States Code § 10607(c), Services to Victims. When analyzing Privacy Act exceptions, consider the Air Force's interest in fostering cooperation of victims and witnesses in

the instant case, whether the accused has made any disclosures about the action or disposition that would diminish his/her expectation of privacy, and other relevant factors. Because each case presents unique facts and circumstances, decisions to release information are reviewed on an individualized basis, in light of the Privacy Act and the exceptions allowing disclosure, as provided therein.

### **5.7. Initial Disposition of a Sexual Assault Allegation (R.C.M. 306).**

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

5.7.1.1. Rape or sexual assault, in violation of Article 120, UCMJ;

5.7.1.2. Forcible sodomy, in violation of Article 125, UCMJ (which was in effect prior to 1 January 2019); and

5.7.1.3. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

5.7.2. The withholding of initial disposition authority applies to all alleged offenses arising from or relating to the alleged sexual assault(s), whether committed by the accused or by the victim. This includes collateral misconduct by the accused or victim. For those offenses for which initial disposition authority is withheld, the subordinate commander forwards the case file, along with a written recommendation, to the Initial Disposition Authority. A copy of the withhold policy can be found on the Virtual Military Justice Deskbook. Refer to Figures A2.4 through A2.8 for template documentation of the initial disposition decision.

5.7.3. The SPCMCA with initial disposition authority is responsible for determining what initial disposition action is appropriate, including whether further action is warranted. (T-0) R.C.M. 306 describes initial disposition as no action, administrative action, nonjudicial punishment, or disposition of charges (dismissing, referring, or forwarding for disposition to a superior or subordinate authority). The SPCMCA's initial disposition decision may be to permit the subordinate commander to take action in the case in accordance with the subordinate commander's recommendation. **Note:** Preferral is not an initial disposition action, thus a subordinate commander may prefer charges before forwarding them to the SPCMCA for disposition.

5.7.3.1. The SPCMCA's initial disposition decision shall, at a minimum, be based upon review of the following:

5.7.3.1.1. Matters transmitted; (T-1)

5.7.3.1.2. Court-martial charges, if any; (T-1)

5.7.3.1.3. Any independent review and recommendation received; (T-1)

5.7.3.1.4. Victim input, if any; (T-1) and

5.7.3.1.5. Consultation with a judge advocate. (T-1)

5.7.3.2. The factors in the discussion under R.C.M. 306(b) and Appendix 2.1 to the MCM (The Secretary of Defense's Non-Binding Disposition Guidance) should be considered in the SPCMCA's initial disposition decision.

#### **5.7.4. Consideration of Victim's Views on Jurisdiction and Disposition (R.C.M. 306(e)).**

5.7.4.1. Victims of any sex related offense under Article 120, 120b, 120c, or offenses in violation of Article 130 that occur on or after 1 January 2019, or attempts thereof, that occur in the United States, have the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. Although the victim's preference is not binding, the initial disposition authority must consider the victim's views before taking action. (T-1) SPCMCA and SJA responsibilities with regard to soliciting the victim's inputs and providing subsequent notifications are detailed in Section 16D. Template documentation for victim input on jurisdiction is available at Figures A2.1 through A2.3.

5.7.4.2. Where the SPCMCA is considering taking no action or disposition by means other than court-martial, the SPCMCA will, through the SJA, solicit the victim's inputs prior to rendering a final decision. (T-0) The SPCMCA should consider the victim's preferences prior to rendering a final decision as long as the victim provides input within a reasonable period of time after it is requested. Refer to paragraph 16.16.2.1 for additional information. A sample memorandum soliciting the victim's inputs as to disposition is included at Figure A2.4.

#### **5.7.5. General Court-Martial Convening Authority (GCMCA) Review of Initial Disposition Decision.**

5.7.5.1. Effective 27 June 2013, the Under Secretary of the Air Force directed that the SPCMCA with initial disposition authority provide the GCMCA in the grade of O-7 or above written notice of the initial disposition within 30 days following the date of the initial disposition decision, with respect to the offenses listed in paragraphs 5.7.1.1 through 5.7.1.3. (T-1) If the SPCMCA recommends no qualifying specifications under paragraphs 5.7.1.1 through 5.7.1.3. as to a victim be referred, see paragraph 9.11, *et seq.*, and Figures A2.7 and A2.8 for documentation and review requirements. Forwarding charges and specifications for referral to the GCMCA in the grade of O-7 or above satisfies this requirement.

5.7.5.2. When final disposition of the alleged offense is complete, the GCMCA signs the written review of the initial disposition authority's action. This responsibility is not delegable. A template review is included at Figure A2.8. A copy of this review serves as a notice of disposition and is forwarded by the legal office supporting the SPCMCA to AFOSI. Refer to Chapter 15 for additional information on disposition data submission to law enforcement.

#### **5.7.6. Initial Disposition Authority for Members of the Air Force Reserve and Air National Guard.**

5.7.6.1. In cases where an Air Force Reserve member is accused of committing a covered offense, as listed in paragraphs 5.7.1.1-5.7.1.3, while on active duty, the SPCMCA to whom the accused is assigned is responsible for the process detailed in paragraphs 5.7.4.1-5.7.4.2. The GCMCA to whom the accused is assigned is responsible for the process detailed in paragraphs 5.7.5.1 and 5.7.5.2.

5.7.6.2. In cases where an Air National Guard member is accused of committing a covered offense, as listed in paragraphs 5.7.1.1-5.7.1.3, while on Title 10 active duty, the SPCMCA

to whom the accused is assigned is responsible for the process detailed in paragraphs 5.7.4.1-5.7.4.2, if the member has been previously recalled to Title 10 active duty status or has remained on Title 10 active duty status. In the event the offense occurred while the member was in Title 32 or civilian status, the active duty SPCMCA and GCMCA are not subject to the requirements of paragraph 5.7.1.

5.7.6.2.1. If the following conditions apply, the local legal office should contact AFLOA/JAJM for guidance:

5.7.6.2.2. The National Guard member committed the offense while in Title 10 active duty status;

5.7.6.2.3. The member was subsequently released from Title 10 active duty status,

5.7.6.2.4. The member has not been recalled; and

5.7.6.2.5. No convening authority listed in paragraph 4.14.4.1., et seq, has indicated an intent to recall the member for either nonjudicial punishment or court-martial.

**5.7.7. Initial Disposition Authority for Tenant Units.** In cases where the accused is a member of a tenant unit, see paragraph 4.5. through 4.5.5. to determine the convening authorities responsible for the processes described in paragraph 5.7.1.1-5.7.1.3. and 5.7.4.1-5.7.4.2.

#### ***Section 5D—Preferral of Charges (Article 30, UCMJ; R.C.M. 307)***

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

**5.8.1. Unlawful Command Influence (Article 37, UCMJ; R.C.M. 104).** The military justice system must promote the independence of command authority and operate free of unlawful command influence. To ensure a fair and just outcome in every case, court-martial convening authorities, commanders, SJAs, and all personnel involved in the military justice process should be sensitive to unlawful command influence and circumstances that might lead to it.

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

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

#### 5.8.4. Involuntary Extension Beyond Expiration of Term of Service.

5.8.4.1. Airmen may be involuntarily retained beyond their expiration of term of service to undergo court-martial. The involuntary extension may be done in anticipation of the preferral of charges. The SJA notifies the Air Force Personnel Center's (AFPC) Separations Branch in writing through the local Force Support Squadron Career Development Section. Contact the Force Support Squadron Career Development Section to ensure the written notice was sent to AFPC and the involuntary extension was completed. AFPC/JA is available to assist SJAs with involuntary extensions of expiration of term of service. **Note:** An "administrative hold" may affect a member's date of separation and prevent a permanent change of station or temporary duty, but it does not affect a member's expiration of term of service or equate to an involuntary extension. See AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*; AFI 36-3208, *Administrative Separation of Airmen; Webb v. United States*, 67 M.J. 765 (A.F.C.C.A. 2009).

5.8.4.2. Time spent in confinement is generally considered "lost time" or non-creditable service and may serve as grounds to extend a member's expiration of term of service for administrative discharge proceedings. See AFI 36-2134, *Air Force Strength Accounting Duty Status Program*, paragraph 3.4.1. Legal offices considering extending the expiration of term of service for a member with "lost time" should consult with AFPC/JA to determine the appropriate course of action.

**5.8.5. Retirement Holds and Other Actions Taken to Suspend or Cancel Separation Processing.** If a member has applied to retire or has been approved to retire, the retirement may be suspended or cancelled by contacting the AFPC Retirements Branch with notice that the member is under investigation. If charges do not materialize or a punitive discharge is not adjudged at trial, the member's retirement may be reinstated or they may reapply for retirement. Note that the common "administrative hold" may stop a member's permanent change of station or temporary duty, but it does not prevent a member from retiring on an approved retirement date or separating on an approved separation date. See AFI 36-3203, *Service Retirements*.

**5.8.6. Accused With Prior Adjudged Punitive Discharge.** If an accused has an approved but unexecuted punitive discharge, the SJA for the SPCMCA immediately notifies AFLOA/JAJM concerning preferral of new charges, with information copies sent to the appropriate GCMCA and MAJCOM SJA. (T-1) This notice enables AFLOA/JAJM to ensure that the execution of the previous punitive discharge does not occur, providing continuing court-martial jurisdiction over the accused.

**5.8.7. Recoupment.** If an accused received education assistance, special pay, or bonus money and faces separation or discharge before completion of the agreed-upon period of active duty, notice of recoupment should be given when court-martial charges are preferred in accordance with Title 10 United States Code § 2005(g), or 37 United States Code § 303a(e). The member should sign a statement of understanding regarding recoupment as shown in Figure A2.9. This notice is included in the ROT as an attachment in accordance with AFMAN 51-203, *Records of Trial*.

5.8.8. The Secretary of Defense Non-Binding Disposition Guidance at Appendix 2.1 of the 2019 MCM provides guidance which may be considered prior to preferral of charges.

## 5.9. Preparing the Charge Sheet for Preferral (DD Form 458, Charge Sheet).

5.9.1. Prepare charges and specifications on the DD Form 458, *Charge Sheet*. The Charge Sheet is prepared by inputting the data into AMJAMS and printing the electronic version of the DD Form 458. (**Note:** If AMJAMS is unavailable, a charge sheet may be accomplished manually but must be immediately loaded into AMJAMS once it becomes available.) Information in AMJAMS is reflected as follows:

5.9.1.1. Blocks 1, 2, 3, and 4. Autofill information in AMJAMS from the AFPC and ensure its accuracy. Make pen and ink changes to the charge sheet to reflect any change in the accused's grade prior to arraignment by lining through and keeping the information legible. Government counsel should initial and date any changes. Changes should be updated in AMJAMS.

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

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

5.9.1.4. Block 7. The accused's current pay per month, to include cents, is entered automatically based on the listed grade and should be updated if necessary. If the accused's grade changes prior to the announcement of sentence, the pay may be corrected with a pen and ink change and initials. **Note:** Pay may also require correction if the incorrect grade is listed, the accused is promoted or demoted, or the accused is brought to trial in a subsequent calendar year.

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

5.9.2. **Charges and Specifications.** Consult R.C.M. 307 and refer to the sample specifications in the MCM, Part IV, and the Military Judges' Benchbook, DA Pamphlet 27-9. AMJAMS will auto-fill the charge and specification indicators. When alleging Article 134, UCMJ, offenses, ensure the specification alleges the terminal element, as required by R.C.M. 307(c)(3). Use caution when reviewing lesser included offenses (LIOs) listed in the MCM, Part IV, to ensure the LIOs comport with the elements test set forth in *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010) or, for offenses committed on or after 1 January 2019, are lesser included offenses designated by the President. 10 U.S.C. § 879.

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

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

5.9.2.3. Identification of the Accused. In the specifications, identify the accused by present grade, followed by the grade on the date of the alleged offense, if different. Use all capital letters. Do not include the MAJCOM. List known aliases. For example. “In that TECHNICAL SERGEANT ADAM J. SMITH, United States Air Force, then MASTER SERGEANT ADAM J. SMITH, alias CAPTAIN JAY J. SMITH, United States Air Force, 401st Maintenance Squadron, did, . . .” **Note:** Change the accused’s rank from the time of the allegation only if pertinent to the offense charged. R.C.M. 307(c)(3), Discussion.

5.9.2.4. Identification of Victim. If the alleged victim is identified in the specification, do not put the victim’s name or grade in all capital letters. Do not substitute initials for the name of child or sex offense victims. The requirement to substitute initials for the name of a child or minor applies only to court-martial orders and the Report of Result of Trial, where charges were referred prior to 1 January 2019, or the Statement of Trial Results and Entry of Judgment, where charges were referred on or after 1 January 2019.

5.9.2.5. Pleading Check Cases. Where the offense involves use of a worthless check rather than a forged check, the contents need not be pled verbatim. In such cases, consider using the model specifications provided in the Military Judges’ Benchbook, DA Pamphlet 27-9, or the sample specifications on the Virtual Military Justice Deskbook. If in doubt, plead the check verbatim, but include only the portions applicable at the time of the offense.

5.9.2.6. Pleading Child Pornography Cases. Exercise care in drafting specifications in a case involving multiple images of child pornography. See *United States v. Piolunek*, 72 M.J. 830 (A.F.C.C.A. 2013), *aff’d* 74 M.J. 107 (C.A.A.F. 2015). The best method of pleading a child pornography case will depend on the facts unique to that case. In certain cases, it may be prudent to charge each image as its own specification, while in other cases this approach may not be viable.

5.9.2.7. Pleading Article 93a Cases. The Secretary has promulgated required definitions for the offenses chargeable under Article 93a in AFI 36-2909, *Professional and Unprofessional Relationships*. Counsel for the government must carefully review these definitions prior to drafting charges and specifications for such offenses. (T-1) Counsel for the government should also consider charging in the alternative (e.g., an Article 92 violation).

**5.10. Forwarding of Charges (R.C.M. 401).** The commander forwards the charges to the convening authority by attaching an indorsement (Figure A2.10.) to the charge sheet. Attach a personal data sheet on the accused (Figure A2.11.) and a copy of the report of investigation or other evidence supporting the charges. The base legal office should redact Privacy Act information not relevant to the charges from documents before forwarding them to the convening authority. The commander signs and dates the indorsement when preferring charges or when forwarding charges preferred by another. The first indorsement must list each attachment (e.g., “Report of Investigation dated 1 January 2019” or “AF 1168 of Amn Snuffy”, not “Evidence”). (T-1) Address the indorsement to the officer exercising special court-martial convening authority over the accused. If additional charges are later added, forward them with a new indorsement.

**5.11. Receipt of Charges (R.C.M. 403).** A judge advocate may receipt for charges on behalf of the SPCMCA if the convening authority delegates that authority in writing. If delegated, receive the charges “FOR THE COMMANDER.”

**5.12. Release of Information to Defense Counsel.** SJAs and government counsel are strongly encouraged to provide discovery to defense counsel as soon as practicable. This may be prior to the preferral of charges. At the time charges are preferred, government counsel must, at a minimum, provide defense counsel copies of, or if impracticable, permit the defense to inspect the matters listed in R.C.M. 404A(a)(1). (T-0)

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

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

5.12.1.2. Releasing Privacy Act Material to Civilian Defense Counsel. When releasing Privacy Act material to civilian defense counsel, government counsel should redact non-discoverable Privacy Act information regarding individuals other than the accused. An example of this would be social security numbers of individuals providing urinalysis samples, which are listed in an otherwise discoverable document, but which have no relevance to the case. Additionally, if government counsel elect not to redact Privacy Act material when providing discovery to civilian defense counsel, government counsel should obtain a signed statement from the civilian defense counsel stating the defense counsel agrees not to release Privacy Act information to others not involved with the defense of the case, using the format set forth at Figure A2.12.

5.12.2. When there is evidence of child pornography, refer to Title 34 United States Code § 20911 et seq., commonly known as “The Adam Walsh Act,” and Title 18 United States Code

§ 3509, with regard to discovery. Coordinate review and analysis of all evidence of child pornography with AFOSI. **Note:** Responsibility regarding handling of child pornography differs based on the status of the child pornography. Child pornography retained as evidence, not as court exhibits, is retained by AFOSI or other responsible law enforcement. Child pornography admitted as an exhibit at trial is the property and responsibility of the court-martial. See 18 U.S.C. § 3509.

5.12.3. These provisions are not intended to create any additional substantive right to discovery, which is described in the R.C.M.s, including R.C.M. 701. After referral of charges to trial, both trial and defense counsel conduct discovery in accordance with R.C.M. 701.

**5.13. Release of Information to Special Victims' Counsel.** Requests from SVCs for records pertaining to a court-martial proceeding involving their clients are properly addressed as “official use” requests under the Privacy Act and Freedom of Information Act. See SORN F051 AFJA I; 5 U.S.C. § 552a(b)(1). SJAs may release those records that are minimally required to accomplish the SVC’s intended use as articulated in the request. See DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2.1. When Privacy Act material or other personal information is not redacted from records released to an SVC, the SVC is responsible for protecting the information and taking steps to guard against its improper release.

**5.14. Requesting and Ordering a Deposition.** If it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial, government or defense counsel may request the convening authority order a deposition pursuant to R.C.M 702(a).

5.14.1. The convening authority determines whether the requesting party has demonstrated that, because of exceptional circumstances and in the interest of justice, the testimony must be taken and preserved for use at trial. See R.C.M. 702(a). If the request is made after referral, either the military judge or convening authority may act upon it. A victim’s declination to testify at a preliminary hearing pursuant to Article 32(d)(3), UCMJ, or declination to submit to pretrial interviews shall not, by itself, be considered exceptional circumstances. See R.C.M. 702(a)(3).

5.14.2. When ordering a deposition, the convening authority details a deposition officer with the qualifications set forth in R.C.M. 702(d)(3)(A). A sample appointment memorandum is provided on the Virtual Military Justice Deskbook as Template 0511. The duties of the deposition officer are described in R.C.M. 702(e).

**5.15. Counsel for Depositions.** The rules governing qualification of counsel who may perform duties before courts-martial apply to counsel representing the parties at a deposition. The deposition should affirmatively indicate the qualifications of counsel.

**5.16. Recording and Authentication of Depositions.**

5.16.1. **Written Depositions.** Depositions taken on written interrogatories are recorded and authenticated using a DD Form 456, *Interrogatories and Depositions*. DD Form 456 is not used for oral depositions.

5.16.2. **Oral Depositions.** Oral depositions are conducted in accordance with the procedures in R.C.M 702(g)(1) and AFMAN 51-203. Formats for conducting, transcribing, and certifying oral depositions may be found in AFMAN 51-203. The deposition officer is the custodian for the record of deposition.



## Chapter 6

### PRE-REFERRAL JUDICIAL PROCEEDINGS OCCURRING ON OR AFTER 1 JANUARY 2019 (R.C.M. 309)

**6.1. The pre-referral judicial proceedings described in this Chapter are available on 1 January 2019 for any case in pre-referral status. Note: This applies both pre-referral and pre-preferral.**

**6.2. Detailing of Military Judges for Pre-Referral Proceedings.** Military judges are detailed to the pre-referral proceedings described in this Chapter in accordance with rules prescribed by the Air Force Trial Judiciary (AF/JAT). No judge that has served on an Article 32 preliminary hearing as a Preliminary Hearing Officer (PHO) may be detailed to a pre-referral proceeding pursuant to Article 30a, UCMJ, in the same case. (T-1)

**6.3. Pre-referral Investigative Subpoenas.** A template investigative subpoena is included at Figure A3.1.

6.3.1. Upon application by government counsel, a military judge may issue a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C). See R.C.M. 309(b)(1); Articles 30a and 46, UCMJ.

6.3.2. Defense counsel may request that government counsel make an application for a pre-referral investigative subpoena. Government counsel must then decide whether to submit it to the military judge. (T-0) If submitted to the military judge, the judge may, at their discretion, grant defense counsel an opportunity to be heard. See R.C.M. 309(b) Discussion.

6.3.3. **Exception to Article 30(a) Proceeding Requirement.** Prior to referral, government counsel may also seek authorization from the GCMCA to issue an investigative subpoena. See R.C.M. 703(g)(3)(D)(v). However, blanket authorizations for investigative subpoenas are not authorized (i.e. one subpoena for the entirety of a case). Government counsel must request authorization from the GCMCA for each pre-referral investigative subpoena. The GCMCA may delegate the authority to approve pre-referral investigative subpoenas to subordinate SPCMCAs, but such delegation must be in writing. (T-1) Grant of a subpoena under this provision do not require an Article 30a proceeding.

6.3.4. A pre-referral investigative subpoena may be obtained prior to referral as well as prior to referral. However, after referral, subpoenas for personal or confidential information about a victim named in a specification require the victim be given notice so that said victim has the opportunity to move for appropriate relief, unless exceptional circumstances exist. (T-0) See R.C.M. 703(g)(3)(C)(ii). This notification is required regardless of whether the subpoena is granted by a military judge or authorized by a GCMCA.

6.3.5. Pre-referral investigative subpoenas may not be used to obtain content or non-content wire or electronic communications. (T-0) See R.C.M. 309(b); R.C.M. 703A. However, this does not limit the ability of government counsel (if authorized by the GCMCA) or a military judge from issuing an investigative subpoena for basic subscriber information.

**6.4. Warrants or Orders for Wire or Electronic Communications (R.C.M. 309 and 703A; Article 30(a), UCMJ).**

**6.4.1. General Provision.** A detailed military judge, upon application by government counsel in connection with an ongoing investigation of an offense under the UCMJ, may issue a warrant to a qualifying provider of electronic communications service or remote computing service for the disclosure of the contents of wire or electronic communications. In addition, a military judge may issue a warrant or order for disclosure of non-content data and information pertaining to subscribers or customers of those services. R.C.M. 703A; Articles 26 and 30a, UCMJ; *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010). See also Title 18 United States Code § 2703, et seq. **Note:** This does not limit the ability of government counsel (if authorized by the GCMCA) or a military judge from issuing an investigative subpoena for basic subscriber information.

**6.4.1.1. Warrants Required for Content Data.** Military judges may not issue orders for the disclosure by a provider of electronic communication service of the content of any wire or electronic communication that is in electronic storage in an electronic communication system. (T-1) In accordance with *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010), warrants are required for disclosure of the content of any wire or electronic communication in electronic storage in an electronic communications system, regardless of the length of time the content is maintained. Thus, military judges may only issue warrants for such disclosures.

**6.4.1.2. Providers of Services to the Public.** Practitioners that intend to apply for a warrant or order for wire or electronic communications should first identify whether the entity that possesses the content is a public electronic communications or remote computing service. See 18 U.S.C. 2711.

**6.4.1.3. Location of Data Storage.** To the extent possible, practitioners, in coordination with applicable law enforcement, should also identify the location of the server in which the communications are stored (e.g., a Canadian company that is storing data on servers in Ireland), in order to determine whether there is an executive agreement in place that would allow the execution of the warrant or order. See 18 U.S.C. 2522-23.

**6.4.2. Request for Military Judge.** Government counsel is responsible for requesting a military judge be detailed and for presenting the application for a warrant or order to the military judge, regardless of the author of the affidavit (e.g., federal law enforcement agent, Security Forces member or counsel). (T-0)

**6.4.3. Real Time Interception Not Affected.** Neither this section nor R.C.M. 309 or 703A, or Article 30(a), apply to “real-time” interception of wire, electronic and oral communications in accordance with DoDI 5505.09 and 18 U.S.C. § 2511.

**6.4.4. Warrant.**

**6.4.4.1. General Provision.** A warrant is a writ, supported by probable cause, issued by a military judge directing an electronic communications service or remote computing service to provide the content of stored electronic or wire communications (e.g., the body of text messages and emails, cell-site location information, etc.). Content data, regardless of the length of time it is stored, must be obtained with a warrant. (T-1) A court order, as discussed in paragraph 6.4.5., is not sufficient. See *U.S. v. Warshak*, 631 F.3d 266 (6th Cir. 2010). A template warrant application is included at A3.2. The warrant will be issued on the template included at A3.3. (T-1) See 18 U.S.C. § 2703(b)(1)(A); R.C.M. 703A(b).

6.4.4.2. **Warrant Request.** To obtain a warrant, trial counsel must submit a request for a military judge unless one was previously detailed. (T-1) The requesting party (government counsel or federal law enforcement) must prepare a warrant application. (T-1) Government counsel must submit the application and supporting evidence, which may include sworn witness testimony, to the military judge. (T-1) A template warrant application is included at A3.2. If government counsel believes a non-disclosure order is appropriate, trial counsel should indicate such on the warrant application and submit, in writing, the reasons for the request. If the military judge determines that there is probable cause to believe the information sought contains evidence of a crime, the military judge will issue the warrant to the requesting federal law enforcement officer or government counsel. (T-0) See 18 U.S.C. § 2703(b)(1)(A); R.C.M. 703A(b). The warrant will be issued on the template included at A3.3. (T-1) If a request for a non-disclosure order is submitted with the warrant application, the military judge determines whether or not a non-disclosure order is appropriate and issues any such order in writing for provision to the electronic communications service or remote computing service, whichever is applicable.

#### 6.4.5. **Order.**

6.4.5.1. **General Provision.** An order, supported by reasonable grounds to believe that the records or information sought are relevant and material to an ongoing criminal investigation, may be issued to an electronic communications service or remote computing service for data other than content (e.g., name, telephone number, address, length of service, services utilized, payment data, etc.). Consult current case law to determine whether an order is sufficient to obtain the data sought.

6.4.5.2. **Order Request.** To obtain an order, trial counsel must submit a request for a military judge unless one was previously detailed. (T-1) The requesting party (government counsel or law enforcement) must prepare an order application. Government counsel must submit the application and supporting evidence, which may include sworn testimony, to the military judge. (T-1) The federal law enforcement agent or government counsel completing the order application should annotate whether delayed notification to the subscriber is requested. The party seeking the order must notify the subscriber of the application for the order unless the party requests the military judge grant delayed notification. (T-0) If granted, the disclosure order and any delayed notification orders must be in writing. (T-1)

**6.5. Non-Disclosure Order to Electronic Communications Service or Remote Computing Service.** In accordance with 18 U.S.C. § 2703(b)(1)(A), 18 U.S.C. § 2705(b) and R.C.M. 703A(d)(2), government counsel may request the military judge order the electronic communications or remote computing service not to disclose the existence of a warrant or order to any third party, including the subscriber. See also *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010). The non-disclosure order may last for a period of no more than one year, but may be extended by the military judge. Sample language requesting a non-disclosure order is located at Figure A3.4. If government counsel believes a non-disclosure order for a warrant is appropriate, trial counsel should indicate such on the warrant application in accordance with paragraph 6.4.4.2. If a request for a non-disclosure order is submitted, the military judge determines whether or not a non-disclosure order is appropriate and issues any such order in writing for provision to the electronic communications service or remote computing service, whichever is applicable.

**6.6. Ex Parte or in Camera Nature of the Proceeding.** As a military judge may conduct such proceedings ex parte or in camera, government counsel must request an ex parte and/or in camera hearing if the government counsel intends for any pre-referral judicial proceeding to occur ex parte and/or in camera. (T-1)

**6.7. Contempt for Failure to Comply.** Failure of an electronic communications service or remote computing service provider to comply with a warrant or court order subjects the service provider to being held in contempt. See Article 48, UCMJ, and Section 12J.

**6.8. Defense Requests for Warrants or Orders for Wire or Electronic Communications.** Defense counsel may request that government counsel make an application for a warrant or order. This restriction applies both before and after referral. See R.C.M. 703(g)(3)(D) and 703A(a). Government counsel must then decide whether to submit it to the military judge. If submitted to the military judge, the judge may, at their discretion, grant defense counsel an opportunity to be heard. See R.C.M. 309(b) Discussion. If government counsel elects not to submit the defense request to the military judge, government counsel should consult with the investigating agency to determine the appropriateness of sending a preservation request at that time.

**6.9. Preservation Requests.** Upon learning of the existence of evidence maintained by a provider of wire or electronic communication services or remote computing services, government counsel should coordinate with law enforcement to request that the provider preserve the pertinent records. A preservation request requires retention of records for 90 days and may be renewed once, for a maximum preservation period of 180 days. Preservation requests are not prospective; requests apply only to data already in existence, not data created after the preservation request. See R.C.M. 703A(f).

**6.10. Requests for Relief from Subpoena or Other Process.** Prior to referral, only individuals in receipt of investigative subpoenas or service providers in receipt of a court order to disclose information regarding wire or electronic communications may request relief on the grounds that compliance is unreasonable, oppressive or prohibited by law. The military judge will then make a determination as to whether the party must comply or will modify or quash the subpoena or order. See R.C.M. 703A(c)(2).

**6.11. Matters Related to Article 6b(c) and 6b(e).** Victims may appeal adverse rulings under Article 6b(c) and 6b(e) directly to a military judge prior to appealing to the Air Force Court of Criminal Appeals.

**6.12. Pre-referral Matters Before an Appellate Court.** Pre-referral matters on remand from an appellate court may be heard in an Article 30a proceeding. This includes matters related to Article 6b(c) and 6b(e) that were appealed to the Air Force Court of Criminal Appeals. See R.C.M. 309(b)(4), Article 30a, UCMJ.

**6.13. Record of Pre-referral Proceedings.** All pre-referral proceedings must be recorded verbatim. (T-1) For recording purposes, follow the procedures used for recording of an Article 32 preliminary hearing. See paragraphs 7.4.1 and 7.4.2. The court reporter must prepare a separate record of the proceeding. (T-1) Such record will include a verbatim transcript, any exhibits offered by any party, and any orders prepared by the military judge. (T-1) The legal office will forward the record to the appropriate authority, as outlined in R.C.M. 309(e). (T-1) The legal office

prosecuting the case will include the record of the pre-referral proceedings in the ROT in accordance with AFMAN 51-203. (T-1) See paragraph 10.7.5.

## Chapter 7

### ARTICLE 32 PRELIMINARY HEARINGS

**7.1. Preliminary Hearings.** Conduct preliminary hearings in accordance with the guidance and procedures prescribed in R.C.M. 405.

**7.2. Preliminary Hearing Personnel.**

**7.2.1. Preliminary Hearing Officer (PHO).**

7.2.1.1. Appointment. A convening authority directs an Article 32 preliminary hearing by appointing the PHO in writing. A sample appointment memorandum is located on the Virtual Military Justice Deskbook as Template 0701.

7.2.1.2. Qualifications of the PHO. The convening authority directing a preliminary hearing will appoint an impartial judge advocate as the PHO. (T-0) The PHO should be certified under Article 27(b), UCMJ. If precluded by military necessity or other compelling circumstances, the PHO may be a judge advocate who is not certified under Article 27(b), UCMJ, including Reserve/Guard judge advocates who may be detailed to serve as a PHO while on active duty or performing inactive duty training. Article 136(b), UCMJ, authorizes Reserve judge advocates to administer oaths while on active duty or performing inactive duty training. Air National Guard judge advocates must be on Title 10 orders. (T-0) The accuser may not serve as the PHO. Whenever practicable, the PHO shall be equal to or senior in grade to military counsel detailed to represent the accused and the government at the preliminary hearing. (T-0) The PHO may be a military judge. Requests for a military judge to serve as a PHO are coordinated with AF/JAT. No judge who has served on a pre-referral proceeding pursuant to Article 30a, UCMJ, may be detailed to an Article 32 preliminary hearing in the same case.

**7.2.2. Counsel.**

7.2.2.1. Counsel for the Government. A judge advocate, who is not the accuser, serves as counsel to represent the United States. The judge advocate serving as the counsel for the government need not be certified under Article 27(b), UCMJ.

7.2.2.2. Counsel for the Accused. The accused has the right to be represented by military defense counsel certified under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ. The accused may also be represented by civilian defense counsel at no expense to the government. Article 38, UCMJ. Civilian defense counsel must take an oath to perform his or her duties faithfully when representing an accused. The PHO administers this oath. Upon request of the accused, the accused is entitled to a reasonable time to obtain civilian counsel and have civilian counsel at the preliminary hearing. However, the preliminary hearing shall not be unduly delayed for the accused to obtain and have present civilian counsel. (T-0) See R.C.M. 405(d)(3). The accused may represent him or herself, but this right is not absolute. See *United States v. Bramel*, 29 M.J. 958 (A.C.M.R. 1990), *aff'd*, 32 M.J. 3 (C.M.A. 1990).

7.2.3. A court reporter, interpreter, or both may be detailed by JAT or other appropriate authority.

**7.3. Scheduling and Pre-Hearing Matters.**

**7.3.1. Delays and Resulting Speedy Trial Issues.** The convening authority may approve a delay of the Article 32 preliminary hearing. The period of time of such approved delays are excluded when determining whether the period in R.C.M. 707(a) has run. The convening authority may delegate the authority to grant a delay to an Article 32 PHO. The convening authority may also grant the PHO the authority to exclude time under R.C.M. 707(c). The PHO has no independent authority to exclude time under R.C.M. 707(c).

**7.3.2. Disclosures Prior to Preliminary Hearing.**

7.3.2.1. R.C.M. 404A Disclosures. As soon as practicable but no later than five days after the convening authority directs the preliminary hearing, counsel for the government must provide the defense copies of, or if impracticable, permit the defense to inspect the matters listed in R.C.M. 404A. (T-0)

7.3.2.2. Should government counsel fail to comply with the provisions of R.C.M. 404A, the PHO shall note the issue in the preliminary hearing report. (T-1) Further, if the convening authority has given the PHO the authority to grant delays, the PHO may grant a reasonable delay to allow government counsel to comply with the above disclosure requirements.

7.3.2.3. R.C.M. 405(h) Disclosures. Prior to the preliminary hearing, government and defense counsel shall provide to opposing counsel and the PHO notice of the matters listed in R.C.M. 405(h). (T-0) The PHO may set earlier timelines for such disclosures which must be followed by counsel.

**7.3.2.4. Victims' Rights Regarding the Preliminary Hearing.**

7.3.2.4.1. A victim of an offense is any person named in one of the specifications being considered at the preliminary hearing who has allegedly suffered direct, physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ. See Article 32(h), UCMJ.

7.3.2.4.2. A victim of an alleged offense has the right to reasonable, accurate and timely notice of a preliminary hearing related to the alleged offense and the reasonable right to confer with counsel for the Government. Article 6b, UCMJ.

7.3.2.4.3. Victims may not be excluded from the preliminary hearing, except to the extent a similarly situated victim would be excluded at trial. (T-0) See Article 6b, UCMJ. If a PHO excludes a victim from the hearing, the PHO shall provide specific findings of fact in writing that support the exclusion and includes the written findings of fact in the preliminary hearing report. (T-0)

7.3.2.4.4. A victim of an alleged offense is not required to testify at a preliminary hearing related to that alleged offense, pursuant to Article 32(d)(3), UCMJ. However, the PHO may consider other evidence, including a victim's prior written statements. Declination to testify at a preliminary hearing cannot be used as the sole basis for ordering a deposition of the alleged victim.

7.3.2.4.5. SVC Access to Hearing. SVCs are entitled to attend all open sessions (i.e., open to the public) and all closed sessions (i.e., not open to the public) involving their clients. (T-0)

**7.3.3. Production of Witnesses.** Follow the rules and procedures in R.C.M. 405(h) for the production of witnesses.

7.3.3.1. Notice. The parties must provide notice of the name and contact information for each witness they intend to call at the preliminary hearing to the PHO and the opposing party in accordance with timelines established by the PHO. (T-0)

7.3.3.2. Defense Witness Requests. All defense requests for witnesses must be in writing. (T-1) This includes requests the defense provides to the PHO in the event the Government objects to producing the requested witness(es).

7.3.3.3. Victim Testimony. An alleged victim may not be compelled to testify regardless of whether the victim is a civilian or military member. (T-0)

7.3.3.4. Civilian Witnesses. A template letter to invite civilian witnesses to testify at a preliminary hearing is available on the Virtual Military Justice Deskbook.

**7.3.4. Production of Evidence.** Follow the rules and procedures in R.C.M. 405(h) for the production of evidence.

#### **7.4. Recording the Preliminary Hearing.**

**7.4.1. Video and Audio Recording of the Preliminary Hearing.** Government counsel shall ensure the preliminary hearing is recorded by a suitable government recording device. (T-1) Government counsel may also use a secondary suitable recording device to create a back-up recording.

**7.4.2. Transcribing the Preliminary Hearing.** The SJA may authorize the completion of a verbatim transcript following the hearing; though a verbatim transcript is not required.

**7.4.3. Providing Preliminary Hearing Recording to the Victim(s).** Upon written request from a victim named in one of the specifications at the preliminary hearing (or victim's counsel), government counsel shall provide the victim with access to, or a copy of, the recording. (T-0) Do not provide any portions of the recording ordered sealed by the PHO to the victim or victim's counsel. (T-0) Trial counsel is not normally required to redact the recording except as indicated below. However, to maintain compliance with the Privacy Act, the government should release the recording in the following manner:

7.4.3.1. If the victim is represented by an SVC, the unredacted recording should be provided to the victim's SVC as a For Official Use only disclosure under the Privacy Act. See DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2. The SVC must maintain the recording in accordance with the Privacy Act. (T-0)

7.4.3.2. An unredacted recording may be provided directly to the victim only if the victim is not represented by counsel. The recording is provided to an unrepresented victim as a routine use disclosure under the Privacy Act system of records notice for Air Force courts-martial records. See SORN F051 AF JA 1. Child victim testimony must be redacted from recordings provided directly to victims unless the recipient of the recording is the child victim, parent or legal guardian, or representative appointed in accordance with Article 6b, UCMJ. (T-1) In no case shall the parent or legal guardian to whom the child victims' recordings are provided be the accused. (T-1)

7.4.3.3. The Government may, in its discretion, provide a transcript to the victim or victim's counsel instead of a recording. See R.C.M. 405(j)(5). Personally identifiable information should be redacted from transcripts provided directly to victims.

7.4.4. **Providing Preliminary Hearing Recording to the Accused.** The Accused will receive a copy of the preliminary hearing report, which includes a copy of the recording. (T-0) Do not provide any portions of the recording ordered sealed by the PHO to the accused or counsel. (T-0)

**7.5. Conducting the Preliminary Hearing.** Conduct the preliminary hearing in accordance with R.C.M. 405(j).

**7.5.1. Public Access.**

7.5.1.1. Ordinarily, preliminary hearings are open to the public, including access by news media, whenever possible.

7.5.1.2. Access by spectators to all or part of the proceeding may be restricted or foreclosed at the discretion of the convening authority who directed the preliminary hearing, or at the PHO's discretion when an overriding interest exists that outweighs the value of an open preliminary hearing. The PHO should follow the procedures in R.C.M. 405(j)(3) in making the determination to close the hearing.

7.5.2. **Potential Witnesses.** Although potential witnesses are normally excluded from watching the proceedings, the PHO has the authority to permit some potential witnesses (e.g., experts) to be present if the PHO considers their presence helpful to the proceedings. Victims have an Article 6b right to be present at the preliminary hearing regardless of whether they testify.

**7.5.3. Uncharged Offenses.**

7.5.3.1. Authority to Examine Other Offenses. The PHO may consider uncharged offenses as outlined in R.C.M. 405(e)(2).

7.5.3.2. Later Preferral of Uncharged Offenses Examined at Preliminary Hearing. If an uncharged offense examined by the PHO in the preliminary hearing is later preferred, the GCMCA may refer the offense to court-martial without convening an additional preliminary hearing, provided the SJA's Article 34, UCMJ pretrial advice addresses the offense. See R.C.M. 601(d)(2).

**7.6. Supplementary Information.**

7.6.1. No later than 24 hours after the preliminary hearing closes, the following parties may submit supplemental information to the PHO that is relevant to the convening authority's disposition decision:

7.6.1.1. Government counsel;

7.6.1.2. Defense counsel;

7.6.1.3. SVC (or equivalent victim's counsel) on behalf of a named victim, if a victim is so represented; and

7.6.1.4. Any victim(s) named in a specification under consideration by the preliminary hearing, if the victim(s) are not represented by an SVC (or equivalent counsel).

7.6.2. The parties and the victim(s) must follow the procedures in R.C.M. 405(k) when submitting supplemental information to the PHO. (T-0)

7.6.3. The PHO must follow the procedures in R.C.M. 405(k) for the handling, sealing and examination of supplementary information. (T-0)

**7.7. Assembly of the PHO Report.** The PHO shall assemble the preliminary hearing report in accordance with R.C.M. 405(l). (T-0) In addition to those items listed in the rule, the preliminary hearing report will contain: DD Form 457, *Preliminary Hearing Officer Report*, and any attachments; DD Form 458, *Charge Sheet*, and any attachments; and the PHO appointment letter. (T-1) Additionally, the PHO must include a copy of the preliminary hearing recording. (T-0)

**7.8. Distributing the PHO Report.**

7.8.1. The PHO shall deliver the PHO Report to the appropriate SJA within eight days after the closure of the preliminary hearing or timely receipt of supplementary information under R.C.M. 405(k), whichever is later. (T-1) The SJA, in turn, delivers the report to the convening authority who directed the preliminary hearing. The convening authority must cause the PHO Report to be served on the accused. (T-0) Government counsel must obtain a receipt from the accused upon service of the PHO Report. (T-1)

7.8.2. The SJA shall provide the recording of the preliminary hearing to the victim and the accused in accordance with paragraphs 7.4.3 and 7.4.4. (T-1)

**7.9. Objecting to the PHO Report.** Any objections to the PHO Report must be submitted in accordance with R.C.M. 405(l)(5) within five days of receipt. (T-0) The day the accused receives the report is not counted in calculating the five-day window in which the accused may raise objections. The convening authority may refer the charge(s) or take other action within this five-day period. R.C.M. 405(l)(5).

**7.10. Forwarding the PHO Report to a Superior Convening Authority.**

7.10.1. If the convening authority who directed the preliminary hearing decides to forward the PHO report to a superior convening authority for disposition, the convening authority who directed the hearing must prepare a forwarding letter providing a recommendation for disposition of the charge(s). (T-1) The forwarding letter will include the following attachments: the charge sheet, the commander's indorsement to the charge sheet, and the PHO Report, with the attachments appended to the report. (T-1) This letter is forwarded to the superior convening authority through the superior convening authority's SJA.

7.10.2. If the subordinate convening authority recommends disposition by court-martial, then the superior convening authority's SJA should provide a list of court member nominees and member data to the superior convening authority in the event the superior convening authority decides to refer the case.

**7.11. Reviewing Sealed Materials in or Attached to a PHO Report.** Refer to R.C.M. 1103A for authority, limitations, and procedures relevant to review of sealed materials in or attached to a PHO Report.

## Chapter 8

### COURTS OF INQUIRY (ARTICLE 135, UCMJ; MCM, PART I, PARAGRAPH 2(B)(3))

**8.1. General.** A court of inquiry is one of several investigative methods available to ascertain the facts of a matter of importance to the Air Force. Only a GCMCA may convene a court of inquiry. A sample convening order is located at Figure A4.1. A court of inquiry should not be used when statute or regulation otherwise provides specific investigative procedures for a matter. A court of inquiry should not be used in place of an Article 32 preliminary hearing unless deemed necessary to produce evidence not otherwise reasonably available. If, however, a court of inquiry previously investigated the subject matter of an offense and the requirements of R.C.M. 405(a) are met, an Article 32 preliminary hearing may not be necessary.

#### 8.2. Personnel.

**8.2.1. Members of the Court of Inquiry.** A court of inquiry consists of three or more commissioned officers. The senior member is the president. All members should be senior to any person whose conduct is the subject of the inquiry.

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

**8.2.3. Party to the Court of Inquiry.** Designate any person subject to the UCMJ whose conduct is subject to inquiry as a party to the court of inquiry. As of 1 January 2019, any person subject to the UCMJ or employed by the DoD may also be designated a party if they have a direct interest in the inquiry and request the Court designate them as a party. Any person designated as a party is given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

**8.2.4. Counsel for Parties.** Military members who are party to the court of inquiry are entitled to representation by a defense counsel certified under Article 27(b), UCMJ. A party may request individual military defense counsel, subject to the rules of reasonable availability applicable to trials by court-martial. Any party may retain a civilian counsel at no expense to the government. See Article 135(c)(3), UCMJ; M.R.E. 305(d); R.C.M. 502(d)(3).

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

#### 8.3. Procedures.

**8.3.1. Convening Order.** Use the sample format in Figure A4.1 to convene a court of inquiry. The order appoints the members and counsel for the court of inquiry, states the subject of inquiry, designates known parties, and directs a report of findings of facts on the issues involved. If the convening authority desires conclusions and recommendations, include this in the order. The convening order should set the time and place of the court of inquiry. The convening order is provided to the parties and counsel.

**8.3.2. Challenges.** Members of a court of inquiry may be challenged by a party, but only for cause stated to the court. The president of the court, with advice from the legal advisor, rules on challenges. In the event the president of the court is challenged, the challenge must be forwarded to the convening authority for a determination.

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

8.3.4. **Procedures and Rules of Evidence.** The procedures and rules of evidence that apply to an Article 32 preliminary hearing apply to a court of inquiry.

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

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

8.3.7. **Record of the Court of Inquiry.** Each court keeps a record of its proceedings. The record is authenticated in accordance with Article 135(h), UCMJ. The president forwards the authenticated record to the convening authority, who obtains a legal review from the servicing SJA. The SJA's legal review includes a summary of the proceedings, a determination of the legal sufficiency of the proceedings, and a recommended action. If the record of the proceedings is to be used as a substitute for an Article 32 preliminary hearing, it must comply with the requirements of R.C.M. 405(1). (T-1)

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

## Chapter 9

### FORWARDING AND REFERRAL OF CHARGES

#### *Section 9A—Referral and Disposition of Charges*

#### **9.1. Pretrial Advice (Article 34, UCMJ; R.C.M 406).**

**9.1.1. Pretrial Advice in General Courts-Martial.** The convening authority's SJA must prepare written pretrial advice for every GCM in accordance with R.C.M. 406. (T-0) A person other than the SJA may prepare the pretrial advice, but the SJA is, unless disqualified, responsible for and must personally sign the pretrial advice. (T-1) An assistant performing the duties of the SJA, in the absence of, or because of the disqualification of the SJA, signs "Acting as the Staff Judge Advocate."

9.1.1.1. Required Contents. The required contents for pretrial advice are prescribed in R.C.M. 406(b). SJAs should understand the difference between a specification that is supported by probable cause but carries litigation risk versus a specification that is not supported by probable cause. A finding that there is not probable cause to believe the accused committed the offense charged in a specification prohibits that convening authority from referring that specification. SJAs should make such a finding only when advising the convening authority that the specification cannot be referred to trial. See Article 34(a)(1)(B) and *United States v. Murray*, 25 M.J. 445 (C.M.A. 1988).

9.1.1.2. Format and Length. Pretrial advice need not contain any underlying analysis or rationale for the conclusions contained in it. In addition, lengthy summaries of evidence, detailed explanations of elements of offenses, and extensive discussions of possible defenses are not required. A sample format for pretrial advice is available at Figure A5.1.

9.1.1.3. Capital Cases. In order to refer a case as capital, the pretrial advice must specify whether there is probable cause to establish any of the aggravating circumstances required under R.C.M. 1004(c). (T-1) **Note:** A special instruction must be included on the charge sheet in order to put the accused on notice about the capital nature of the case. (T-0) See R.C.M. 201(f)(1)(A)(iii); R.C.M. 1004(b)(1)(A).

9.1.1.4. Distribution. The government shall provide a copy of the pretrial advice to the defense for service upon the accused if charges are referred to a general court-martial. (T-0)

**9.1.2. Pretrial Advice in Special Courts-Martial (Article 34, UCMJ; R.C.M. 406A).** Before referral of charges to a SPCM, to include a SPCM by a military judge alone, the convening authority shall consult a judge advocate on relevant legal issues. (T-0) Pretrial advice by a judge advocate in a SPCM does not need to be in writing and does not need to come directly from the SJA. However, in the event any pretrial advice is reduced to writing, it must be provided to defense counsel if charges are referred. (T-1)

**9.1.3. Pretrial Advice in Summary Courts-Martial.** Pretrial advice is optional for SCMs.

**9.1.4. Non-Binding Disposition Guidance.** In addition to the pretrial advice, the Secretary of Defense Non-Binding Disposition Guidance at Appendix 2.1 of the 2019 MCM provides guidance the convening authority may consider before referring charges. There is no

requirement to address the Non-Binding Disposition Guidance in pretrial advice in order for it to be considered by the convening authority.

**9.2. Forwarding of Pretrial Advice in General Courts-Martial.** The charge sheet, the commander's indorsement, forwarding letters or other indorsements, and, if applicable, the PHO's appointment letter with attachments (including the Article 32 preliminary hearing report, receipts of report, and any objections) should be forwarded with the pretrial advice to the GCMCA. If the preliminary hearing is waived, forward the accused's waiver along with the documentary evidence that the SJA relied upon when drafting the pretrial advice, such as investigative reports, witness statements, and other documents containing relevant information. If the GCMCA must detail members to a court-martial to try the forwarded case, appropriate documentation should be forwarded for court-member selection. See Section 10C.

**9.3. Dismissal of Charges (R.C.M. 401(c)(1)).**

9.3.1. If the convening authority determines some or all of the charges or specifications will be dismissed instead of referred to court-martial, the dismissed charges or specifications should be lined-out on the charge sheet and annotated with the dismissal date and the initials of the person who lined through the charges (e.g., "Dismissed on 15 Sep 18, [initials]"). This may be accomplished by the convening authority, a judge advocate authorized to sign referrals on the convening authority's behalf, or the trial counsel at the direction of the convening authority. Such delegation does not have to be in writing. The remaining charges, if any, are renumbered as necessary.

9.3.2. Dismissal of charges or specifications by order of the military judge pursuant to R.C.M. 907 is documented on the Statement of Trial Results for cases in which charges were referred on or after 1 January 2019, or the Report of Result of Trial memorandum for cases in which charges were referred prior to 1 January 2019. Charges or specifications dismissed by a military judge are not ordinarily lined out on the charge sheet.

**9.4. Referral of Charges to Court-Martial (R.C.M. 601).** The convening authority must sign either the referral section on the DD Form 458, *Charge Sheet*, or another document reflecting the intention to refer charges to trial by court-martial. (T-1) Such other documents may include concurrence with an SJA's pretrial advice and recommendation to refer the case to trial by a specified court-martial.

9.4.1. **Completing the Referral Block on Charge Sheet.** The designation of the convening authority on the charge sheet should be the same as on the convening order. The date should be the date the convening authority referred the charges. If the convening authority personally signs the referral, the language of "By ... Command or Order ... of..." should be stricken and the convening authority's signature block should be included. If the convening authority delegated authority to sign the referral block on the charge sheet to a judge advocate, the judge advocate signs the referral "FOR THE COMMANDER."

9.4.1.1. Special instructions should be included in the referral block when appropriate. See R.C.M. 601(e). For example, when additional charges are referred, the following language should be included: "To be tried with the original (charge) (charges), dated [date of referral of original charge(s)]." When a case is referred as a capital case, the following language should be included: "To be tried as a capital case."

9.4.1.2. When a case is referred to a SPCM by military judge alone under Article 16(c)(2)(A), UCMJ, the following language should be included: “To be tried by a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), UCMJ.”

9.4.1.3. The SJA to the SPCMCA ensures the accused’s records are examined to ascertain the accused’s nationality no later than twenty-four hours after referral, even if a claim of foreign nationality has not been made. (T-1) See Section 23D.

9.4.1.4. The SJA to the SPCMCA ensures that AFOSI and SF/S2I are promptly sent copies of referred charge sheets. (T-1)

#### **9.4.2. Disqualification of Convening Authority (R.C.M. 601(c)).**

9.4.2.1. An accuser may not refer charges to a GCM or SPCM if he or she is also the accuser of those charges. (T-0) Further, a convening authority with “an interest other than an official interest in the prosecution of the accused” is disqualified from referring that case to court-martial. (T-0) Article 1(9), UCMJ.

9.4.2.2. If the SPCMCA is disqualified, the case is forwarded to the GCMCA. If the GCMCA is disqualified, the MAJCOM commander determines who shall act as the convening authority. If there is not an appropriate commander exercising general court-martial convening authority within the command, the MAJCOM SJA requests assistance from AFLOA/JAJM in the designation of a commander to serve as the GCMCA.

#### **9.4.3. Referral Authority for Certain Sex Offenses (R.C.M. 201(f)(1)(D)) .** Only a general court-martial has jurisdiction over the following offenses.

9.4.3.1. If committed on or after 24 June 2014:

9.4.3.1.1. Rape or sexual assault, in violation of Article 120, UCMJ;

9.4.3.1.2. Rape of a child or sexual assault of a child, in violation of Art 120b, UCMJ;

9.4.3.1.3. Forcible sodomy, committed prior to 1 January 2019, in violation of Article 125, UCMJ (2016 and earlier editions); and

9.4.3.1.4. Attempts to commit the above offenses, in violation of Article 80, UCMJ.

9.4.3.1.5. For offenses committed on or after 1 January 2019, conspiracy to commit the above offenses, in violation of Article 81, UCMJ. See Article 56, UCMJ.

**9.5. Transferring Charges to Parallel Convening Authority (R.C.M. 601(g)).** If it is impractical for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if already referred, to be transmitted to a parallel convening authority (defined as a convening authority of the same level, such as transfer from one SPCMCA to another SPCMCA). This transmittal must be in writing. (T-1) The original convening authority’s SJA coordinates with AFLOA/JAJM and the gaining convening authority’s SJA to transfer the case. (T-1)

**9.6. Withdrawal of Referred Charges (R.C.M. 604).** Reference paragraph 12.3. for withdrawing referred charges.

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

**9.7.1. New Referral.** The new referral is documented in the same format as that on page two of the charge sheet, following the rules in paragraph 9.4. The new referral may be accomplished by typing the appropriate language on bond paper or by using the referral section from page two of another DD Form 458. When completed, the new referral section should be cut out and attached to the charge sheet by stapling it immediately above the original referral section. A prior referral should never be removed or destroyed. If a third or subsequent referral is necessary, it should be attached in the same way as the second. A new referral must include service on the accused.

**9.7.2. Special Instructions for Rehearings.** When a case is referred for a rehearing (whether in full, for a limited purpose, or for a new trial), the appropriate instructions should be incorporated in the referral section. R.C.M. 810. For example, in a rehearing on sentence only, the following special instruction should be included: "For a rehearing on sentence only, as ordered by General Court-Martial Order No. 17, Headquarters, 18 AF, dated 4 June 2018, as to the charge and specification of which the accused was found guilty and affirmed by the Air Force Court of Criminal Appeals, dated 10 May 2018," or a similar instruction.

## **9.8. Notification of Referral of Later Charges in Pending Cases.**

**9.8.1. Notification to AFLOA/JAJM.** If charges are referred to trial against a person who is the accused in a case under review under Articles 66, 67, 67a, or 69, UCMJ, the headquarters referring the new charges must notify AFLOA/JAJM immediately. (T-1) The case currently under review is identified by the accused's full name, rank, and social security number and the case's Army Court-Martial number (ACM), if available. The following information should also be provided: the nature of the new charges, the date referred, type of court-martial, anticipated date of trial, a brief statement of facts of the case, and any other information that might affect disposition of the current review concerning the case.

**9.8.2. Follow-Up Messages.** Follow-up messages should be sent to AFLOA/JAJM to advise when trial is completed (including the result), if the charges are withdrawn, or if there are other significant developments which may affect disposition of the case currently under review.

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

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

## **9.11. General Court-Martial Convening Authority Decision Not to Refer Certain Sex Offense Charges.**

**9.11.1.** In cases where the GCMCA decides not to refer a covered sex offense charge or specification for which initial disposition authority was withheld, the GCMCA forwards the decision to a superior convening authority for review as described below. (T-0) See paragraph 5.7; Fiscal Year 2014 National Defense Authorization Act, Section 1744(d).

**9.11.2. Superior General Court-Martial Convening Authority (GCMCA) Review of Non-Referral Decision.** In any case where the SJA's pretrial advice recommends against referring a covered charge or specification to a court-martial and the GCMCA concurs, then

the GCMCA forwards the non-referral decision and the corresponding case file, as defined in paragraph 9.11.4, to the next superior GCMCA for review. A template memorandum is located at Figure A5.2. Figure A5.3 is a template for the superior GCMCA's response.

**9.11.3. Secretary of the Air Force Review of Non-Referral Decision.** In any case where the GCMCA SJA's pretrial advice recommends referring a covered charge or specification to a court-martial and the GCMCA non-concurs, then the GCMCA forwards the non-referral decision and the corresponding case file, as defined in paragraph 9.11.4, to the Secretary of the Air Force for review. The case file is transmitted to AFLOA/JAJM through functional channels. Figure A5.4 is a template for the Secretary of the Air Force's response.

**9.11.4. Request for Secretary of the Air Force Review of Non-Referral Decision.** In addition to the circumstances mandating Secretary of the Air Force review described in paragraph 9.11.3, the Chief of the Government Trial and Appellate Counsel Division (AFLOA/JAJG) may request Secretary of the Air Force review in any case where the GCMCA decides not to refer the charge and any specification described in paragraph 9.4.3.

9.11.4.1. Case File Required Contents. The case file that is forwarded to the Secretary of the Air Force or GCMCA under paragraphs 9.11.2, 9.11.3, or 9.11.4 shall include (T-0):

9.11.4.1.1. All charges and specifications preferred;

9.11.4.1.2. All reports of investigations, including but not limited to the Article 32 PHO report, the AFOSI report of investigation, and any report of investigation by a military or civilian criminal investigative organization;

9.11.4.1.3. A certification that the victim of any alleged offense described in paragraph 5.7.1. was notified of the opportunity to express a preference as to disposition of the alleged offense for consideration by the convening authority. See paragraph 5.7. and Figure A2.4;

9.11.4.1.4. All statements from the victim provided to AFOSI and to the victim's chain of command relating to any alleged offense described in paragraph 5.7.1.;

9.11.4.1.5. Any statement provided by the victim to the convening authority expressing the victim's view on the preferred disposition of the pertinent alleged offense(s);

9.11.4.1.6. The SJA's Pretrial Advice pursuant to Article 34, UCMJ. See Figure A5.1;

9.11.4.1.7. A written statement from the GCMCA explaining the reasons for the decision not to refer charges or specifications for trial by court-martial. See Figure A5.2; and

9.11.4.1.8. A certification that the victim of any alleged offense described in paragraph 5.7.1 was informed of the GCMCA's decision to forward the case for review under paragraphs 9.11.2, 9.11.3 or 9.11.4. See Figure A5.5 and Figure A5.6.

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

**9.11.5. Victim Notification of Results of Superior Review.** The SJA ensures the victim of any offense described in paragraph 5.7.1 is notified of the forwarding of a case for superior GCMCA or Secretary of the Air Force review. (T-1) See Figures A5.5 and A5.6. The victim

must be notified of the results of the review conducted by the Secretary of the Air Force or superior GCMCA. (T-1)

**9.12. Referral of Charges to Special Court-Martial by Military Judge Alone.** The Secretary of the Air Force has authorized use of this forum only in instances where the accused does not object. Charges may not be referred to a special court-martial by military judge alone over the objection of the accused. The convening authority may only refer a case to SPCM by military judge alone if all of the charged offenses occurred on or after 1 January 2019. See paragraph 3.3.2.

9.12.1. When a case is referred to a SPCM by military judge alone, the following language should be included as a special instruction on the referral block of the Charge Sheet: “To be tried by special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), UCMJ.”

9.12.2. **Notice to Accused and Opportunity to Object.** Inclusion of the special language in paragraph 9.12.1 serves as notice to the accused that the charges are being referred to a special court-martial by military judge alone. Prior coordination between accused’s counsel, if represented, and the SJA or detailed trial counsel is encouraged.

9.12.2.1. In cases discussed in paragraph 9.12.5, the accused has three duty days upon receipt of referred charges to object to the forum. The convening authority must notify the accused of the time limit (three duty days) to object to referral to the forum. (T-1) Template notifications are located at Figures A6.1 and A6.2. SJAs should ensure the convening authority initials the block in paragraph 2 and that the proper first and second indorsements are used based on the offenses referred to SPCM by military judge alone. At a minimum, the notification must:

9.12.2.1.1. Notify the accused of the three duty day time limit for an objection; (T-1)

9.12.2.1.2. Include instructions advising the accused that any objection must be provided to the trial counsel before the expiration of that three duty day time limit; (T-1)

9.12.2.1.3. Advise the accused that objections will not be accepted after the three duty day limit, unless the failure to respond resulted from reasons beyond the accused’s control; (T-1)

9.12.2.1.4. Include an indorsement in which the accused acknowledges the date and time of receipt and the date and time at which objections must be received by trial counsel; (T-1)

9.12.2.2. In cases discussed in paragraphs 9.12.3 and 9.12.4, the accused may object to the forum at any time prior to arraignment. The convening authority must notify the accused of the time limit (until arraignment) to object to referral to the forum. (T-1) At a minimum, the notification must:

9.12.2.2.1. Notify the accused that the accused may object to the forum at any point prior to arraignment, at which point the convening authority will withdraw the referral and decide what, if any, further action to take; (T-1)

9.12.2.2.2. Include instructions advising the accused that, if the accused wishes to object prior to convening an Article 39(a) session for arraignment before a military

judge, the accused should submit that objection to the trial counsel before arraignment; (T-1)

9.12.2.2.3. Include an indorsement in which the accused acknowledges the date and time of receipt and the date and time at which objections must be received by trial counsel. (T-1)

9.12.2.2.4. A template notification is located at Figure A6.2. SJAs should ensure the convening authority initials the appropriate blocks in paragraph 2 and that the proper first and second indorsements are used based on the offenses referred to SPCM by military judge alone.

**9.12.3. Objection by Accused for Offenses Carrying More Than Two Years Maximum Confinement.** If the specifications preferred include violations of offenses for which the maximum authorized confinement at a GCM exceeds two years, excluding wrongful use or possession of a controlled substance under Article 112a(b), UCMJ, the accused may object to the forum choice at any point prior to arraignment. R.C.M. 201(f)(2)(E)(I).

**9.12.4. Objection by Accused for Offenses Requiring Sex Offender Notification.** If the specification preferred would result in notification as a sex offender, the accused may object at any point prior to arraignment. R.C.M. 201(f)(2)(E)(II).

**9.12.5. Objection by Accused for All Other Offenses Referred.** The accused has three duty days from receipt of the charge sheet and notification listed in paragraph 9.12.2.1. to object to the forum. The convening authority may extend this timeline; however, government and defense counsel should be mindful of speedy trial concerns and should ask for exclusions of time under R.C.M. 707 where applicable. This timeline runs concurrently with the accused's three-day waiting period prior to arraignment. **Note:** This provision applies to wrongful use or possession of a controlled substance under Article 112a(b), UCMJ.

**9.12.6. Form of the Objection.** Any objection submitted prior to the conclusion of the prescribed time limit should be in writing and should be transmitted from the accused's counsel to the SJA or detailed trial counsel. The SJA is responsible for providing the objection to the convening authority. (T-1) Any objection that is raised at the arraignment must be articulated on the record. (T-1)

**9.12.7. Action Subsequent to Objection.** If the accused objects to the forum within the applicable time period, the convening authority must withdraw the charges. See R.C.M. 604. The convening authority should promptly act on the charges (e.g., dismiss, refer to a different forum, etc.).

**9.13. Referral of Additional Charges Occurring on or After 1 January 2019.** Where charges and specifications were referred to a court-martial prior to 1 January 2019, additional charges and specifications for offenses that occurred on or after 1 January 2019 may not be referred to the same court-martial. (T-1) Such referral would create an irreconcilable difference between the rules affecting impanelment and other post-referral processes. Convening authorities may refer the recommended additional charges and specifications to a separate court-martial or may withdraw the original charges and specifications and refer all charges to a single court-martial on or after 1 January 2019.

## Chapter 10

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

#### *Section 10A—Court-Martial Composition and Personnel*

#### **10.1. Detail of Military Judges (R.C.M. 503(b)).**

10.1.1. **Chief Trial Judge.** The Judge Advocate General's designee for detail of military judges is the Chief Trial Judge, USAF Trial Judiciary.

10.1.2. **Detailing Military Judges.** The Chief Trial Judge details military judges to SPCMs and GCMs. The Chief Trial Judge may delegate this authority to any person assigned as an Air Force military judge. A military judge with the authority to detail military judges may detail himself or herself to a court-martial. Orders detailing military judges may be oral or written. Any written orders are included in the ROT. The authority who detailed the military judge is announced on the record.

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

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

10.1.2.3. No judge may be detailed to a court-martial when that judge has previously acted as a PHO at a preliminary hearing or judge at a pre-referral proceeding pursuant to Article 30a, UCMJ, in the same case. (T-1)

#### **10.2. Summary Courts-Martial (R.C.M. 1301, 1302).**

10.2.1. **Detailing Summary Courts-Martial.** An SCM is detailed by a convening order. The convening order is a special order prepared in accordance with R.C.M. 504(d) signed by the convening authority. For composition of an SCM, refer to R.C.M. 1301(a). Guidelines for formatting and drafting a convening order are discussed at paragraph 10.13, and a sample summary courts-martial convening order is provided at Figure A7.5.

10.2.1.1. All summary courts-martial are constituted by special orders that are numbered consecutively on a fiscal year basis, starting with the number 1, and using an AC series letter prefix. See paragraph 10.13.3.

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

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

Order (WWCO) memorandum that is published every fiscal year, and is located in the Virtual Military Justice Deskbook.

10.2.1.3. Even when a separate order is used, the convening authority or properly designated judge advocate completes and signs Block 14 of the charge sheet.

10.2.2. **Reservists as SCM Officer.** A reservist on active duty who is a commissioned officer may serve as a SCM Officer under R.C.M. 1301. Reservists on inactive duty for training are not on active duty and cannot serve as an SCM Officer. Air National Guard officers who are serving on active duty in federal service may serve as SCM Officers under R.C.M. 1301.

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

### 10.3. Detail of Counsel (R.C.M. 503(c)).

#### 10.3.1. Procedure.

10.3.1.1. Defense Counsel. The Chief, Trial Defense Division, has the authority to detail a Chief Circuit Defense Counsel, Circuit Defense Counsel, or Area Defense Counsel to any court-martial, and may delegate such authority.

10.3.1.1.1. A Circuit Defense Counsel may detail an Area Defense Counsel within that circuit to a court-martial outside of that circuit, with the concurrence of the Chief, Trial Defense Division (AFLOA/JAJD), or a Chief Circuit Defense Counsel.

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

10.3.1.1.3. Announce orders detailing counsel on the record.

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

10.3.1.3. R.C.M. 503(c)(3) and other Armed Forces' regulations govern detailing counsel from other Armed Forces to Air Force courts-martial. The Chief, Military Justice Division (AFLOA/JAJM), is TJAG's designee with authority to make Air Force counsel, with the exception of those assigned to AFLOA/JAJD, available for detail to trials convened by another Armed Force. AFLOA/JAJD exercises this authority over defense counsel.

#### 10.3.2. Qualifications.

10.3.2.1. General Courts-Martial. Only attorneys certified according to Article 27(b), UCMJ, may be detailed as trial counsel, defense counsel, or assistant defense counsel for a general court-martial. Any person detailed as assistant trial counsel must be designated as a judge advocate in accordance with AFI 51-101, *The Air Force Judge Advocate*

*General's Corps (AFJAGC) Operations, Accessions, and Professional Development.* (T-1)

10.3.2.2. **Special Court-Martial.** Only attorneys certified according to Article 27(b), UCMJ, and AFI 51-101 may be detailed as defense counsel or assistant defense counsel for a special court-martial. Any person detailed as trial counsel or assistant trial counsel for a SPCM must be designated as a judge advocate under AFI 51-101 in order to be competent for purposes of Article 27(c)(2). (T-1)

10.3.2.3. **Summary Court-Martial.** An accused facing trial by SCM may request representation by a military defense counsel and will generally be detailed a military defense counsel but is not entitled to military defense counsel. See R.C.M. 1301(e). Civilian counsel obtained by the accused and qualified under R.C.M. 502(d)(2)(B) are permitted to represent the accused at the SCM if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it. R.C.M. 1301(e). An attorney who is designated a judge advocate under AFI 51-101 may be detailed to represent the government.

10.3.2.4. **Capital Cases.** Where possible, in capital cases at least one defense counsel should have knowledge and/or experience in capital litigation. See Article 27(d), UCMJ. The Chief, Trial Defense Division (AFLOA/JAJD) will continue to identify capital litigation training opportunities for defense counsel. (T-1)

10.3.2.5. **Air Reserve Component Members.** The requirements of certification and designation set out in paragraphs 10.3.2.1 through 10.3.2.3 also apply to Reserve Component judge advocates. Only those reservists assigned as Circuit Trial or Circuit Defense Counsel may be certified annually. Other reserve component judge advocates are certified according to AFI 51-101. Reserve Component judge advocates must be on active duty or performing inactive duty training to be detailed as trial counsel or military defense counsel, and they must be in Title 10 status at all times when performing trial duties. (T-1) Paragraph 10.4.5 provides additional guidance on reserve component judge advocates performing individual military defense counsel duties.

10.3.2.6. **Civilian Counsel (R.C.M. 502(d)(2)(b)).** When a civilian counsel represents an accused at a court-martial, the counsel's qualifications to serve as defense counsel, including information about the counsel's bar membership and standing, should be included in the record. Ordinarily, the military judge will have the civilian counsel announce his or her qualifications on the record during court-martial proceedings.

**10.3.3. Disqualifications (Articles 26(d) and 27(a)(2), UCMJ; R.C.M. 502(d)(43)).** A PHO who conducted an Article 32, UCMJ, preliminary hearing may never serve as a member of the prosecution or as military judge in the same case. (T-1) A judge advocate who served as the accuser or PHO who conducted the Article 32, UCMJ, preliminary hearing cannot perform any other duty in connection with the trial of the same case, except as defense counsel at the specific request of an accused after being fully informed of the individual's prior involvement in the case. (T-1)

**10.4. Request for Individual Military Defense Counsel (R.C.M. 502(d)(2)(B) and 506(b)).** An accused may request representation by an individual Air Force JAG military defense counsel in an Article 32, UCMJ, preliminary hearing or at a court-martial. The requested counsel

represents the accused, if reasonably available. The right to request an individual military defense counsel does not extend to representation for actions under Article 15, UCMJ.

**10.4.1. Format of Individual Military Defense Counsel Requests.** An individual military defense counsel request must be in writing and signed by the accused or detailed counsel. (T-1) The request shall include the following, as applicable:

10.4.1.1. The date of the Article 32, UCMJ, preliminary hearing or trial; (T-1)

10.4.1.2. Any special qualifications of the requested counsel relevant to the case; (T-1)

10.4.1.3. Whether the accused is represented by other counsel (not the requested counsel) and, if so, the name of that counsel; (T-1)

10.4.1.4. Whether the accused has entered into an attorney-client relationship with the requested counsel concerning the charges being investigated or tried (including any statement required by 10.4.4); (T-1)

10.4.1.5. In the case of a requested counsel presently unavailable, whether the counsel is expected to be available before the Article 32 preliminary hearing or trial; (T-1) and,

10.4.1.6. A statement acknowledging the accused's understanding that, if the individual military defense counsel request is granted, the detailed defense counsel may be excused from further participation in the case at the sole discretion of the detailing authority. (T-1)

**10.4.2. Non-Availability of Certain Counsel.** In addition to those persons listed in R.C.M. 506(b)(1), the following persons are not ordinarily reasonably available to serve as individual military defense counsel because of the nature of their duties, positions, or geographic locations:

10.4.2.1. Medical Law Consultants and Advisors;

10.4.2.2. Attorneys in the National Capital Region assigned to AFLOA, excluding any individual detailed to perform duties as a Circuit Defense Counsel or Area Defense Counsel;

10.4.2.3. Attorneys attending an Air Force Institute of Technology sponsored program such as a Master of Laws program;

10.4.2.4. Attorneys assigned or attached to the AFOSI;

10.4.2.5. Attorneys detailed to perform duties as a Circuit Trial Counsel, detailed trial counsel, and assistant trial counsel in the same or an allied case;

10.4.2.6. SJAs, and for commands having a GCMCA, Deputy Staff Judge Advocates (DSJAs).

**10.4.3. Reasonably Available.** A counsel is "reasonably available" if not considered unavailable by the terms of the MCM or this instruction, and the appropriate approval authority determines the requested counsel can perform the duties of an individual military defense counsel without unreasonable expense or detriment to the United States and without unreasonable delay in the proceedings. In determining the reasonable availability of a counsel, the approval authority may consider the following:

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

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

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

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

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

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

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

**10.4.4. Exception: Attorney-Client Relationship.** When an attorney-client relationship exists, as determined by the approval authority, exceptions to non-availability based upon assignment to a position identified in R.C.M. 506(b)(1) and paragraph 10.4.2 should ordinarily be granted. An attorney-client relationship exists when, at the time of the accused's individual military defense counsel request, the accused and the requested attorney had a bilateral understanding as to the nature of services to be provided in the case, and the requested attorney was actively engaged in the preparation and pretrial strategy of the case. *United States v. Spriggs*, 52 M.J. 235 (C.A.A.F. 2000). A statement, signed by the requested attorney and accused, asserting the attorney-client relationship and providing an overview of the relationship must accompany the request. (T-1) See paragraph 10.4.1.4.

**10.4.5. Individual Military Defense Counsel Requests for Air Reserve Component Attorneys.** Only Air Reserve Component attorneys on extended Title 10 active duty tours can be requested and may be granted. The reasonable availability of Air Reserve Component attorneys is assessed in the context of R.C.M. 506(b)(1) and paragraph 10.4.2. (i.e., the restrictions apply to the active and reserve components alike). Air Reserve Component attorneys must be in Title 10 status at all times when performing as an individual military defense counsel. (T-1) Requests for Air Reserve Component attorneys are processed in accordance with paragraph 10.4.7.

**10.4.6. Processing Individual Military Defense Counsel Requests for Area Defense Counsel and Circuit Defense Counsel.**

10.4.6.1. Individual military defense counsel requests for Area Defense Counsel and Circuit Defense Counsel are forwarded through defense channels to the appropriate approval authority as follows:

10.4.6.1.1. The Chief, Trial Defense Division, has the authority to act on any individual military defense counsel request for any Chief Circuit Defense Counsel, Circuit Defense Counsel, or Area Defense Counsel, and may delegate such authority.

10.4.6.1.2. The Chief, Trial Defense Division, or a Chief Circuit Defense Counsel takes action on individual military defense counsel requests for Circuit Defense Counsel. However, the Chief, Trial Defense Division, may override a Chief Circuit Defense Counsel's decision to grant an individual military defense counsel request.

10.4.6.1.3. The Chief, Trial Defense Division, takes action on individual military defense counsel requests for a Chief Circuit Defense Counsel.

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

**10.4.7. Processing Individual Military Defense Counsel Requests for Other Counsel.** Individual military defense counsel requests for all other counsel (not addressed in paragraph 10.4.6) are forwarded to the convening authority through the trial counsel, if any. See R.C.M. 506(b)(2). Because the Trial Defense Division (AFLOA/JAJD) is responsible for defense services throughout the Air Force, it is incumbent upon those individual military defense counsel who are not assigned to AFLOA/JAJD to notify the Chief, Trial Defense Division, of their association with a case as soon as practicable. These individual military defense counsel should also keep Chief Circuit Defense Counsel informed about the progress of the case. Additionally, the individual military defense counsel must coordinate in advance any anticipated expenditure of AFLOA/JAJD funds for travel or other reasons. (T-1)

10.4.7.1. Disposition When Counsel is Not Reasonably Available. If the requested counsel is not reasonably available for a reason identified in R.C.M. 506(b)(1) or paragraph 10.4.2, and the accused does not assert an attorney-client relationship, the convening authority will deny the request and notify the accused. (T-1)

10.4.7.2. Disposition When Counsel May Be Available. If the requested counsel appears to be reasonably available (i.e., not apparently unavailable in accordance with R.C.M. 506(b)(1) or paragraph 10.4.2), the convening authority forwards the request to the appropriate approving authority identified below. The approving authority evaluates availability (*see* paragraph 10.4.3), decides whether to grant the request, and informs the forwarding convening authority of the decision and the reasons for the decision. The convening authority notifies the accused of the decision.

10.4.7.2.1. Attorneys Assigned to AFLOA or Headquarters Air Force. Send requests for attorneys assigned to the Civil Law and Litigation Directorate (AFLOA/JAC), Air Force Judiciary Directorate (AFLOA/JAJ), Commercial Law and Litigation Directorate (AFLOA/JAQ), Community Legal Services Directorate (AFLOA/CLS), Legal Information Services Directorate (AFLOA/JAS), The Judge Advocate General's School (AFLOA/AFJAGS) or Headquarters Air Force Directorates to the respective Director. Send requests for attorneys assigned to AFLOA/CSS to AFLOA/CC. Requests for Area Defense Counsel and Circuit Defense Counsel shall be forwarded per paragraph 10.4.6. (T-1)

10.4.7.2.2. Master of Laws Students. Send requests for attorneys in a Master of Laws program to the Director, Professional Development Division, Headquarters USAF/JAX.

10.4.7.2.3. Staff Judge Advocates. Send requests for SJAs to the SJA's commander.

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

**10.4.8. Appeals.** The accused may request review of a disapproved individual military defense counsel request by the next higher level of supervision of the officer who denied the request. Appeals are forwarded to the convening authority through the trial counsel.

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

10.4.8.2. If an approval authority originally denied the request, the appeal is forwarded by the convening authority to that approval authority. If the approval authority declines to grant the request on appeal, the appeal is forwarded to the approval authority's superior officer for review and decision. The Deputy Judge Advocate General (DJAG) reviews denials by AFLOA/CC or Headquarters Air Force Directorates. AFLOA/CC reviews denials by AFLOA Directors. There is no further review of denials by DJAG. The final decision is returned to the convening authority, who notifies the accused of the decision.

10.4.8.3. A military judge may, for good cause, determine that a particular individual military defense counsel is reasonably available, notwithstanding any provision of this instruction.

## **10.5. Oaths (Article 136, UCMJ; R.C.M. 807).**

**10.5.1. One-Time Oath.** The following personnel take a one-time oath: military judges certified according to Article 26(b), UCMJ; military counsel, certified according to Article 27(b), UCMJ; and court reporters.

10.5.1.1. Any person authorized by Article 136, UCMJ, may administer the one-time oath. The person administering the oath completes a certificate indicating the place and date the oath was administered. The oath contains the typed name, signature, and qualifications of the person administering the oath. Give a copy to the person taking the oath.

10.5.1.2. For military judges, send the original and one copy to Headquarters USAF/JAX. Use the following oath: "I (name of military judge), do (swear) (affirm) that I will faithfully and impartially perform the duties of military judge in any proceeding under the UCMJ to which I am detailed to perform such duties, (so help me God)."

10.5.1.3. For military counsel, the SJA or designee should ensure the original and one copy is sent to Headquarters USAF/JAX. The following oath is used: "I [name of military counsel], do (swear) (affirm) that I will faithfully perform the duties of counsel in any proceeding under the UCMJ to which I am detailed to perform such duties or in any court-martial in which I am to perform duties of individual defense counsel, (so help me God)."

10.5.1.4. For court reporters, the SJA or designee should give the original to the reporter and file one copy in the office where the individual is assigned. If the individual transfers to another Air Force legal office, the SJA should forward a copy of the oath to the receiving SJA. Use the following oath: "I (name of reporter), do (swear) (affirm) that I will faithfully perform the duties of (reporter) in any proceeding under the UCMJ to which I am detailed, (so help me God)."

10.5.2. **Uncertified Military Counsel and Civilian Defense Counsel.** Military counsel not certified according to Article 27(b), UCMJ, and civilian defense counsel are sworn for each court-martial. In a GCM or SPCM, the military judge administers the oath. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath. The SJA or trial counsel ensures the oath is documented in the record of the proceeding.

10.5.3. **Court Members.** Court members are sworn for each court-martial to which they are detailed. The trial counsel administers the oath. See R.C.M. 807.

10.5.4. **Interpreters.** In a general court-martial or special court-martial, the trial counsel or military judge administers an oath to the interpreter. In other proceedings, a person authorized by Article 136, UCMJ, administers the oath. The SJA or trial counsel ensures the oath is documented in the record of the proceeding. An interpreter is properly sworn after an affirmative response to the following oath: “Do you, [name of interpreter], (swear) (affirm) that you will faithfully perform the duties of interpreter in this proceeding, (so help you God)?”

## **10.6. Defense Investigative Support from Air Force Office of Special Investigations.**

10.6.1. Defense requests for investigative support from outside AFLOA/JAJD are made in writing to the servicing SJA, who forwards the request along with a recommendation to the convening authority. If the convening authority grants the request and investigative resources are available within the convening authority’s command that would satisfy the needs of the defense, other than Air Force Office of Special Investigations investigators, the convening authority appoints an investigator.

10.6.2. If the convening authority determines that other investigative resources are not available and appointment of an AFOSI special agent is necessary under the circumstances, the convening authority informs the local AFOSI detachment commander. The AFOSI detachment commander forwards the request through command channels for a determination of whether or not AFOSI investigative resources exist to support the defense request. If AFOSI/CC agrees that appointment of a special agent is appropriate and an agent is available, AFOSI/CC appoints a special agent. AFOSI/CC is the decision authority for appointment of AFOSI agents as defense investigators, except in the extraordinary case where a trial judge specifically mandates the appointment of an AFOSI special agent. In all cases, the convening authority provides the requisite funding. See *also United States v. Pomarleau*, 57 M.J. 351 (C.M.A. 2002).

10.6.3. Contact AFOSI/JA with any questions regarding this policy or its application, including provisions that apply to the permissible activities, access to law enforcement resources and level of assistance which may be provided by special agents who are assigned to provide defense investigative support.

### ***Section 10B—Court Reporters***

**10.7. Court Reporter Duties.** The primary role of the Air Force court reporter is to record, transcribe, and assemble records for courts-martial, Article 30a, pre-referral judicial proceedings, and other proceedings, as required. Court reporters will assist counsel for both sides, hearing officers, and the military judge in preparing and marking documents associated with proceedings. (T-1) The court reporter is neutral and should not express personal opinions about the case being reported.

10.7.1. Courts-Martial. Court reporters are detailed to all GCMs and SPCMs. The court reporter records everything that is said or done verbatim, from the initial Article 39(a) session until the court adjourns, and maintains the reporter's notes and recordings according to the Air Force Records Disposition Standards. The court reporter segregates the recording of the open proceedings from the closed proceedings so the government may distribute the recording of open proceedings as required under R.C.M. 1106, R.C.M. 1106A, and R.C.M. 1112. See AFMAN 51-203.

**10.7.2. Transcription Requirements.**

10.7.2.1. The court reporter shall prepare a certified verbatim transcript of the court-martial when the judgment entered includes a dismissal, punitive discharge or confinement for more than six months. (T-0)

10.7.2.2. The court reporter shall prepare a summarized transcript in all other cases unless the convening authority or SJA requests a verbatim transcript. (T-1) A verbatim transcript is acceptable in cases where a summarized transcript is required.

**10.7.3. Certification of Record of Trial.** A court reporter shall prepare and certify that the record of trial includes all required items in R.C.M. 1112(b) as soon as practicable after the entry of judgment. (T-0) See R.C.M. 1112(c) and AFMAN 51-203, *Records of Trial*.

10.7.3.1. The court reporter shall attach the items listed in R.C.M. 1112(f) to the record of trial before the certified record of trial is forwarded for appellate review. (T-0)

10.7.3.2. If additional proceedings are held after the court reporter certifies the record, a record of those proceedings shall be included in the record of trial, and a court reporter shall prepare a supplemental certification. (T-0)

**10.7.4. Sealing Records.** The court reporter shall seal materials ordered sealed by the military judge or preliminary hearing officer to prevent unauthorized access or disclosure. (T-1) Trial counsel shall inspect the record of trial prior to distribution to the accused or victim to ensure that all required items are sealed. (T-1) See R.C.M. 1113.

**10.7.5. Pre-referral Proceedings.** Court reporters detailed to record and transcribe Article 30a hearings must promptly transcribe Article 30a hearings and prepare a separate record of the proceeding (T-1) Such record will include a verbatim transcript, any exhibits offered by any party, and any orders prepared by the military judge. (T-1) The legal office will forward the record to the appropriate authority, as outlined in R.C.M. 309(e). (T-1) See paragraph 6.13.

**10.8. Detailing Court Reporters.** AF/JAT is responsible for the centralized management of the court reporter program and serves as the single point of contact for all requests for transcription assistance and court reporter temporary duty support. See AFMAN 51-203 for guidance on requesting court reporter assistance.

**10.9. Methods of Recording.** Digital recording is the primary method of recording. Court reporters use both a primary and backup system to ensure a record can be accurately prepared. See AFMAN 51-203 for more information on authorized methods of recording.

**10.10. Enlisted Court Reporters.** The primary role of the enlisted court reporter is to fulfill the expeditionary court reporting requirement and support mishap investigation boards. They also report and transcribe courts-martial, administrative discharge boards, Article 30a, UCMJ, pre-

referral judicial proceedings, depositions, and other proceedings as the expeditionary mission allows.

### *Section 10C—Convening Courts-Martial*

#### **10.11. Detailing Members in Cases Referred On or After 1 January 2019 (R.C.M. 501, 502, 503, 912A; Articles 25, 29, UCMJ).**

10.11.1. **Cases Referred Before 1 January 2019.** For cases referred before 1 January 2019, follow the detailing instructions in R.C.M. 501-503 and Article 25, UCMJ, in the MCM (2016 ed.).

10.11.2. **Detailing Generally.** Convening authorities detail the best qualified persons for courts-martial in accordance with the criteria in Article 25(e)(2) and R.C.M. 502(a)(1). Convening authorities may detail members under their command or others made available by the appropriate commander. When detailing court members, convening authorities may consider nominees submitted by subordinate commanders.

10.11.2.1. If the accused is enlisted, the convening authority may detail a court-martial panel of entirely officer members, entirely enlisted members, or a combination of officer and enlisted members. Enlisted members may come from the same unit as the accused but may not be junior in rank to the accused. The convening authority may not detail enlisted members to a case where the accused is a commissioned officer or cadet. (T-0)

10.11.2.2. For courts-martial involving Reservists, convening authorities should consider detailing Reserve members on active duty who meet the qualifications in Article 25, UCMJ, and R.C.M. 502.

10.11.2.3. The SJA must guard against unlawful command influence in the court member selection process, which includes ensuring no involvement by trial counsel or assistant trial counsel in the selection of prospective court members. (T-1) When advising the convening authority on court member selection, the SJA reiterates the Article 25(e)(2), UCMJ, criteria. The SJA may prepare a list of proposed nominees. If such a list is used, the SJA also informs the convening authority that persons on the nomination list as well as any other eligible persons subject to his or her command or others made available by their commanders may be considered.

10.11.2.4. The SJA maintains all documents submitted to the convening authority in the course of detailing members to a court-martial. (T-1)

10.11.3. **Panel Requirements.** Convening authorities should detail a sufficient number of members so that, after exercise of challenges, a capital case will be comprised of twelve voting members, a non-capital general court-martial will be comprised of eight voting members, and a special court-martial will be comprised of four voting members. **Note:** If the number of members in a non-capital general court-martial is reduced after impanelment, the trial may proceed so long as at least six members remain. See Article 29, UCMJ.

10.11.4. **Alternate Members.** The convening authority must state, in writing, whether or not alternate members are authorized. (T-1) If the convening authority authorizes impanelment of alternate members, the convening authority must either specify a number of

alternate members or authorize the military judge to impanel alternates only if excess members remain after exercise of challenges. (T-0) See R.C.M. 912A and Attachment A7.1.

10.11.4.1. If the convening authority designates a specified number, the military judge impanels that number of alternates in addition to the primary members on the fixed panel. Therefore, if after challenges there is an insufficient number of alternate members, the convening authority must detail additional members to the panel until the specified number of alternates are seated on the panel.

10.11.4.2. If the convening authority states that alternates may be impaneled only if excess members remain, the military judge may impanel no more than three alternates. If no excess members remain after challenges, then the convening authority is not required to detail additional members to serve as alternates.

**10.11.5. Accused's Elections.** An enlisted accused may request that he or she be tried by a court-martial panel with no further specificity, or that a court-martial panel be comprised entirely of officer members or at least one-third enlisted members. If the accused requests that he or she be tried by a court-martial panel comprised entirely of officer members or at least one-third enlisted members, then the convening authority excuses members or details additional members in order to comply with the accused's election. See R.C.M. 503(a)(2).

10.11.5.1. If the accused requests a panel entirely of officer members, and the convening authority previously detailed enlisted members, then the convening authority must excuse the previously detailed enlisted members. (T-1)

10.11.5.2. If the accused requests at least one-third enlisted members and officer members were already detailed, the convening authority may replace officer members with enlisted members or may detail enlisted members without excusing officer members. If the convening authority previously detailed a sufficient number of enlisted members, then there may be no need to replace or detail new members.

**10.12. Replacing or Excusing Detailed Members (R.C.M. 505).** Before the court-martial is assembled, the convening authority may excuse members or replace the members of a court-martial without showing cause. The convening authority may delegate to the servicing SJA or other principal assistant the authority to excuse individual members of a court-martial before a court is assembled. However, the SJA or other principal assistant may excuse no more than one-third of the detailed members. Only the convening authority may detail new members to a court-martial panel. See R.C.M. 505(c).

**10.13. Special Order Convening Courts-Martial.** Convening orders are prepared in accordance with R.C.M. 504, 1302, and this chapter. A sample convening order is provided at Figure A7.2.

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

10.13.2. **Amendments.** Convening orders may be amended. A sample amended convening order is provided at Figure A7.3. The original order should be amended to reflect changes in court members, except when members are excused without replacement. If excusal of a member without replacement is not reduced to writing, the military judge or trial counsel

announces the excusal on the record. No more than two amendments to the original order may be issued. (T-1) If it is necessary to further amend the convening order, a new order should be published with a savings clause that transfers all cases in which the court has not yet been assembled to the new order. A sample order with a savings clause is included at Figure A7.4. All amendments to a convening order and all convening orders with a savings clause should cite all prior orders. Copies of all convening orders and amendments to convening orders should be provided to the military judge and included in all copies of the ROT.

**10.13.3. Numbering Convening Orders.** Orders convening courts-martial are special orders that are numbered consecutively on a fiscal year basis, starting with number 1. The number follows an A-series letter prefix. Use an A letter prefix for general courts-martial, an AB letter prefix for special courts-martial, an AC letter prefix for summary courts-martial, and an AD letter prefix for special courts-martial by military judge alone under Article 16(c)(2).

**10.13.4. Identification of Members.** Special orders convening a court-martial should contain the name, rank and unit of all persons detailed. Do not include personal information (e.g., social security number). If a detailed member is not under the command of the convening authority, ensure the special order clearly indicates that the member was detailed with the concurrence of the member's commander.

**10.13.5.** If the convening authority directs the military judge to appoint alternates, it must be so annotated on the convening order. A sample convening order including the authorization to impanel alternates is located at Figure A7.2.

**10.13.6.** If the convening authority convenes a special court-martial by military judge alone, it must be so annotated on the convening order. A sample convening order is located at Figure A7.6.

## Chapter 11

### TRAVEL FUNDING, WITNESS PRODUCTION, AND IMMUNITY

#### *Section 11A—Travel Funding*

**11.1. Funding Authorities.** AFMAN 65-605, Volume 1, *Budget Guidance and Procedures*, Table 10.2, prescribes the travel funding authorities for persons required for preliminary hearings and courts-martial. A copy of the travel funding table and additional procedural guidelines are located on the Virtual Military Justice Deskbook.

**11.2. AFLOA Central Funding.** AFLOA/JAJM centrally funds and manages travel for certain persons identified in AFMAN 65-605v1, Table 10.2, for travel required for Article 30a, UCMJ, pre-referral proceedings, Article 32, UCMJ, preliminary hearings and courts-martial. For example, if a witness is being traveled within the same MAJCOM for a relevant proceeding, then the convening authority responsible for the proceeding funds witness travel (e.g., if an Active Duty Air Force witness is being traveled to testify at an Article 30a, UCMJ, pre-referral proceeding or Article 32, UCMJ, preliminary hearing, the SPCMCA is responsible for funding that witness's travel). AFLOA/JAJM does not fund travel for other matters related to UCMJ proceedings, such as travel to and from depositions and administrative actions. AFLOA/JAJM does not fund trial preparation days. If a court-martial, Article 30a, UCMJ, pre-referral judicial proceeding, or Article 32, UCMJ, preliminary hearing is conducted within Regular Air Force channels for a Category A or B Reservist, the applicable Regular Air Force convening authority prescribed in AFMAN 65-605v1 is responsible for witness travel costs.

**11.2.1. Requesting Air Force Legal Operations Agency Central Travel Funds and the Witness Funding Management System.** R.C.M. 703(c) governs the initial determination of whether to produce a witness. Once the determination is made to require the presence of a person whose travel may be funded by AFLOA/JAJM, including a witness required by the military judge, the SJA requests travel funds electronically through the Witness Funding Management System on FLITE.

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

11.2.1.2. All requests should be sent electronically through the Witness Funding Management System to AFLOA/JAJM at least ten calendar days before the requested person is required to travel. Requests not received in a timely manner may require the convening authority to provide the initial funding. A link to the Witness Funding Management System is accessible on the Virtual Military Justice Deskbook.

**11.2.2. Roles and Responsibilities within the Witness Funding Management System.**

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

initial information in the Witness Funding Management System and forwarding the request to a local Witness Funding Management System manager for approval.

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

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

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

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

### 11.2.3. Responsibilities for Travel of Centrally Funded Witnesses.

#### 11.2.3.1. AFLOA/JAJM Responsibilities.

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

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

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

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

11.2.3.2. Legal Office Responsibilities.

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

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

11.2.3.2.3. The requesting legal office is responsible for obtaining Defense Travel System access for the witness and will be responsible for processing the invitational travel orders. Once approved, the legal office will provide the approved invitational travel orders and the ticketed itinerary to the witness. The requesting legal office is also responsible for filing the witness travel voucher. The finance office associated with AFLOA/JAJM will not process a manual DD Form 1610 or DD Form 1351-2.

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

11.2.4. **Expert Witnesses.** AFLOA/JAJM funds only those expert witnesses involved in urinalysis cases. Specifically, AFLOA/JAJM centrally funds experts (forensic experts such as chemists, toxicologists, qualified physicians) approved by a convening authority to testify at courts-martial relating to urinalysis testing. AFLOA/JAJM does not fund consultants. See paragraph 11.2.5.

11.2.4.1. Requesting Funding for an Expert. The witness fee per day, travel costs, and per diem should be included in the request. The request must include a statement of the convening authority's approval of the expert and the amount of compensation. In cases involving an expert urinalysis witness, the SJA for the requesting legal office must also certify the attendance and testimony of the expert witness in writing before payment of expert or inconvenience fees can be made.

11.2.4.2. Non-Government Civilian Expert Witnesses. Before requesting funding for a non-government civilian expert witness, trial counsel must first ascertain the non-availability of the forensic urinalysis experts at the Air Force Drug Testing Laboratory, Joint Base San Antonio-Lackland, Texas, or any other expert under contract with the Air Force. SJAs should obtain written agreements with non-government civilian expert

witnesses fixing their rate of compensation and reimbursement for expenses. A sample agreement is located on the AFLOA/JAJM Virtual Military Justice Deskbook as Template 1101. For additional requirements, refer to paragraph 11.4.5.

11.2.4.3. **Fee Limits.** AFLOA/JAJM funding for urinalysis expert witness fees is limited to \$1,000 per day, with a maximum of \$4,000 per witness, per case, for in-court testimony only. Expert witness fees paid by AFLOA/JAJM will not include payment for days devoted to travel, trial preparation, or consultation. Any agreement to pay amounts exceeding AFLOA/JAJM's limits is not binding on AFLOA/JAJM and will result in the convening authority paying the difference. The SJA must certify the attendance and testimony of expert witnesses before payment of expert fees can be made. (T-1)

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

11.2.5. **Consultants.** Central witness funds are used for expert witnesses, not consultants. The convening authority is responsible for payment of consultant services and fees. The funding request constitutes a representation the witness is expected to testify at the trial. However, should AFLOA/JAJM approve and fund an expert witness who does not testify at trial, the funding authorization for the travel expenses will not be revoked.

### ***Section 11B—Witness Production***

**11.3. Military Witnesses.** The SJA or trial counsel provides notice to the witness and the witness's commander of the time, place, and date the witness's presence is required and requests the commander issue any necessary orders to the witness. See R.C.M. 703(g)(1).

**11.4. Civilian Witnesses.** A civilian may be compelled to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board if they were duly issued a subpoena in accordance with Article 46, UCMJ, and R.C.M. 703. Except as provided in paragraphs 11.4.4, 11.4.5, and 11.4.6, DD Form 453, *Subpoena*, is used to obtain the presence of a civilian witness. Civilian witness travel expenses are computed and reimbursed via the Defense Travel System website.

11.4.1. **Informal Service for Willing Witnesses.** When a civilian witness will appear voluntarily and a subpoena is issued, informal service of process by mail, including arrangements for travel and advance travel pay, is authorized. Sample letters to accomplish informal service is located on the Virtual Military Justice Deskbook as Templates 1102 and 1103. R.C.M. 703(g)(3)(E), Discussion.

**11.4.2. Formal Service for Unwilling Witnesses.** If a witness is unwilling to attend the court-martial voluntarily, the trial counsel or designee ordinarily serves the subpoena personally on the witness and tenders travel orders. See R.C.M. 703(g)(3)(E) and Discussion. A witness who violates a subpoena faces potential arrest or prosecution by federal authorities under Article 47, UCMJ. Such arrest or prosecution is typically initiated by requesting the issuance of a warrant of attachment. See paragraph 11.4.3.

11.4.2.1. Where it is impracticable for the trial counsel or designee to personally serve a subpoena (i.e., if the witness is not in the local area), the trial counsel should contact the SJA or commander of the military installation nearest to the witness for assistance. Personal service may also be requested through the local law enforcement office or AFOSI detachment nearest the witness.

11.4.2.2. To meet the threshold requirement for requesting a warrant of attachment and subject the witness to federal prosecution under Article 47, UCMJ, the person serving the subpoena must provide the witness a means of reimbursement of fees and mileage or, in cases of hardship, ensure that such reimbursement is advanced to the witness. (T-1)

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

11.4.2.2.2. Trial counsel should consult with the base finance office to determine the proper method of obtaining any necessary funds for an advance. The SJA or trial counsel may be designated by the finance office as an accounting and finance certifying payment official in order to receive the witness travel funds for personal service on the witness. In the alternative, the finance office may draft a check to the witness that accompanies the subpoena for service or attempted service upon the witness. Refer to the *Joint Travel Regulations* for advance payment processing.

**11.4.3. Failure to Appear.** If the witness fails or refuses to appear, exhaust every reasonable means to secure live testimony. If necessary, use a DD Form 454, *Warrant of Attachment*, to compel the witness to appear or produce evidence. See R.C.M. 703(h)(2)(H), Discussion; *United States v. Ortiz*, 35 M.J. 391 (C.M.A. 1992). The witness may be prosecuted for failure to comply.

11.4.3.1. Requirements for a Warrant of Attachment. A Warrant of Attachment may be issued only if in compliance with the provisions set out in R.C.M. 703.

11.4.3.2. Processing a Warrant of Attachment.

11.4.3.2.1. In most cases, a Warrant of Attachment should be executed by the United States Marshals Service. Otherwise, anyone 18 years or older may execute a Warrant of Attachment. Military law enforcement may execute a Warrant of Attachment; however, military law enforcement should only be considered a last resort.

11.4.3.2.2. Provide the United States Marshals Service with the following:

11.4.3.2.2.1. A copy of the Warrant of Attachment;

11.4.3.2.2.2. A copy of the subpoena;

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

11.4.3.2.2.4. An affidavit indicating that appropriate fees and mileage were tendered to the witness where applicable, or that the witness was provided a means for reimbursement for fees and mileage, and the dollar amount;

11.4.3.2.2.5. The reasons that witness is material and why it is believed the witness refuses or willfully neglects to appear; and

11.4.3.2.2.6. A Military Interdepartmental Purchase Request number. See paragraph 11.4.3.4. Legal office personnel should consult with their local finance office to obtain this information.

11.4.3.2.3. The General Counsel's Office for the United States Marshals Service will review the Warrant of Attachment and determine the appropriate executing office. As this process can take some time, trial counsel or the Government representative should consider requesting relief pursuant to R.C.M. 707(c) if applicable.

11.4.3.2.4. If the United States Marshals Service is executing the Warrant of Attachment, it will make travel, lodging, and housing arrangements for the escorts and witness as appropriate. Otherwise, the Government is responsible for making travel, lodging and housing arrangements for the escorts and witness.

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

11.4.3.2.6. A convening authority may only issue a Warrant of Attachment to compel compliance with an investigative subpoena issued prior to referral. R.C.M. 703(g)(3)(H)(i) and Discussion. In all other cases, a Warrant of Attachment is issued by a military judge.

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

11.4.3.3.1. If the United States Marshals Service or other civilian law enforcement agency did not execute the Warrant of Attachment, a civilian witness must be accompanied by a minimum of two escorts at all times. (T-1) Armed escorts should be used as a last resort and only if absolutely necessary.

11.4.3.3.2. If it is necessary to house a civilian witness prior to the proceeding and the United States Marshals Service or other civilian law enforcement agency did not execute the Warrant of Attachment, coordinate with the United States Marshals Service to arrange for housing of the witness in the nearest available civilian detention facility. Every effort should be made to minimize the amount of time a civilian witness is housed in a civilian detention facility. Never house a civilian witness in a military confinement facility. (T-1)

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

funding the travel of the witness is also responsible for fees charged by the facility detaining the witness. If the entity executing the Warrant of Attachment is another Federal agency, such as the United States Marshals Service, funding will be accomplished through a Military Interdepartmental Purchase Request.

**11.4.4. Subpoena Limitations.** A civilian witness may not be subpoenaed to testify at a court-martial outside the United States or at an Article 30a or 32, UCMJ, preliminary hearing. However, a subpoena duces tecum (for documents) may be duly issued in accordance with Article 46, UCMJ, and R.C.M. 703, for a preliminary hearing pursuant to Article 32(b), UCMJ. A search warrant or order may be issued pursuant to Article 46, UCMJ and R.C.M. 703A for electronic or stored communications prior to or after referral of any charges and specifications. Invitational Travel Orders (located on the Virtual Military Justice Deskbook as Template 1104) should be issued to a civilian witness who voluntarily agrees to appear at such proceedings. *Joint Travel Regulations*, Appendix E1.

**11.4.5. Civilian Expert Witnesses for Urinalysis Cases (not employees of the United States).** When a party determines government employment of a civilian expert witness is necessary, the party shall submit a written request to the convening authority, with notice to the opposing party, to authorize the employment and fix the expert's compensation. (T-0) R.C.M. 703(d). The terms of employment in approved requests should be memorialized in a Memorandum of Agreement for Expert Witnesses. A sample memorandum can be located on the Virtual Military Justice Deskbook as Template 1101. Use Invitational Travel Orders to authorize travel of civilian experts and to notify them of billeting and travel arrangements. The finance office associated with AFLOA/JAJM will not process a manual DD Form 1610 or DD Form 1351-1. (T-1) The requesting legal office is responsible for obtaining Defense Travel System access for the witness.

**11.4.6. Civilians Employed by the United States.** Civilian employees of the United States can be required to testify incident to their employment with appropriate travel orders issued for this purpose. A subpoena is not required for DoD civilian employees requested as witnesses; the appropriate travel order is the DD Form 1610, *Request and Authorization for TDY Travel of DoD Personnel*. This is completed via the Defense Travel System. For non-DoD federal civilian employees providing testimony incident to their employment, the employee's agency will prepare the appropriate travel order. Do not use Invitational Travel Orders for federal civilian employees, contractors or non-appropriated fund employees. (T-1)

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

11.4.7.1. Prior to issuing a subpoena to a member of the news media, trial counsel will consult with the base-level SJA. (T-1) The SJA forwards a request to the GCMCA's SJA addressing the following:

11.4.7.1.1. That all reasonable attempts were made to obtain the information sought from alternative sources; (T-1)

11.4.7.1.2. That all reasonable alternative investigative steps were taken to obtain the information sought; (T-1)

11.4.7.1.3. The results of negotiations with the media. Negotiations should make clear the government's needs in the particular case and its willingness to respond to particular concerns of the media; (T-1)

11.4.7.1.4. That reasonable grounds exist to conclude, based on information obtained from other sources, that a crime has occurred and that the information sought is essential to the case; (T-1) and,

11.4.7.1.5. That to the extent possible, the subpoena is directed at material information regarding a limited subject matter, will cover a reasonably limited period of time, and will avoid requiring production of a large volume of unpublished material. (T-1)

11.4.7.2. The GCMCA's SJA approves or disapproves the issuance of the subpoena. The base-level SJA immediately files a Special Interest Report in accordance with Chapter 17 of this instruction. (T-1)

11.4.7.3. In the event exigent circumstances prevent prior consultation with the GCMCA's SJA, a trial counsel may issue a subpoena with the base-level SJA's approval. In that case, the base-level SJA immediately informs the GCMCA's SJA, MAJCOM SJA, and AFLOA/JAJM by e-mail of the issuance of the subpoena and the exigent circumstances that precluded prior consultation. (T-1)

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

#### **11.4.8. Rates for Civilian Witnesses.**

11.4.8.1. Civilians Employed by the United States. When summoned as a witness, a civilian employed by the United States Government is paid as authorized by the *Joint Travel Regulations* or by the Federal Travel Regulation, 41 C.F.R. Subtitle F (for non-DoD civilian employees).

11.4.8.2. Civilians Not Employed by the United States. Pay fees and allowances authorized under Title 18 United States Code § 1821 (per diem, mileage, subsistence). See *Joint Travel Regulations*, Appendix E.

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

11.4.9.1. If a military witness files a voucher 30 or more days after the initial travel date, the travel voucher may be returned as "no order on file" and a letter from the witness's commander may be required to explain why the voucher was not filed in a timely manner.

11.4.9.2. If a civilian witness files a voucher 30 or more days after the initial travel date, the travel voucher may be returned as "no order on file" and a letter may be required to explain why the voucher was not filed in a timely manner.

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

11.4.10. **Processing Expert Fee Vouchers.** Use the Standard Form 1034, Public Voucher for Purchases and Services Other than Personal or Standard Form 1164, Claim for Reimbursement for Expenditures on Official Business. The SJA with administrative responsibility for the proceeding in which the expert witness testified ensures the expert witness prepares and submits the appropriate forms and supporting documents (e.g., receipts, fee schedule, etc.) to the servicing finance office. Centrally Funded Witness forms are sent to AFLOA/JAJM for processing. Before AFLOA/JAJM will pay a civilian expert witness, the SJA must certify the dates of attendance and any scheduled witness fees (expert testimony, inconvenience, etc.). See paragraph 11.2.3.2. and the template included on the Virtual Military Justice Deskbook as Template 1105.

## 11.5. Witness Production Issues.

11.5.1. **Foreign Area Clearance and Passport Applications.** Allow appropriate time for the processing of foreign area clearances when witnesses must travel to courts-martial convened outside the United States. DoD Directive 4500.54E, *DoD Foreign Clearance Program*. Ensure the prospective witness has a passport or applies for one. The responsible SJA may request the base nearest the requested witness process the passport application or the witness may personally process the passport application. The Department of State will normally process a passport application without the normal fee if the orders expressly provide for it. Contact the nearest passport office for further guidance.

11.5.2. **Air Force Office of Special Investigations.** Submit witness requests for special agents to the AFOSI detachment to which the agent is assigned. To submit a request for a deployed AFOSI agent, see paragraph 11.5.3.

11.5.2.1. Submit witness requests for threatened Airmen and confidential sources to the local AFOSI detachment. A threatened airman is a person against whom "threats of bodily harm or death" are made. The threats must be "of such severity that military and civilian authorities are unable to provide the family's continued safety." See AFI 36-2110, *Total Force Assignments*.

11.5.2.2. Only AFOSI may contact another installation to request threatened Airmen and confidential sources as witnesses.

11.5.3. **Deployed Witness.** Requests to return a deployed witness should be routed through the Combatant Command's service component's legal office prior to contacting the witness's deployed unit or making arrangements to return the witness from deployment. For example, for Air Force witnesses, AFCENT/JA will coordinate requests with Central Command. Additionally, contact AFLOA/JAJM in cases requiring the use of central witness funding.

11.5.4. **Escort or Attendant for an Active Duty Sexual Assault Victim.** A sexual assault victim as defined in DoD Directive 6495.01, *Sexual Assault Prevention and Response Program*, is authorized an escort or attendant when required to travel to testify or participate in proceedings (e.g., an Article 32, UCMJ, preliminary hearing; pretrial motion hearing; or court-martial) in

connection with the sexual assault. See *Joint Travel Regulations*, paragraph 7415-E. Funding for such travel is provided by the convening authority.

### ***Section 11C—Immunity***

#### **11.6. Grants of Immunity (R.C.M. 704, M.R.E. 301(d)).**

**11.6.1. General Provision.** A GCMCA possesses the authority to grant immunity to witnesses. The GCMCA may delegate the authority to grant immunity to subordinate SPCMCA. Any such delegation must be in writing, and the authorization may not be further delegated. (T-0) If the GCMCA delegates authority to grant immunity to the SPCMCA, the SPCMCA SJA must consult with the GCMCA SJA before requesting a grant of immunity from the SPCMCA. (T-1) All grants of immunity must be in writing and attached to the ROT. (T-1) Figure A8.1 is a sample grant of immunity and order to testify. Grants of immunity should include language stating the immunity grant takes effect on the date the witness receives a copy of it. When another GCMCA retains administrative control over the witness to be immunized, prior coordination with the retaining GCMCA or delegee, if applicable, is recommended.

**11.6.2. National Security Cases.** Process immunity requests for witnesses suspected of criminal activity involving national security according to paragraph 11.6.3, regardless of whether the witness is subject to the UCMJ. AFLOA/JAJM is responsible for coordinating such cases with the Department of Justice and other interested United States agencies. **Note:** Complete the additional reporting and processing requirements specified in Chapter 17 for national security cases independent of immunity authorization requests.

#### **11.6.3. Cases Involving the Department of Justice.**

**11.6.3.1. Persons Subject to the UCMJ.** If the Department of Justice has an interest in investigating and prosecuting a witness suspected of criminal activity, prepare the immunity request according to paragraph 11.6.3.2, regardless of whether the witness is subject to the UCMJ. (T-0)

**11.6.3.2. Persons Not Subject to the UCMJ.** The GCMCA or delegee, if applicable, must indicate the intent to approve a request for immunity for persons not subject to the UCMJ prior to submission of the immunity request to the Department of Justice. (T-0) A written memorandum from the GCMCA or delegee is then forwarded to JAJM, who will staff the package to the Department of Justice. The Department of Justice (or other authority designated under 18 U.S.C. § 6004) will then either authorize the GCMCA to offer immunity to the person not subject to the UCMJ or will disapprove the request. If authorized, the GCMCA may then offer the person not subject to the UCMJ immunity. Prepare requests for Department of Justice authorization in accordance with paragraph 11.6.4. (T-1)

#### **11.6.4. Requests for Department of Justice Authorization.**

**11.6.4.1.** In cases requiring Department of Justice authorization, the SJA whose office is prosecuting the court-martial initiates the request for Department of Justice authorization. When the GCMCA, or delegee, indicates in a memorandum the intent to grant immunity, the GCMCA SJA or SPCMCA SJA, if the authority to grant immunity has been delegated to the SPCMCA, forwards the request with written endorsement, by e-mail, directly to

AFLOA/JAJM, with information copies to the MAJCOM SJA. The SJA should consult with AFLOA/JAJM prior to forwarding the request as the Department of Justice requires that requests be forwarded in a specific format. Requests are forwarded no less than 30 days in advance of the date the witness is expected to testify. SJAs should consider requesting a delay pursuant to R.C.M. 707(c)(1) while authorization is pending.

11.6.4.2. The written request should include the following information:

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

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

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

11.6.4.2.4. The witness's military status and organization, if any;

11.6.4.2.5. Whether the defense or prosecution requested the immunity;

11.6.4.2.6. Name, grade, organization, and mailing address of the GCMCA or delegee who will grant the immunity after receiving Department of Justice authorization, and a statement that the GCMCA or delegee supports the immunity request. **Note:** Immunity is not actually granted until approved by the GCMCA or delegee after receiving Department of Justice authorization;

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

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

11.6.4.2.9. A summary of the witness's expected testimony;

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

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

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

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

## Chapter 12

### TRIAL MATTERS (POST REFERRAL)

#### *Section 12A—Rules of Court-Martial Practice (R.C.M. 108)*

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

#### *Section 12B—Changes to and Withdrawal of Charges or Specifications*

**12.2. Changes to Charges or Specifications.** Minor and major changes may be made to charges or specifications after referral as authorized and explained in R.C.M. 603. Changes should be made by lining through the material while ensuring the form remains legible. All changes and modifications should be dated and initialed by the trial counsel. Major changes are made only with the permission of the convening authority. This permission does not need to be in writing. Do not use white-out tape or liquid for any changes to the charge sheet.

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

**12.2.2. Major Changes.** Major changes or amendments to a referred charge or specification may not be made over the objection of the accused unless the charge or specification affected are referred anew. A new referral will also be necessary and, in the case of a GCM, a new Article 32 preliminary hearing may be required if the charge or specification, as changed, was not covered in the prior preliminary hearing. See R.C.M. 603(d).

12.2.2.1. If the accused objects to a major change to a referred charge or specification, the SJA or trial counsel will ensure the objected to charge(s) and specification(s) are dismissed. In the event there are charges remaining, the objected to charges may be re-referred as additional charges. In the event all charge(s) and specification(s) are dismissed, a new preferral and referral of the changed or amended charge or specification must be accomplished. (T-0)

12.2.2.2. Even if an accused does not object to a major change or amendment to a referred charge or specification, it may be prudent to prefer anew. New preferral and referral may avoid a jurisdictional issue as to whether the accused was improperly tried for a charge never referred to trial by the convening authority in an actual order or functional equivalent. *United States v. Wilkins*, 29 M.J. 421 (C.M.A. 1990).

**12.3. Withdrawal of Charges or Specifications.** Before findings are announced, a convening authority may cause any charges or specifications to be withdrawn from a court-martial. R.C.M. 604. Withdrawal of charges or specifications extinguishes the jurisdiction of a court-martial over them, unlike a dismissal that extinguishes the charges themselves. Withdrawn charges or specifications should be disposed of promptly (e.g., dismissed, re-referred to another court-martial,

or forwarded to another convening authority for disposition). An officer authorized to sign referrals or trial counsel may withdraw charges or specifications at the direction of the convening authority.

**12.3.1. Complete Withdrawal.** To withdraw all charges and specifications from a court-martial, trial counsel should line through the referral section (Part V) of the charge sheet, specify the disposition and the date, and initial the action taken (e.g., “Withdrawn on 15 Sep 11, [initials]”). If the convening authority or a superior competent authority directs both withdrawal and dismissal of all charges and specifications, reflect accordingly (e.g., “Withdrawn and Dismissed on 15 Sep 11, [initials]”).

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

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

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

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

12.3.2.2.2. If the military judge does not direct renumbering, the remaining charges or specifications should not be renumbered and the military judge instructs the members that they should not draw any inference from the numbering of the charges and/or specifications.

12.3.2.3. When charges or specifications are withdrawn after arraignment and after they have come to the attention of court members (or the military judge sitting alone), the remaining charges or specifications ordinarily are not renumbered. The military judge instructs the members that the withdrawn charges or specifications should not be considered for any reason.

### ***Section 12C—Conditional Guilty Plea***

**12.4. Conditional Guilty Plea.** R.C.M. 910(a)(2); *United States v. Monroe*, 50 M.J. 550 (A.F.C.C.A. 1999); and *United States v. Phillips*, 32 M.J. 955 (A.F.C.M.R. 1991). When approving a guilty plea conditioned on preserving review of an adverse determination of a pretrial motion, the military judge should make the following findings on the record: (1) the offer is in

writing and clearly details the motion that the accused wishes to preserve on appeal; (2) the government's consent is in writing and signed by an official authorized to consent; (3) the particular motion was fully litigated before the military judge; and (4) the motion is case dispositive. The SJA, person "Acting as the Staff Judge Advocate" to the convening authority, or the trial counsel at the direction of the SJA is authorized to consent for the government to the accused entering a conditional guilty plea.

*Section 12D—Pretrial Agreements and Plea Agreements (R.C.M. 705, R.C.M. 910)*

**12.5. Pretrial Agreements and Plea Agreements.** The term "pretrial agreement" refers to the framework prior to the Military Justice Act of 2016, and the term "plea agreement" refers to the framework under the Military Justice Act of 2016. Pretrial and plea agreements have different sets of permissible terms and procedures. Practitioners must apply the correct framework to their case as outlined below. (T-0)

**12.5.1. Pretrial Agreements.** Permissible terms of pretrial agreements are governed by Article 60, UCMJ, R.C.M. 705 and R.C.M. 910 in the 2019 MCM, along with relevant case law. Pretrial agreements apply to cases where any of the charged offenses occurred prior to 1 January 2019, regardless of when the case was referred to trial. However, if any charged offense in a case occurred prior to 1 January 2019 and an accused wishes to take advantage of the Military Justice Act of 2016 sentencing framework, an accused must enter into a plea agreement, not a pretrial agreement. (T-0) A sample pretrial agreement is available on the Virtual Military Justice Deskbook as Template 1201.

**12.5.2. Plea Agreements.** Plea agreements are governed by the versions of Article 53a, UCMJ, R.C.M. 705 and R.C.M. 910 that are in effect on 1 January 2019, and relevant case law. Plea agreements apply to cases where all of the charged offenses occurred on or after 1 January 2019, and to cases with offenses occurring both before 1 January 2019 and on or after 1 January 2019 (straddling cases) if the accused opts in to the Military Justice Act framework as described in paragraph 12.5.3.1. A sample plea agreement is available on the Virtual Military Justice Deskbook as Template 1202.

**12.5.3. Straddling Cases.** In cases with offenses occurring both before 1 January 2019 and offenses occurring on or after 1 January 2019, the following options are available:

12.5.3.1. The accused can opt-in to the Military Justice Act of 2016 sentencing rules for all offenses. This includes opting into the Military Justice Act of 2016 plea agreement framework to cover all of the offenses. If the accused does not opt-in to the Military Justice Act of 2016 sentencing rules in a straddling case, then the parties may not enter into a plea agreement under Article 53a. **Note:** If all offenses occurred before 1 January 2019, then the accused may not opt-in to the Military Justice Act plea agreement framework regardless of when the case is referred.

12.5.3.2. The convening authority can refer the charges to two different proceedings—one proceeding for the offenses committed prior to 1 January 2019 (applying the pretrial agreement framework), and another proceeding for offenses committed on or after 1 January 2019 (applying the Military Justice Act of 2016 plea agreement framework).

12.5.3.3. The convening authority may not enter into a pre-Military Justice Act of 2016 pretrial agreement in cases where offenses occurred both before 1 January 2019 and on or

after 1 January 2019. (T-1) **Note:** Failure to abide by this rule may result in a scenario where the convening authority is unable to take action on a sentence to make it conform to the terms of a pretrial agreement.

**12.6. Policy Considerations.** Convening Authorities and SJAs should exercise caution when considering a pretrial or plea agreement.

12.6.1. SJAs have an obligation to preserve a military justice system that promotes good order and discipline and is fair, timely, and transparent to the military community and the public at large. The advantages to both the government and the accused should clearly outweigh the disadvantageous features of a pretrial or plea agreement. SJAs should be able to articulate to the convening authority the benefits to the government and the accused as well as the costs to the military justice system of entering an agreement in order to properly balance the considerations. Such agreements should not be used to mask case-processing inefficiencies.

12.6.2. The use of a pretrial or plea agreement may be advisable in the following situations:

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

12.6.2.2. Cases where sensational information involving persons other than the accused can be avoided through a negotiated plea.

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

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

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

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

12.6.4. Pretrial or plea agreements that would include a provision for waiver of mandatory forfeitures should be carefully scrutinized to ensure the accused's expectations will be met. For example, when an accused enters a no-pay status upon the expiration of his or her term of service, there will be no pay available to forfeit, and therefore, no amount to waive for the benefit of dependents. An agreement predicated upon terms including a waiver that is thwarted due to no pay entitlement may render pleas by an accused improvident and result in reversal of a conviction. *United States v. Mitchell*, 58 M.J. 251 (C.A.A.F. 2003); *United States v. Perron*, 58 M.J. 78 (C.A.A.F. 2003).

12.6.5. **Defense Offer.** The SJA, trial counsel and counsel for the accused may clarify the terms of a defense plea agreement offer to obtain sufficient information to enable the convening authority to decide whether to accept or reject the offer, or request permission to negotiate in accordance with paragraph 12.6.

## **12.7. Pretrial and Plea Agreements in National Security and Related Cases.**

12.7.1. The SJA must obtain permission from the Chief of the Military Justice Division (AFLOA/JAJM) to enter into pretrial or plea agreement discussions in cases involving an offense (including attempt, conspiracy, and solicitation to commit such an offense) of espionage, subversion, aiding the enemy, sabotage, spying, or violation of punitive rules or regulations and criminal statutes concerning classified information or the foreign relations of the United States. (T-1) AFLOA/JAJM ensures coordination with the Department of Justice according to DoD Instruction 5525.07. AFLOA/JAJM permission is not required for the convening authority to reject a pretrial or plea agreement offer.

**12.7.2. Request for Permission to Negotiate.** The GCMCA personally or through the SJA requests by the most expeditious means available permission from AFLOA/JAJM to negotiate a pretrial or plea agreement. The following information should be included in the request:

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

12.7.2.2. The offenses charged;

12.7.2.3. A summary of evidence against the accused;

12.7.2.4. Terms of the accused's pretrial or plea agreement offer; and,

12.7.2.5. Factors warranting a pretrial or plea agreement.

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

**12.8. Authority to Approve a Pretrial or Plea Agreement.** The decision to accept or reject a pretrial or plea agreement offer submitted by an accused is within the sole discretion of the convening authority that referred the case to trial. *United States v. Caruth*, 6 M.J. 184 (C.M.A. 1979). The accused is entitled to have the convening authority personally act upon the offer before trial. *United States v. Upchurch*, 23 M.J. 501 (A.F.C.M.R. 1986). A convening authority, through the servicing SJA, must provide the victim(s) an opportunity to submit views before accepting the plea agreement offer. (T-0) See R.C.M. 705(e)(3)(B) and paragraph 16.16.2.5.

**12.9. Pretrial and Plea Agreement Terms.** Plea agreements as defined by the Military Justice Act of 2016 and pretrial agreements utilized in prior versions of the MCM have different permissible terms. See paragraph 12.5 to determine the applicable framework for a particular case.

**12.9.1. Pretrial Agreements.** For cases in which all offenses occurred prior to 1 January 2019, R.C.M. 705(b)-(c) in the 2016 MCM discusses permissible terms and conditions for pretrial agreements.

**12.9.2. Plea Agreements.** For cases in which all offenses occurred on or after 1 January 2019, R.C.M. 705(b)-(d) in the 2019 MCM discusses permissible terms and conditions for plea agreements.

**12.9.2.1. Accused Opt-in to the Military Justice Act of 2016 Sentencing Rules.** In straddling cases, the accused can agree to opt in to the Military Justice Act of 2016 sentencing rules as a term of the plea agreement. See R.C.M. 902(b) and paragraph 12.5.3.

12.9.2.2. **Sentencing Range.** The parties can agree to a limit on the maximum and minimum amount of punishment. See R.C.M. 705(d)(1). An agreement including an exact agreed upon term of confinement (e.g., no more than one year confinement and no less than one year confinement) is prohibited. **Note:** R.C.M. 705 prohibits disclosure of the existence of a plea agreement to the members. In the event of members sentencing, the military judge provides appropriate instruction on any sentencing limitations that exist in a case.

12.9.2.3. **Segmented Sentencing by Military Judge.** Military judges adjudge confinement, if any, and fines, if any, for each enumerated offense of which the accused is found guilty. See R.C.M. 1002(d)(2). A plea agreement that requires sentencing by a military judge and includes sentencing limitations must specify any agreed upon limitations regarding confinement and/or fines for each enumerated offense, if any. (T-1) See paragraph 12.9.2.1. The plea agreement may also specify whether any terms of confinement are to be served concurrently or consecutively. See R.C.M. 1002(d)(2)(B).

12.9.2.4. **Unitary Sentencing by Members.** Court-martial members adjudge a single sentence for all offenses of which an accused is found guilty. See R.C.M. 1002(d)(1). Any plea agreement that permits sentencing by members and includes sentencing limitations must specify a single maximum, minimum, or maximum and minimum punishment for the offenses for which the accused is pleading guilty.

## 12.10. Pretrial Agreement and Plea Agreement Format.

12.10.1. Pretrial and plea agreements must be in writing and signed by the accused and counsel. (T-1) When a convening authority accepts a plea agreement, the convening authority personally signs it, unless the convening authority previously authorized another individual such as the SJA or trial counsel to sign. If the SJA or trial counsel signs the plea agreement, an authority line such as “FOR THE COMMANDER” should accompany the signature. Oral plea agreements are prohibited, as are promises to intervene on the accused’s behalf in any manner in exchange for a guilty plea. (T-0) The SJA or designee ensures all documentation pertaining to a plea agreement is included in the ROT.

12.10.1.1. A sample pretrial agreement is available on the Virtual Military Justice Deskbook as Template 1201.

12.10.1.2. A sample plea agreement is available on the Virtual Military Justice Deskbook as Template 1202.

12.10.2. **Changes to Pretrial or Plea Agreements.** If the negotiation results in an agreement for different relief for the accused than that included in the original offer, the SJA or designee should prepare a different offer reflecting the agreed upon terms. If another offer is prepared, the SJA or designee ensures the original offer is attached to the ROT as an attachment, if a GCM or SPCM, or an allied paper if a SCM.

12.10.2.1. Plea agreements do not utilize an Appendix A as all terms, to include any that affect sentencing, are contained within the plea agreement itself. However, for pretrial agreements, place any agreed-upon sentence limitations in an Appendix A to the pretrial agreement.

12.10.3. **Stipulations of Fact.** In order to make members and the military judge, when sitting alone, sufficiently aware of the circumstances of the offenses with which an accused is charged, the convening authority may require the accused and counsel to enter into stipulations of fact or testimony as a part of the pretrial or plea agreement. See R.C.M. 705(c)(2)(A).

**12.11. Withdrawal from Pretrial or Plea Agreements.** Either party may withdraw from a pretrial agreement as provided in R.C.M. 705(d)(4) or from a plea agreement as provided in R.C.M. 705(e)(4).

12.11.1. Withdrawals by the convening authority should be in writing and signed by the convening authority. The SJA or designee gives a copy of any withdrawal to the accused and defense counsel.

12.11.2. Withdrawals by the accused should be in writing and given to the SJA or trial counsel.

12.11.3. The SJA or designee ensures the pretrial or plea agreement and the withdrawal, by either side, is included in the ROT or, if not in writing, is discussed on the record. (T-1) See AFMAN 51-203.

12.11.4. **Accused's Failure to Satisfy Pretrial or Plea Agreement Condition.** If the accused does not fulfill a promise to satisfy certain conditions before action or during any period of suspension of the sentence as agreed to in the pretrial or plea agreement, the convening authority may be relieved of the obligation to fulfill the agreement, provided that the accused's promise was included in the agreement and the hearing requirements in R.C.M. 1108 (plea agreements) or 1109 (pretrial agreements), whichever is applicable, have been satisfied. See R.C.M. 705(c)(2); *United States v. Smith*, 46 M.J. 263 (C.A.A.F. 1997); *United States v. Hunter*, 65 M.J. 399 (C.A.A.F. 2008); *United States v. Shook*, 70 M.J. 578 (A.F.C.C.A. 2011).

12.11.5. **Convening Authority's Failure to Satisfy Pretrial or Plea Agreement Condition.** Pretrial or plea agreements that would include a provision for waiver of mandatory forfeitures should be carefully scrutinized to ensure the accused's expectations will be met. See paragraphs 12.6.4 and 13.9 and Section 13E.

**12.12. In-Court Inquiry.** Trial counsel should notify the military judge of a pretrial or plea agreement before arraignment. The military judge must question the accused prior to accepting the plea to determine whether the accused understands and agrees to the meaning and effect of each pretrial or plea agreement condition and the agreed upon sentence limitations. (T-1)

12.12.1. Where there is a pretrial agreement in a trial by military judge alone, the military judge should not inquire into the actual sentence limitations specified in the pretrial agreement until after sentence announcement.

12.12.2. Where there is a plea agreement, the sentence limitations should be inquired into by the military judge and included within the plea agreement. R.C.M. 910(f)(3).

12.12.3. Pretrial or plea agreements that are subject to in-court inquiry, whether or not accepted by the military judge, are appellate exhibits in the ROT. R.C.M. 705(f) discusses nondisclosure requirements for plea agreements. R.C.M. 705(e) (MCM 2016 ed.) discusses nondisclosure requirements for pretrial agreements.

### *Section 12E—Trial by Members*

**12.13. Impanelment.** For all cases referred on or after 1 January 2019, there is a fixed-panel requirement. Capital GCMs require 12 members; non-capital GCMs require eight members; and SPCMs require four members. (T-0) See R.C.M. 501.

12.13.1. After the exercise of challenges for cause, members are assigned random numbers in accordance with procedures prescribed by AF/JAT. See R.C.M. 912(f). After the assignment of numbers, the parties may exercise peremptory challenges. Members are then impaneled in accordance with R.C.M. 912A. Alternates, if required or authorized by the convening authority, are also seated in accordance with R.C.M. 912A.

12.13.2. Under the impanelment process prescribed in R.C.M. 912 and 912A, it is possible that a panel for an enlisted accused will be comprised entirely of enlisted members.

### *Section 12F—Trial by Military Judge Alone at the Request of the Accused*

**12.14. Requesting Trial by Military Judge Alone (R.C.M. 903).** To request a trial by military judge alone, the accused should use the DD Form 1722, *Request for Trial Before Military Judge Alone*. If the DD Form 1722 is used, the military judge admits it as an appellate exhibit. See AFMAN 51-203.

### *Section 12G—Findings and Sentencing Worksheets*

**12.15. Use of Findings and Sentencing Worksheets.** In cases in which the accused is sentenced by members, the following forms may be used to document court-martial findings and sentences in the format required by the Manual for Courts-Martial:

12.15.1. AF Form 1092, *Court-Martial Findings Worksheet*. This form should be tailored to document court-martial findings in all cases in which the finder of fact consists of a panel of members. Where a specification against a service member alleges wrongful acts on “divers occasions,” trial counsel should request that members be instructed that any findings made by exceptions and substitutions that remove the “divers occasions” language should clearly reflect the specific instance of conduct upon which the modified findings are based. Such changes can be accomplished through reference in the substituted language to a relevant date or other facts in evidence that put the accused and the reviewing authorities on notice of what conduct served as the basis for the finding. See *United States v. Walters*, 58 M.J. 391 (C.A.A.F. 2003).

12.15.2. AF Form 1093, *Sentence Worksheet* (special court-martial). This form should be used in all special courts-martial in which the accused is sentenced by members.

12.15.3. AF Form 835, *Sentence Worksheet* (general court-martial). This form should be used in all general courts-martial in which the accused is sentenced by members.

12.15.4. In cases adjudicated pursuant to the Military Justice Act of 2016 sentencing procedures, the Statement of Trial Results also must be signed by the military judge at the conclusion of trial. (T-0) This document takes the place of the Report of Result of Trial. A template Statement of Trial Results can be found at Figure A9.1 See also paragraph 13.3.

**Section 12H—Audiovisual and Teleconferencing Technology**

**12.16. Use of Audiovisual and Teleconferencing Technology.** The use of audiovisual and teleconferencing technology is authorized by Secretary of the Air Force to the extent and under the conditions allowed for in R.C.M. 804(b), 805(a), 805(c), 914A, and 914B.

**Section 12I—Evidentiary Matters**

**12.17. Confidential Drug or Alcohol Abuse Treatment Records.** Federal statutes and regulations restrict the disclosure of records of the identity, diagnosis, prognosis, or treatment of any patient maintained in connection with a Federal drug and alcohol abuse education, prevention, training, treatment, rehabilitation, or research program. Refer to Title 42 United States Code § 290dd-2 and 42 C.F.R. § 2.1 et seq.

12.17.1. Although the interchange of records entirely within the Armed Forces is exempt from the prohibitions in paragraph 12.17, the DoD adopted the standards as a matter of policy to the extent it provides such records may not be used to initiate or substantiate any criminal charges against the rehabilitant, except as authorized by a court order issued under 42 U.S.C. § 290dd-2 and as allowed in AFI 90-507, *Military Drug Demand Reduction Program* (implementing DoDD 1010.01, *Military Personnel Drug Abuse Testing Program*).

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

12.17.2.1. As evidence for the defense before findings.

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

12.17.2.3. After trial in support of clemency or clemency petitions to TJAG or the Secretary of the Air Force.

12.17.3. 42 C.F.R. § 2.31 outlines the procedures to be followed in authorizing release of the records by the accused-patient. Discussion of the records in open court should be avoided to the extent feasible.

12.17.4. Only those portions of the records necessary and relevant should be released. An accused cannot selectively authorize disclosure of the records to mislead the court or other parties to the trial (e.g., disclosing favorable early records, but not later ones indicating regression). If there is reason to believe an accused is selectively authorizing disclosure, the matter may be resolved among counsel or by an in camera review of the records by the military judge.

12.17.5. Drug and alcohol abuse records may be disclosed at trial without the consent of the accused to rebut or impeach evidence presented by the accused. See *United States v. Evans*, 20 M.J. 504 (A.C.M.R. 1985); *United States v. Fenyo*, 6 M.J. 933 (A.C.M.R. 1979), *pet. denied*, 7 M.J. 161 (C.M.A. 1979).

**12.18. Psychotherapist-Patient Privilege (M.R.E. 513).** When psychotherapist-patient communications are involved, counsel should consult the psychotherapist-patient privilege under M.R.E. 513 and, when applicable, the evidentiary protections and limitations extended to an accused entered the Limited Privilege Suicide Prevention Program under AFI 44-172, *Mental Health*.

12.18.1. The M.R.E. 513 privilege does not apply if access to the confidential communications between a military member and a psychotherapist is sought for a non-UCMJ-related purpose. In these situations, confidential communications should be disclosed to persons or agencies with a proper and legitimate need for the information and authorized by law or regulation to receive them. When UCMJ proceedings are pending against the member whose confidential communications are being sought for a non-UCMJ-related purpose, no privilege applies for the non-UCMJ-related purpose.

12.18.2. Disputes between a requestor and a psychotherapist or patient may arise over the disclosure of confidential communications. In such circumstances, release of mental health records, like all protected health information, is made in accordance with DoD 6025.18-R, *Department of Defense Health Information Privacy Regulation*, and other applicable law. The SJA in possession of any crime victim's mental health records related to a UCMJ case guards against improper disclosures to investigators and trial counsel that may "poison the case" with inadmissible evidence.

**12.19. Victim Advocate-Victim Privilege (M.R.E. 514).** A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made between the victim and a victim advocate, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or supportive assistance to the victim. See M.R.E. 514; see also DoDD 6495.01, *Sexual Assault Prevention and Response (SAPR) Program*, and AFD 90-60.

#### **12.20. Restricted and Unrestricted Reports of Sexual Assault.**

12.20.1. Restricted Reporting. Restricted reporting allows a sexual assault victim to confidentially disclose the details of the assault to specified individuals and receive medical treatment and counseling without triggering the official investigative process. In cases where a victim elects restricted reporting, providers authorized to receive such reports under AFI 90-6001, *Sexual Assault Prevention and Response Program* or DoDD 6495.01, may not disclose covered communications to law enforcement or command authorities, either within or outside the DoD, except as provided by the DoD Instruction, Air Force policy or the law. (T-0) A sexual assault victim may elect to convert a restricted report to an unrestricted report at any time.

12.20.2. The SARC, assigned Victim Advocate, and health care providers must consult with the servicing legal office, in the same manner as other recipients of privileged information, to determine if an exception applies. (T-1) Until those determinations are made, only non-identifying information should be disclosed. When there is uncertainty or disagreement on whether an exception applies, the matter is resolved in accordance with AFI 90-6001, *Sexual Assault Prevention and Response Program*, Chapter 3.

12.20.3. Unrestricted Reporting. Any report of a sexual assault made through normal reporting channels, including the victim's chain of command, civilian law enforcement, and AFOSI or other criminal investigative organization is considered an unrestricted report.

#### **Section 12J—Contempt Proceedings (R.C.M. 809; Article 48, UCMJ)**

**12.21. Contempt Defined.** Any person who uses any menacing word, sign or gesture in the presence of the judicial officer during the proceeding; disturbs the proceeding by any riot or

disorder; or willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding may be punished for contempt. See Article 48(a).

**12.22. Punishment Authority.** The following judicial officers have the authority to punish a person for contempt: a judge of the Court of Appeals of the Armed Forces or Air Force Court of Criminal Appeals, military trial judges detailed to a court-martial or any other proceeding under the UCMJ, or the president of a court of inquiry. See Article 48(b), UCMJ.

**12.23. Contempt Punishment.** The maximum punishment for contempt is confinement for 30 days, a fine of \$1,000 or both. Article 48(b).

12.23.1. Military members may not be placed in confinement in immediate association with enemy prisoners or foreign nationals detained under the law of war who are not otherwise members of the armed forces. (T-0)

12.23.2. A sentence to confinement begins when announced by the judicial officer unless the person held in contempt notifies the judicial officer of an intent to file an appeal, and the judicial officer, in the exercise of discretion, defers the sentence pending action by the Air Force Court of Criminal Appeals. See R.C.M. 809(e)(4).

12.23.3. If issued by a court of inquiry, a fine does not become effective until approved by the convening authority.

**12.24. Process.** The process for imposition of punishment for contempt varies based on whether it was directly witnessed by the judicial officer authorized to impose punishment. See R.C.M. 809(b).

12.24.1. If conduct constituting contempt is directly witnessed by the military judge or judicial officer during the proceeding, the judicial officer may immediately punish the offender for contempt. The judicial officer must ensure that the record of trial includes an accurate description of the misconduct that was witnessed by the judicial officer during the proceeding. (T-0) See R.C.M. 809(b)(1).

12.24.2. If conduct allegedly constituting contempt is not directly witnessed by the judicial officer, the alleged offender must be brought before the judicial officer in a hearing pursuant to Article 39(a), UCMJ. (T-0) See R.C.M. 809(b)(2). The alleged offender must be informed orally or in writing of the alleged contempt and of the right to be represented by counsel. (T-0) The alleged offender must be afforded a reasonable opportunity to present evidence, including witnesses. (T-0) See R.C.M. 809(c).

12.24.3. To punish the alleged offender, the contempt must be proven beyond a reasonable doubt. (T-0) See R.C.M. 809(c).

12.24.4. The offender must be notified in writing by the judicial officer of the holding and sentence, if any, and the applicable procedures and regulations concerning execution and review of the contempt punishment. (T-0) The reviewing officer must notify the person held in contempt of the action of the reviewing authority. (T-0) See R.C.M. 809(f).

12.24.5. Contempt proceedings may occur at any time during the court-martial or other proceeding under the UCMJ, at the discretion of the judicial officer. If during a court of inquiry, the judicial officer must consult with the assigned legal advisor or judge advocate before imposing punishment for contempt. (T-0) See R.C.M. 809(c).

**12.25. Record.** A record of the contempt proceedings must be included as part of the record. (T-0) If the offender was held in contempt, a separate record of the contempt proceedings must be prepared in accordance with AFMAN 51-203 and forwarded for review. (T-1)

12.25.1. If a person was punished for contempt as part of a court of inquiry, the record must be forwarded to the convening authority for review. (T-0) The convening authority must approve or disapprove of the contempt finding and all or part of the sentence. (T-0) The contempt punishment is not subject to further review.

12.25.2. If a person was punished for contempt by a military judge, the alleged offender may elect to file an appeal to the Air Force Court of Criminal Appeals, in accordance with the *United States Air Force Court of Criminal Appeals Rules of Practice and Procedure*. The Air Force Court of Criminal Appeals may set aside the findings and/or sentence, in whole or in part.

### **Section 12K—Pre-sentencing Matters (R.C.M. 1001)**

**12.26. Personnel Records of the Accused.** “Personnel records of the accused,” as referenced in R.C.M. 1001, includes those records made or maintained in accordance with Air Force directives that reflect the past military efficiency, conduct, performance, and history of the accused, as well as any evidence of disciplinary actions, including punishment under Article 15, UCMJ, and previous court-martial convictions.

12.26.1. **Personnel Information File.** Relevant material contained in an accused’s unit personnel information file may be admitted pursuant to R.C.M. 1001(b) if:

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

12.26.1.2. There is some evidence that:

12.26.1.2.1. The accused received a copy of the correspondence (a document bearing the signature of the accused, or a witnessed statement regarding the accused’s refusal to sign) and had the opportunity to respond to the allegation; and,

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

12.26.1.3. Relevant material contained in an accused’s personnel information file that does not comply with paragraphs 12.26.1.2.1. and 12.26.1.2.2. may be admitted under R.C.M. 1001 for rebuttal purposes if, in the military judge’s discretion, other competent means of authenticating the material have been presented to the court. *United States v. Strong*, 17 M.J. 263 (C.M.A. 1984).

12.26.2. **Nonjudicial Punishment.** Records of nonjudicial punishment under Article 15, UCMJ, from any file in which the record is properly maintained by regulation, may be admitted if not over five years old on the date the charges were referred. This time period is measured from the date the commander notified the accused of the commander’s intent to impose nonjudicial punishment. Periods in which the accused was absent without authority are excluded in computing the five-year period. If the personnel information file contains an Air Force Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, that meets this five-year requirement, a copy of the underlying record imposing the nonjudicial

punishment is also admissible, regardless of whether the original Article 15 action was served on the accused within this time period. Nothing in this paragraph precludes use of Article 15 actions over five years old as rebuttal evidence pursuant to R.C.M. 1001.

**12.26.3. Performance Reports.** Trial counsel offers all enlisted or officer performance reports maintained according to departmental directives, as evidence of the character of the accused's prior service. See R.C.M. 1001(b)(2); *United States v. Wingart*, 27 M.J. 128 (C.M.A. 1988).

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

**12.27. Hate Crimes.** Trial counsel may present evidence in aggravation that the accused intentionally selected a victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person. See R.C.M. 1001(b)(4).

#### ***Section 12L—Officer Resignation in Lieu of Trial by Court Martial***

**12.28. General.** Officers (including United States Air Force Academy cadets) may submit a request to resign in lieu of trial by court-martial with the understanding that the Secretary of the Air Force may direct a discharge under other than honorable conditions when their conduct makes them subject to trial by court-martial. A resignation in lieu of trial by court-martial is a type of resignation for the good of the service and addressed in AFI 36-3207, *Separating Commissioned Officers*, Section 2C. A template is located on the Virtual Military Justice Deskbook as Template 1203.

**12.29. Considerations.** Commanders should not recommend that the Secretary of the Air Force accept a resignation in lieu of trial by court-martial for expediency when the alleged offense(s) would be more appropriately resolved at trial. Before making any recommendation, reviewing commanders at all levels should consider the best interests of the Air Force and the effect a resignation would have on good order and discipline. The time and expense of a court-martial is rarely the deciding factor. To permit the full development of the facts of the case and appropriate consideration of dispositions other than trial, officers are encouraged not to submit a resignation in lieu of trial by court-martial request before charges are referred to trial by court-martial. Any reviewing commander may deny a resignation in lieu of trial by court-martial request submitted prior to the referral of charges. If denied, the officer may resubmit the request after referral of charges. If a request is submitted after referral and prior to arraignment, the resignation in lieu of trial by court-martial request may only be acted upon by the Secretary of the Air Force. A resignation in lieu of trial by court-martial request may not be submitted post-arraignment. (T-1)

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

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

12.30.2. The Air Force does not pay for or reimburse officers for civilian defense counsel.

**12.31. Recoupment.** Officers should understand that if the Secretary of the Air Force accepts their resignation, they may be required to reimburse a portion of advanced education assistance, special pay, or bonuses received if they leave active duty before completing the period of active duty they agreed to serve. AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, provides more detailed recoupment guidance. Officers who are subject to recoupment of education assistance, special pay, or bonuses must sign a Recoupment Statement and attach it to their request. (T-1) A template is located on the Virtual Military Justice Deskbook as Template 1205.

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

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

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

12.32.1.2. Recommendations on disposition of the resignation in lieu of trial from each commander required to review the resignation in lieu of trial by court-martial. See paragraph 12.29. A template is located on the Virtual Military Justice Deskbook as Template 1204.

12.32.1.3. A comprehensive legal review from the wing-level (or equivalent) legal office supporting the initial reviewing commander. See paragraph 12.29.

12.32.1.4. Views of any victim(s) on whether the resignation in lieu of trial by court-martial should be approved. A victim is defined as an individual who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense.

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

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

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

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

**12.32.2. Review and Recommendation.** The wing commander or equivalent authority reviews and makes a recommendation and forwards the package to the GCMCA (or to the SPCMCA if the wing commander or equivalent authority does not exercise special court-

martial convening authority). A template is located on the Virtual Military Justice Deskbook as Template 1204.

12.32.2.1. The GCMCA reviews and makes a recommendation and forwards the package to the requesting officer's MAJCOM commander.

12.32.2.2. The MAJCOM commander (or MAJCOM vice commander, if delegated) reviews and makes a recommendation and forwards the package to AFLOA/JAJM with an information copy of the officer's request to HQ AFPC's Retirements and Separations Section (HQ AFPC/DP2STM).

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

12.32.3. **Legal Review.** The required legal review is done by the wing-level legal office supporting the initial reviewing commander and should address the views of any victims on whether the resignation in lieu of trial by court-martial should be approved. See paragraph 12.32.1.4. Written legal reviews by legal offices at intermediate levels of command are not required unless the intermediate legal office or reviewing commander non-concurs with the required legal review or recommendation of a subordinate reviewing commander. Otherwise, written coordination indicating concurrence is all that is required unless the relevant MAJCOM legal office requires otherwise.

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

12.32.5. Headquarters AFPC/DP2STM schedules the officer's date of separation as soon as possible upon receiving notification from AFLOA/JAJM that a resignation in lieu of trial by court-martial request has been approved.

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

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

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

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

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

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

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

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

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

12.32.9.1. When forwarding a withdrawal request, the SJA or designee includes the following:

12.32.9.1.1. The officer's request to withdraw and any additional documents submitted by the officer;

- 12.32.9.1.2. Recommendations on disposition of the withdrawal request from each commander required to review the original resignation in lieu of trial by court-martial request;
- 12.32.9.1.3. A legal review from the wing-level legal office (or equivalent) of the withdrawal request;
- 12.32.9.1.4. Views of any victim(s) named in specifications for consideration by the court-martial on whether the withdrawal request should be approved;
- 12.32.9.1.5. A copy of the original resignation in lieu of trial by court-martial request and additional documents; reviewing commanders' recommendations; the wing-level legal review; and views of any victim(s).
- 12.32.9.2. The MAJCOM legal office provides an informational copy of the request to withdraw and related documents to Headquarters AFPC/DP2STM.
- 12.32.9.3. AFLOA/JAJM writes a comprehensive legal review and processes the request to withdraw for Headquarters Air Force review and action by the Secretary of the Air Force.
- 12.32.9.3.1. If the withdrawal request is received by AFLOA/JAJM prior to AFLOA/JAJM forwarding the request for review and action by the Secretary of the Air Force, AFLOA/JAJM will not forward either the request for resignation in lieu of court-martial or the withdrawal request for review and action by the Secretary of the Air Force. AFLOA/JAJM will return the request for resignation in lieu of trial by court-martial and the withdrawal request to the wing-level legal office.
- 12.32.9.3.2. If the withdrawal request is received by AFLOA/JAJM after AFLOA/JAJM forwarded the request for review and action by the Secretary of the Air Force, AFLOA/JAJM will forward the withdrawal request for review and action by the Secretary of the Air Force.
- 12.32.10. Resignation in Lieu of Trial by Court-Martial Processing Time Management. Expedient processing of resignations in lieu of court-martial is essential to preventing judicial inefficiency, unnecessary trial delay, wasted resources, disruptions for victims and witnesses, prolonged uncertainty and anxiety for the accused, and impairment of mission accomplishment. The following Air Force measures are established for resignation in lieu of trial by court-martial processing:
- 12.32.10.1. Process a resignation in lieu of trial by court-martial request within 60 days from the date the officer submits the request to the date the officer is notified of final action on the request. The 60 days are allotted as follows:
- 12.32.10.1.1. Wing-level (or equivalent) legal office processes and forwards the resignation in lieu of trial by court-martial package to AFLOA/JAJM with electronic copies for review and processing by legal offices at intermediate levels of command within 10 days from the date the officer submits the resignation in lieu of trial by court-martial request.
- 12.32.10.1.2. NAF or GCMCA-level (or equivalent) legal office processes and forwards the GCMCA's recommendation within seven days, in accordance with the RILO Checklist on the Virtual Military Justice Deskbook, after the wing-level legal office provides the electronic copy.

12.32.10.1.3. GCMCA legal office processes and forwards the MAJCOM commander's recommendation, in accordance with the RILO Checklist on the Virtual Military Justice Deskbook, within seven days after the NAF-level legal office provides an electronic copy of the GCMCA's recommendation.

12.32.10.1.4. AFLOA/JAJM and AFLOA/JAJ process and forward the resignation in lieu of trial by court-martial package to AF/JA within seven days after receipt of the complete package, including required recommendations by reviewing commanders and legal reviews.

12.32.10.1.5. AF/JA processes and forwards the resignation in lieu of court-martial package for Headquarters Air Force coordination within five days after receipt of the package from AFLOA/JAJ.

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

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

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

**12.33. Retirement in Lieu of Trial by Court-Martial.** If an officer submits a request to retire in lieu of trial by court-martial, the wing-level (or equivalent) SJA or designee immediately contacts AFLOA/JAJM for further guidance. Generally, a retirement in lieu of trial by court-martial request is processed in the same manner as a resignation in lieu of trial by court-martial request. That the requesting officer is pending trial by court-martial and trial has not yet begun is a retirement restriction that may be waived by the Secretary of the Air Force or delegee in the best interest of the Air Force. The retirement in lieu of trial by court-martial request is considered both a request to retire in lieu of trial by court-martial and a request for waiver of the retirement restriction of pending trial by court-martial. In order to be eligible to request a retirement in lieu of trial by court-martial, the officer must be otherwise eligible to retire with 20 years of Total Active Federal Military Service (and ten years of Total Active Federal Commissioned Service to retire as an officer if requesting to retire as an officer) as of the date the officer submits the retirement in lieu of trial by court-martial request. AFI 36-3203, *Service Retirements*, Section 2C discusses retirement prohibitions and waiveable restrictions.

### ***Section 12M—Trial Matters Requiring Air Force Legal Operations Agency Assistance***

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

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

12.34.2. **Asserting the M.R.E. 505 Privilege.** Only the Secretary of the Air Force, the Chairman of the Joint Chiefs of Staff or the Chairman's delegee, or the head of a non-Air Force government agency for documents owned by agencies outside the Air Force, may claim the privilege from disclosure of classified information. See M.R.E. 505(c). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on his or her behalf. Requests for assertion of the privilege are forwarded through command channels to AFLOA/JAJM.

12.34.3. **Classified Material in the Record.** When a ROT contains classified material, the SJA or designee takes appropriate steps to declassify the material when proper. If it is impossible to declassify the material, the record must be classified. (T-1) In determining whether a particular ROT must be classified because of its content, consideration should be given to DoD Memorandum 5200.01, Vol. 1, *Department of Defense Information Security Program: Overview, Classification, and Declassification*, and AFI 16-1404, *Air Force Information Security Program*. AFMAN 51-203, Chapter 6, provides additional guidance.

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

### **12.35. Government Information Other than Classified Information (M.R.E. 506).**

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

12.35.2. Requests for assertion of the safety privilege should be forwarded through command channels and the Air Force Safety Center Office of the SJA (AFSC/JA) to AFLOA/JAJM.

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

### **12.37. Appeals by the United States from an Adverse Ruling by a Military Judge (R.C.M. 908).**

12.37.1. Trial counsel may file a notice of appeal by the United States under Article 62, UCMJ, and R.C.M. 908, only after consultation with the Government Trial and Appellate Counsel Division (AFLOA/JAJG). The SJA decides whether to file such notice of appeal with the convening authority's concurrence.

12.37.2. After filing a notice of appeal conforming to the requirements of R.C.M. 908(b) with the military judge, trial counsel sends notice to AFLOA/JAJG within 20 days, requesting that office file the appeal with the Air Force Court of Criminal Appeals. In the request, trial counsel will identify the ruling or order to be appealed and include the following:

12.37.2.1. A copy of the charges and specifications; (T-1)

12.37.2.2. An original and two copies of the verbatim record of the applicable proceedings, or, if not available, a summary of the evidence and facts; (T-1)

12.37.2.3. Trial counsel's certification that the appeal is not taken to delay the case; (T-1)

12.37.2.4. Trial counsel's certification that, if the order or ruling excludes evidence, the excluded evidence is substantial proof of a fact material in the proceeding; (T-1) and

12.37.2.5. A memorandum opinion on the law applicable to the issues appealed, including an explanation why the issues appealed are significant enough to require appeal by the United States. (T-1)

12.37.3. AFLOA/JAJG decides whether to file the appeal with Air Force Court of Criminal Appeals, and notifies the trial counsel, SJA, and AFLOA/JAJM.

### **12.38. Appeals of Sentence by the United States (R.C.M. 1117).**

12.38.1. With the approval of TJAG, the Government may appeal a sentence to the Air Force Court of Criminal Appeals on the grounds that the sentence violates the law or is plainly unreasonable. See Article 56(d), UCMJ. The government may only file such an appeal if all specifications allege offenses that were committed on or after 1 January 2019.

12.38.2. A Government appeal of the sentence must be filed within 60 days after the entry of judgement is complete. (T-0) Prior to filing a notice of appeal, the Government must receive convening authority concurrence, consult with AFLOA/JAJG, and receive TJAG approval through their functional chain. (T-0) The Government must reserve adequate time after coordination to allow AFLOA/JAJG to prepare the required appellate briefs within the 60-day window. (T-0)

12.38.3. To seek TJAG approval, the requesting legal office must submit to AFLOA/JAJM:

12.38.3.1. A statement of reasons that meets the requirements of R.C.M. 1117(c)(1)-(3) (**Note:** The statement of reasons may not include facts outside the record established at the time the sentence was announced.); (T-1)

12.38.3.2. The entry of judgment; (T-1)

12.38.3.3. The transcript of the proceedings or, if the transcript is not available at the time of the request, a summary of the evidence and facts established at the time the sentence was announced; (T-1)

12.38.3.4. Convening authority concurrence, which may be established in the statement of reasons; (T-1)

12.38.3.5. AFLOA/JAJG coordination, which may be established in the statement of reasons; (T-1) and

12.38.3.6. Documentation showing concurrence and coordination with the functional chain-of-command. (T-1) This coordination may be established in the statement of reasons.

12.38.4. Prior to acting, TJAG forwards the request to the military judge who presided over the proceedings for the purpose of allowing the military judge, the parties, and the victim(s) to make a submission addressing the Government's request. See R.C.M. 1117(c)(4).

12.38.5. Upon receiving TJAG approval, trial counsel may file a notice of appeal with the military judge consistent with R.C.M. 908(b).

12.38.6. After filing a notice of appeal, trial counsel promptly requests AFLOA/JAJG file the appeal with the Air Force Court of Criminal Appeals. In the request, trial counsel will identify the sentence to be appealed and include the following:

12.38.6.1. The statement of approval from TJAG (T-0);

12.38.6.2. The Government's request and statement of reasons (T-0);

12.38.6.3. Any submissions made by the military judge, the defense, or the victim(s) (T-0);

12.38.6.4. Any other documentation required by AFLOA/JAJG. (T-1)

12.38.7. AFLOA/JAJG decides whether to file the appeal with the Air Force Court of Criminal Appeals, and notifies the requesting party and AFLOA/JAJM.

**12.39. Extraordinary Writs by Trial or Victim's Counsel.** A petition for extraordinary relief by the prosecution or victim's counsel in a court-martial is a rare course of action. In the event a base legal office receives or intends to file an extraordinary writ, contact AFLOA/JAJM for guidance.

### *Section 12N—Sentencing*

**12.40. Applicable Sentencing Rules.** Only one sentencing system applies in a court-martial—either the sentencing rules effective prior to 1 January 2019 (“old sentencing rules”), or the sentencing rules under The Military Justice Act of 2016 (“new sentencing rules”). (T-0) See R.C.M. 902A. The primary changes between the old and new sentencing rules are the new requirements for segmented sentencing by a military judge (see Article 56(c)(2)) and default sentencing by a military judge unless the accused specifically requests member sentencing (see Article 53(b)(1)(A)). The date the referred specifications occurred will dictate whether the old or new sentencing rules apply.

12.40.1. If all specifications referred to a court-martial were committed prior to 1 January 2019, the old sentencing provisions in effect prior to 1 January 2019 apply. Refer to Article 56 and R.C.M. 1002 in the 2016 MCM.

12.40.2. If all specifications referred to a court-martial allege offenses committed on or after 1 January 2019, the Military Justice Act of 2016 sentencing provisions apply. Refer to Article 56, UCMJ, and R.C.M. 1002.

12.40.3. If some specifications referred to a court-martial allege offenses committed prior to 1 January 2019, and others committed on or after 1 January 2019, the following options are available:

12.40.3.1. The convening authority may separate the specifications into two different courts-martial—one proceeding for specifications that allege offenses committed before 1

January 2019, and another proceeding for specifications that allege offenses committed on or after 1 January 2019—and apply the sentencing rules in effect at the time the alleged offenses were committed.

12.40.3.2. The convening authority may refer the specifications to a single court-martial and apply the sentencing rules in effect prior to 1 January 2019 to all of the specifications.

12.40.3.3. The accused may elect to use the Military Justice Act of 2016 sentencing procedures for all specifications.

12.40.4. See Section 12D for additional sentencing considerations related to pretrial agreements and plea agreements.

**12.41. Sentencing by Members.** Any sentence by military members will be a single, unitary sentence for all offenses of which the accused was found guilty in that court-martial. (T-0) See R.C.M. 1002; Article 53, UCMJ.

**12.42. Sentencing by Military Judge Alone.**

12.42.1. **Segmented Sentencing.** For cases applying Military Justice Act sentencing rules, military judges assign a separate term of confinement, if any, and fine, if any, for each specification of which the accused is found guilty. If multiple terms of confinement exist, the military judge determines if the terms run concurrently or consecutively. See R.C.M. 1002(d)(2). In making this determination, a military judge considers the requirements of R.C.M. 1002(d)(2).

12.42.2. **Default Military Judge Sentencing.** For cases applying the Military Justice Act sentencing rules, the military judge shall sentence the accused unless the accused is convicted by members and explicitly requests member sentencing. If the accused is convicted by members but does not request member sentencing, then a military judge sentences the accused. See Article 53(b)(1)(A).

**12.43. Announcement of the Sentence.** The sentence, whether determined by military judge or members, is announced by the military judge.

**12.44. Recommendation for Suspension of Sentence.** A military judge may make a recommendation that all or part of a sentence be suspended. R.C.M. 1109(f). The recommendation must be included, along with a statement explaining the recommendation and a specified time period for the recommended suspension, on the Statement of Trial Results. If the military judge makes this recommendation, there is no requirement that it be announced on the record.

## Chapter 13

### POST-SENTENCING PROCESS

#### 13.1. Effective Dates.

13.1.1. For cases referred before 1 January 2019, refer to Attachments 11 and 12 for post-trial processing procedures, to include publication of the Court-Martial Order.

13.1.2. For cases referred on or after 1 January 2019, follow the post-sentencing process as outlined in this Chapter.

**13.2. Definition of “Victim” During Post-Sentencing.** Practitioners should be cognizant of the changing definition of victim throughout the post-sentencing process. In certain circumstances, victim refers to any victim named in a specification, regardless of whether the specification resulted in a conviction. In other circumstances, victim refers only to named victims whose specifications resulted in a conviction.

13.2.1. Any victim, regardless of whether that victim’s allegation resulted in a conviction, receives the Statement of Trial Results and the Entry of Judgment. R.C.M. 1101(d), 1111(f).

13.2.2. Any victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense for which the accused was found guilty receives an opportunity to submit matters to the convening authority under R.C.M. 1106A(b)(2).

13.2.3. A victim named in a specification who testified during the proceeding automatically receives a copy of the certified ROT, regardless of the findings. A victim named in a specification who did not testify, regardless of whether their allegation resulted in a conviction, may request a copy of the certified ROT. R.C.M. 1112(e).

#### *Section 13A—Initial Post-Sentencing Process and Statement of Trial Results*

#### 13.3. Statement of Trial Results (R.C.M. 1101).

13.3.1. Following final adjournment, the military judge must ensure a Statement of Trial Results is prepared and signed by the military judge. (T-0) The Statement of Trial Results must contain the content required under R.C.M. 1101. (T-0) **Note:** In cases where an expurgated Statement of Trial Results is required, both an expurgated and unexpurgated Statement of Trial Results must be prepared and signed by the military judge. (T-1) See paragraph 13.5 for discussion of expurgated and unexpurgated Statements of Trial Results. Trial counsel will generally provide a draft to the military judge with all required information, to include Defense Incident-Based Reporting System (DIBRS) codes for the listed offenses. (T-1) Trial counsel and military judges must follow the templates provided at Figures A9.1 and A9.2. (T-1)

13.3.2. Military Judge Recommendation for Suspension of Sentence. See paragraph 12.44.

13.3.3. Prior to distribution, the SJA must sign and attach to the Statement of Trial Results a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under Title 18 United States Code 922(g)(9); criminal record history indexing is required in accordance with DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. (T-1)

See Chapter 15 for further information on these requirements. Templates are located at Figures A9.1 and A9.2. The first indorsement is distributed with the Statement of Trial Results. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in their signature block.

**13.4. Distributing the Statement of Trial Results.** The SJA distributes the Statement of Trial Results and first indorsement to those recipients identified in the Statement of Trial Results/Entry of Judgment distribution list on the Virtual Military Justice Deskbook. (T-1)

**13.5. Unexpurgated and Expurgated Statements of Trial Results.**

13.5.1. When the content of a Statement of Trial Results includes classified or other matters unfit for publication, prepare both an expurgated and an unexpurgated copy. The version with the content replaced is called the expurgated Statement of Trial Results. Only certain parties receive the unexpurgated version (see paragraph 13.5.2.). Make the following substitutions in the expurgated Statement of Trial Results:

13.5.1.1. Names of children under 16 years of age are replaced with initials, regardless of verdict (in both the expurgated and unexpurgated Statement of Trial Results); (T-1)

13.5.1.2. Names of minor victims under 18 years of age are replaced with initials when the charged offense is a child pornography offense, regardless of verdict (in both the expurgated and unexpurgated Statement of Trial Results); (T-1)

13.5.1.3. Names of adult sex offense victims are replaced with initials, regardless of verdict; (T-1)

13.5.1.4. Names of victims listed in paragraphs 13.5.1.1-13.5.1.3 when listed in other offenses on the charge sheet (e.g., if the same victim is listed as the victim of an Article 128, UCMJ, offense and an Article 120, UCMJ, offense, the victim’s name should be expurgated in both offenses such that the name cannot be ascertained from the Article 128, UCMJ, charge) should be replaced with initials, regardless of verdict; (T-1) and

13.5.1.5. Classified information is replaced with asterisks. (T-1)

**13.5.2. Distribution.**

13.5.2.1. Unexpurgated Statements of Trial Results—Classified Cases. If an unexpurgated Statement of Trial Results contains classified information, ensure the Statement of Trial Results is properly marked with classified markings in accordance with the classification guide; then do not distribute it to any party. (T-1) Provide the unexpurgated classified statement to AFLOA/JAJM as part of the original ROT, and maintain an unexpurgated classified statement in the legal office’s copy of the ROT in a container authorized to store classified information. For more information on the storage and transfer of classified information, see AFMAN 51-203.

13.5.2.2. Unexpurgated Statement of Trial Results—Unclassified Cases. For cases not involving classified information, only the following parties receive the unexpurgated Statement of Trial Results:

13.5.2.2.1. AFLOA/JAJM;

13.5.2.2.2. The commanding officer responsible for the confinement facility where the accused is held; and

13.5.2.2.3. The confinement officer or noncommissioned officer.

13.5.2.3. Expurgated Statements of Trial Results. All other individuals or organizations required to receive a Statement of Trial Results are provided expurgated copies.

13.5.2.4. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list mark, “\*Recipients of unexpurgated Statement of Trial Results.”

13.5.2.5. Refer to the Statement of Trial Results Distribution Checklist on the Virtual Military Justice Deskbook for the most current guidance on distribution.

### ***Section 13B—Accused’s Submission of Matters***

**13.6. Generally.** The accused may submit written post-sentencing matters for the convening authority’s consideration in accordance with R.C.M. 1106. Submissions may not include matters that relate to the character of a victim unless such matters were admitted as evidence at trial. (T-0) See R.C.M. 1106.

13.6.1. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority.

13.6.2. If a victim submits post-sentencing matters under R.C.M. 1106A and Section 13B, trial counsel shall promptly serve those matters on defense counsel to allow the accused an opportunity to provide a written rebuttal. (T-1)

### **13.7. Time Periods for Submissions.**

13.7.1. In a GCM or SPCM, the accused may submit matters within ten calendar days after the sentence is announced.

13.7.2. In a SCM, the accused may submit matters within seven calendar days after the sentence is announced.

13.7.3. If a victim submits post-sentencing matters under R.C.M. 1106A, the accused has five calendar days from receipt of those matters to submit matters in rebuttal. A sample notice to the accused of the opportunity to submit rebuttal matters is located at Figure A9.6. The day on which the accused is served victim’s matters does not count against the five-day time period.

13.7.4. The convening authority may extend the time periods for submission up to an additional 20 calendar days if the accused shows good cause for the extension. Extension requests must be submitted by the accused or defense counsel, in writing, to the trial counsel who will provide it to the convening authority. (T-1)

13.7.5. Notification. Immediately following sentence announcement, the SJA or trial counsel notifies the accused of the right to submit matters under R.C.M. 1106. (T-1) A template letter is provided at Figure A9.3. At a minimum, the notification letter should advise the accused:

13.7.5.1. The process for submitting matters to the convening authority;

13.7.5.2. That the convening authority will consider timely written matters submitted by the accused before deciding whether to grant the accused post-sentencing relief;

13.7.5.3. That the convening authority may not consider character evidence related to the victim unless such evidence was admitted at trial;

13.7.5.4. The date by which matters must be submitted, and the process for requesting additional time from the convening authority;

13.7.5.5. That any matters submitted by the victim under R.C.M. 1106A and Section 13C will be provided to the accused for rebuttal;

13.7.5.6. That a failure to submit matters by the prescribed time constitutes a waiver;

13.7.5.7. That submission of any matters under R.C.M. 1106 shall be deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limit is expressly reserved in writing;

13.7.5.8. That if the accused waives the opportunity to submit matters, the waiver may not be revoked; and

13.7.5.9. That the accused is entitled to request a copy of the recording and copy of, or access to, the exhibits to assist in the preparation of their matters.

**13.8. Access to Court-Martial Recordings and Evidence.** To facilitate preparation of matters, the defense counsel or accused may request a copy of the court-martial recording and copies of, or access to, the exhibits. When preparing these records for release, the government should be cognizant that delays in providing the requested information may serve as grounds for the defense to request a delay in the submission of matters.

13.8.1. The government shall not release the recording under R.C.M. 1106 unless the government receives a written request from the defense. (T-1) Upon receiving such a request, trial counsel is only authorized to release the recording of open court-martial sessions. Trial counsel must not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any person or party (including defense counsel or an SVC). (T-0) Trial counsel is not required to further redact the recordings (e.g., for personally identifying information), but shall not provide such recordings directly to the accused, only to defense counsel. (T-1) Defense counsel must maintain the recording to prevent the unauthorized release of third-party personal information to any other party, including to the accused. (T-1)

13.8.2. The government must provide access to exhibits upon written request from the defense, but should not normally provide copies of exhibits. (T-1) If the government chooses to provide copies of exhibits, third-party personal information (i.e. information not pertaining to the accused) must first be redacted. **Note:** See paragraph 13.8.1. for discussion on sealed exhibits.

13.8.3. In the event an accused is not represented by either military or civilian defense counsel, contact AFLOA/JAJM for guidance.

**13.9. Application to Defer Sentence and Waive Required Forfeitures.** Before the convening authority makes a decision as to whether to grant relief in a case, an accused may submit an application to the convening authority, through the servicing SJA, to defer any adjudged or mandatory forfeiture of pay or allowances, reduction in grade, or service of a sentence to confinement. See Articles 57(b) and 58b(a)(1), UCMJ. If an accused has dependents, an application may also be submitted to the convening authority, through the servicing SJA, to waive

any mandatory forfeiture of pay and allowances under Article 58b(b) for the benefit of the accused's dependents. Applications for deferral or waiver may be submitted through the servicing SJA any time after the sentence is announced and before action. The accused may choose to submit an application for deferral or waiver at the same time the accused submits post-sentencing matters, or at any other time prior to action. The convening authority may waive automatic forfeitures of pay and allowances without a request from the accused. **Note:** Automatic and adjudged forfeitures go into effect automatically 14 days after the announcement of the sentence. See Section 13E for additional guidance on deferring and waiving forfeitures of pay and allowances.

**13.10. Return to Duty.** The return to duty system may offer selected enlisted personnel with exceptional potential the opportunity for relief concerning the characterization of their discharges and possible return to duty. The applicant, with assistance of defense counsel, submits a letter and attachments to the convening authority or TJAG requesting a recommendation for return to duty. The defense counsel is responsible for ensuring the application, with the requisite recommendation, is forwarded to the Air Force Clemency and Parole Board. AFI 31-105 and Attachment 18 of that instruction, provides additional guidance on applications and requirements for applications for return to duty.

### *Section 13C—Victim's Submission of Matters*

**13.11. Generally.** In any case resulting in a guilty finding for an offense that involved a victim who has suffered direct physical, emotional or pecuniary harm, the SJA must ensure the victim is provided an opportunity to submit written matters for consideration by the convening authority, or by another person authorized to act under Article 60a or Article 60b, UCMJ, before the convening authority or such other person considers taking action. (T-0) See R.C.M. 1106A.

13.11.1. Submissions may not include matters that relate to the character of the accused unless such matters were admitted as evidence at trial. (T-0)

13.11.2. Matters should be submitted to the SJA, who causes those matters to be served on the convening authority and the accused. The accused has an opportunity to rebut statements made by the victim in accordance with R.C.M. 1106(d)(3).

### **13.12. Time Periods for Submissions.**

13.12.1. In a GCM or SPCM, the victim must submit any matters within ten calendar days after the sentence is announced. (T-0)

13.12.2. In a SCM, the victim must submit any matters within seven calendar days after the sentence is announced. (T-0)

13.12.3. The convening authority may extend the time period for submissions up to an additional 20 calendar days, if the victim shows good cause for the extension. Extension requests must be in writing and submitted by the victim or victim's counsel to the trial counsel, who will provide it to the convening authority. (T-1)

**13.13. Notification.** Immediately following trial, the SJA or trial counsel must provide a letter to eligible victims as defined in paragraph 13.11, if any, notifying them of their right to submit matters under R.C.M. 1106A. (T-1) A template letter notifying a victim of the right to submit a

Victim Impact Statement is provided at Figure A9.4. At a minimum, the notification letter should advise the victim:

- 13.13.1. That the convening authority will consider any timely written matters submitted by the victim before deciding whether to grant the accused post-sentencing relief; (T-1)
- 13.13.2. That the convening authority may not consider character evidence related to the accused unless such evidence was admitted at trial; (T-1)
- 13.13.3. That the convening authority may not consider character evidence related to the crime victim unless such evidence was admitted at trial; (T-1)
- 13.13.4. That the convening authority may not consider evidence of offenses of which the accused was not convicted at trial; (T-1)
- 13.13.5. The process for submitting matters to the convening authority; (T-1)
- 13.13.6. That any matters submitted by the victim will be provided to the accused's defense counsel for rebuttal by the accused; (T-1)
- 13.13.7. The date by which matters must be submitted, and the process for requesting additional time from the convening authority; (T-1)
- 13.13.8. That the victim is entitled to only one opportunity to submit matters, and that a failure to submit matters by the prescribed time constitutes a waiver; (T-1)
- 13.13.9. That if the victim waives the opportunity to submit matters the waiver may not be revoked; (T-1) and
- 13.13.10. That the victim is entitled to request a copy of the recording and copies of, or access to, the exhibits to assist in the preparation of their matters. (T-1)

**13.14. Access to Court-Martial Recordings and Evidence.** To facilitate preparation of matters, the victim's counsel or victim may request a copy of the court-martial recording and copies of, or access to, the exhibits.

13.14.1. The government may release the recording under R.C.M. 1106A only upon receiving a written request from the eligible victim or victim's counsel. (T-1) Upon receiving such a request, trial counsel is only authorized to release the recordings of open court-martial sessions. Trial counsel may not release recordings of closed sessions, classified material, or any other matters ordered sealed unless otherwise authorized by a military judge, to any other person or party (including defense counsel or SVC). (T-1) Trial counsel is not normally required to further redact the recording (e.g., for personally identifying information) except as indicated below. However, to ensure compliance with the Privacy Act, the government should release the recording in the following manner:

13.14.1.1. If the victim is represented by an SVC, trial counsel should provide the recording to the victim's SVC as a For Official Use disclosure under the Privacy Act. See DoD 5400.11-R, *Department of Defense Privacy Program*. The SVC must maintain the recording in accordance with the Privacy Act. (T-0)

13.14.1.2. An unredacted recording (e.g., a recording of all open sessions that has not been redacted for PII) may be provided directly to the victim only if the victim is not represented by counsel. **Note:** Such recording may not include any closed, sealed or classified sessions

absent an order from the military judge. See paragraph 13.14.1. The recording may be provided to an unrepresented victim as a routine use under the Privacy Act system of records notice for Air Force courts-martial records. See SORN F051 AF JA 1. Child victim testimony must be removed before distributing a recording directly to an unrepresented victim unless the requester is the child victim or guardian whose testimony is at issue. (T-1) Trial counsel must verify that child-victim testimony is removed before distributing the recording to an unrepresented victim. (T-1) Refer to the charged offense to determine whether a testifying victim constitutes a child.

13.14.2. The government must provide access to exhibits upon written request from the SVC, if the victim is represented, or to the victim if the victim is unrepresented, but should not normally provide copies of exhibits. (T-1) If the government chooses to provide copies of exhibits, third-party personal information must first be redacted. (T-1) **Note:** Victims should not be given access to or copies of sealed exhibits.

### ***Section 13D—Convening Authority Action and Decision on Action***

**13.15. Cases Referred before 1 January 2019.** Refer to Attachment 11 for the form and format of convening authority action.

**13.16. Applicable Version of Article 60, UCMJ.** The convening authority may grant relief or take action on a case depending on what version of Article 60 applies. To determine the applicable version of Article 60, look at the date of the earliest offense resulting in a conviction. The version of Article 60 in effect on that date applies to the entire case.

13.16.1. If the earliest offense resulting in a conviction occurred prior to 24 June 2014, then use the version of Article 60 in effect prior to 24 June 2014. In such cases, the convening authority has full discretion to grant clemency on the court-martial findings and/or sentence. See paragraphs A11.15.2.1, A11.23.2, and A11.23.4.

13.16.2. If the earliest offense resulting in a conviction occurred between 24 June 2014 and 31 December 2018, then use the version of Article 60 in effect at that time (found in the 2016 MCM).

13.16.3. If the earliest offense resulting in a conviction occurred on or after 1 January 2019, then use the version of Article 60a and Article 60b effective under the Military Justice Act of 2016 (found in the 2019 MCM).

**13.17. Convening Authority Discretion.** The convening authority may grant post-sentencing relief on the findings and/or sentence of a court-martial in accordance with the applicable versions of Articles 60, 60a, and 60b, UCMJ, and their associated R.C.M.s, as discussed in the previous paragraph.

13.17.1. When deciding whether to grant relief under these rules, the convening authority has two options: take action on the findings and sentence or take no action on the findings and sentence. A decision to take action is tantamount to granting relief, whereas a decision to take no action is tantamount to granting no relief. Granting post-sentencing relief (i.e. “taking action”) is a matter of command prerogative entirely within the discretion of the convening authority, as limited by the applicable version of Article 60, UCMJ. See paragraph 13.18.

13.17.2. Convening authorities may not substitute an administrative discharge for an adjudged punitive discharge. (T-1) However, in cases involving relatively minor offenses, an accused with an outstanding combat record, or other exceptional circumstances, and where restoration to duty is inappropriate, convening and reviewing authorities may recommend administrative, rather than punitive, discharge to the Secretary of the Air Force under Article 74(b), UCMJ. If a convening authority is considering making such a recommendation, the convening authority's SJA should contact AFLOA/JAJR for assistance and coordination.

### **13.18. Military Judge Suspension Recommendation.**

13.18.1. In all cases, regardless of the date of the offenses, the convening authority may suspend a sentence in accordance with a military judge's recommendation as annotated on the Statement of Trial Results. See Article 60a(c), UCMJ. However, the convening authority may not suspend a mandatory minimum sentence or exceed the suspension recommendation of the military judge. (T-0) Further, the duration of the suspension may not be less than that recommended by the military judge. (T-0)

**13.19. Required Considerations.** Before making a decision to take action or to take no action, the convening authority must:

13.19.1. Consult with a SJA or legal advisor; (T-0) and

13.19.2. Consider matters timely submitted by the accused under R.C.M. 1106 and/or the victim(s) under R.C.M. 1106A. (T-0)

13.19.3. The convening authority may consider other matters the convening authority deems appropriate before making a decision. However, the convening authority may not consider any matters adverse to the accused that were not admitted at the court-martial unless the accused is first notified and given an opportunity to rebut. (T-0)

### **13.20. Consultation with Staff Judge Advocate.**

13.20.1. For cases referred before 1 January 2019, the SJA must prepare a written legal review in the form of a SJA Recommendation (SJAR) and Addendum. (T-0) Refer to Attachment 11 for the SJAR/Addendum requirements and templates.

13.20.2. For cases referred on or after 1 January 2019, there is no requirement that legal advice be in writing, and there is no longer a requirement for an SJAR or Addendum. However, if written legal advice is prepared then the SJA must serve it on the accused and accused's counsel. (T-1) Though the legal reviews are not required, any subsequent written legal reviews that raise new matters to which the accused has not had an opportunity to rebut must also be served on the accused and accused's counsel. (T-1)

**13.21. Matters Adverse to the Accused.** If the convening authority wishes to consider any matters adverse to the accused that were not admitted at trial, then the convening authority must first cause those matters to be served on the accused with an opportunity to rebut. (T-0)

13.21.1. The SJA shall serve any such matters on the accused and the accused's counsel, and shall notify the accused, in writing:

13.21.1.1. That the convening authority may potentially consider information adverse to the accused not previously admitted at trial;

13.21.1.2. That the accused has a right to rebut the information; and

13.21.1.3. The date on which the accused's rebuttal matters are due to the SJA, which should be no less than five calendar days from the date on which the accused is notified. (T-1)

13.21.1.4. This notification memo will be attached to the record of trial, behind the memo documenting the convening authority's decision to take action or to take no action. (T-1) See paragraph 13.23.

13.21.2. Upon receiving rebuttal matters, if any, from the accused, the SJA provides those to the convening authority. The SJA does not have to prepare a corresponding written legal review or memo (**Note:** For cases referred prior to 1 January 2019, the SJA will prepare a written Addendum and serve it on the accused and counsel in accordance with Attachment 11 (T-1)).

13.21.3. The convening authority indicates, in writing, whether such matters were considered and, if so, whether the accused submitted matters in rebuttal. This may be incorporated into the same memo the convening authority uses to document the decision to take action or to take no action. See paragraph 13.19; a template is provided at Figure A9.5.

**13.22. Timing of Convening Authority Decision to Take Action/No Action.** The convening authority must generally act before the entry of judgement. However, the convening authority may grant relief upon recommendation of trial counsel for substantial assistance by the accused after the entry of judgment. See R.C.M. 1109(e)(3)(B) and (e)(7); see also R.C.M. 1110(c)(2). If trial counsel's recommendation is made more than one year after the entry of judgment, the GCMCA over the command to which the accused is assigned may reduce the sentence only if the criteria in R.C.M. 1109(e)(5)(B) is met.

**13.23. Documenting Convening Authority Action/No Action.**

13.23.1. If the convening authority decides to take action, the convening authority's decision must be in writing and must include a written statement explaining the reasons for the action. (T-0)

13.23.2. If the convening authority decides to take no action, the convening authority's decision must be in writing. (T-1) No rationale is required.

13.23.3. The convening authority's written decision to take action or no action must be attached to the record of trial. (T-1) A template is provided at A9.5 and sample action language is provided at A9.8. At a minimum, the convening authority's written decision on action must:

13.23.3.1. Indicate the action taken, if any, on the findings or the sentence and the rationale (to include whether the action was taken as a result of a trial counsel substantial assistance recommendation); (T-1)

13.23.3.2. Express the convening authority's decision on a military judge suspension recommendation, if any; (T-1)

13.23.3.3. Annotate whether the convening authority intends to grant or previously granted any deferments or waivers of forfeitures, the effective/expiration dates for any such deferments or waivers, and the dependent who will receive waived forfeitures; (T-1)

13.23.3.4. Include any adjudged and approved reprimand; (T-1)

13.23.3.5. Direct the member to be placed on excess leave pending appellate review if required under Section 13K. (T-1)

**13.24. Service of the Convening Authority's Decision.** The SJA must promptly serve the convening authority's decision to take action or no action on the military judge, counsel for the accused, and counsel for the victim. (T-0) In the event the accused or victim is not represented by counsel, the convening authority's decision must be served on the accused or victim, as applicable. (T-1) If the SJA serves the action decision on the accused's or victim's counsel, counsel must provide a copy to their client. (T-0)

**13.25. Disqualification of a Convening Authority.** A convening authority may not conduct the post-trial review of a case if the attendant facts and circumstances would lead a reasonable person to impute a personal interest in the outcome of the case or a personal bias towards the accused. See *United States v. Gudmundson*, 57 M.J. 493 (C.A.A.F. 2002); *United States v. Voorhees*, 50 M.J. 494 (C.A.A.F. 1999); *United States v. Crossley*, 10 M.J. 376 (C.M.A. 1981); *United States v. Gordon*, 2 C.M.R. 161 (C.M.A. 1952).

***Section 13E—Forfeitures of Pay, Deferment and Waiver (Articles 57(b) and 58b, UCMJ; R.C.M. 1103)***

**13.26. Adjudged Versus Automatic Forfeitures.** The ability of a convening authority to defer or waive forfeitures of pay and allowances hinges on whether the forfeitures are adjudged or automatic (the latter of which is also known as “mandatory forfeitures”).

13.26.1. Adjudged forfeitures are those forfeitures imposed by the military judge or the members as part of a court-martial sentence. See Article 57(a) and R.C.M. 1103. Adjudged forfeitures of pay and/or pay and allowances take effect 14 calendar days after the sentence is announced, or, in an SCM, the date the sentence is approved by the convening authority.

13.26.2. Automatic forfeitures are forfeitures that take effect by operation of law. See Article 58b. An accused must forfeit pay and allowances if sentenced to confinement for more than six months or if sentenced to a punitive discharge and any length of confinement.

13.26.2.1. Automatic forfeitures take effect 14 calendar days after the sentence is announced or, in an SCM, the date the sentence is approved by the convening authority.

13.26.2.2. The amount of automatic forfeitures in a GCM is all pay and allowances otherwise due to the accused. The amount of automatic forfeitures in an SPCM is two-thirds pay otherwise due to the accused. Allowances otherwise due are not subject to mandatory forfeitures in an SPCM.

13.26.2.3. Automatic forfeitures only take effect if the following three conditions exist:

13.26.2.3.1. The adjudged sentence includes confinement for more than six months or death, or confinement for six months or less and a punitive discharge;

13.26.2.3.2. The accused is in confinement or on parole; and

13.26.2.3.3. The accused is otherwise entitled to pay and allowances that are subject to automatic forfeitures.

**13.27. Deferment Versus Waiver.** Deferment and waiver of forfeitures are distinct concepts that operate differently depending on whether the forfeitures are adjudged or automatic.

13.27.1. Deferment (Article 57(b)). Deferment is a postponement of the running of a sentence. Upon written application of the accused, the convening authority may defer adjudged and automatic forfeitures until the entry of judgment or, in the case of a SCM, until a convening authority acts on the sentence. Deferred forfeitures are paid directly to the accused. The accused may apply for deferment regardless of whether the accused has dependents. The convening authority may rescind a deferment at any time.

13.27.1.1. In rare circumstances, the convening authority may grant a deferment without an application from the accused. See R.C.M. 1103(c).

13.27.1.2. The factors an accused should establish in a deferment request, and the factors a convening authority should consider, are provided in R.C.M. 1103(d)(2).

13.27.1.3. The convening authority's action on the deferment request must be in writing, with a copy included in the record of trial and provided to the military judge and accused. (T-0)

13.27.1.4. If the convening authority grants deferment, the deferment continues until Entry of Judgment unless the convening authority mitigates, suspends or disapproves the adjudged forfeitures prior to Entry of Judgment, in which case the deferment or adjudged forfeitures ends at the time at which the convening authority acts, and are thereafter mitigated, suspended or disapproved.

13.27.2. Waiver (Article 58b). The convening authority may waive automatic forfeitures for no more than six months for the benefit of the accused's dependents. Waived forfeitures are paid directly to the accused's dependents. Dependent is defined by Title 37 United States Code § 401. See paragraph 13.29.

13.27.2.1. The convening authority may not waive adjudged forfeitures. (T-0) However, the convening authority may take action under Articles 60, 60a or 60b to defer, suspend, mitigate, or disapprove all or part of adjudged forfeitures, and then waive any resulting automatic forfeitures. See *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). Figure A11.16 provides sample language the convening authority may use to defer, suspend, mitigate or disapprove all or part of adjudged forfeitures.

13.27.2.2. The factors a convening authority may consider before granting a waiver are provided in R.C.M. 1103(h)(2).

13.27.2.3. The convening authority may waive automatic forfeitures for the purpose of providing support to the accused's dependents even if the accused does not apply for a waiver.

13.27.2.4. The convening authority may waive automatic forfeitures at any point before the entry of judgment. The waiver can be retroactive, designated to begin on a date 14 days after the sentence is adjudged.

13.27.2.5. Waived forfeitures cannot be applied beyond a member's expiration of term of service because the pay entitlement ceases at that point.

13.27.2.6. If the convening authority grants waiver of any portion of automatic forfeitures, the convening authority should specify the date on which the waiver is effective. The waiver may begin no later than the Entry of Judgment.

13.27.3. A request for a combination of deferral and waiver can maximize the pay and allowances going to the accused and the accused's family members. For example, the accused may request that the convening authority defer mandatory and adjudged forfeitures until the entry of judgment and then waive mandatory forfeitures starting on the entry of judgment for a period not to exceed six months. However, a convening authority who waives automatic forfeitures starting at Entry of Judgment should also consider disapproving, commuting or suspending some or all of the adjudged forfeitures for the same period. *U.S. v. Emminizer*, 56 M.J. 44 (C.A.A.F. 2002).

**13.28. Mechanics of Deferring and Waiving Forfeiture of Pay.** Table 13.1 explains the relationship between adjudged and mandatory forfeitures from the date the sentence is adjudged until the end of the forfeiture period.

13.28.1. Accused's Deferral Request. If an accused requests a deferral of a reduction in grade or a forfeiture of pay and allowances until entry of judgment, the convening authority may approve the request, in full or in part, or may disapprove the request.

13.28.1.1. The accused's deferral request should specify whether a request for deferred forfeitures is for adjudged forfeitures, mandatory forfeitures, or both. If it is unclear, the convening authority may treat it as a request for deferral of both.

13.28.1.2. The convening authority's decision on the request should be reflected in a signed and dated document. This includes the basis for any denial.

13.28.1.3. The terms of approved deferrals are reported in a 14-day memorandum in accordance with Figure A9.7 and are reported on the decision on action memorandum signed by the convening authority at Attachment A9.5.

13.28.1.4. A deferral of forfeitures may be for adjudged forfeitures, mandatory forfeitures or both, and for all pay and allowances to which the accused is entitled or a lesser sum. However, deferment does not extend beyond the time at which the Entry of Judgment is completed in a GCM or SPCM or beyond action in a SCM. R.C.M. 1103(f).

13.28.2. Waiver of Mandatory Forfeitures. In cases where mandatory forfeitures are waived, whether prior to or as part of the convening authority's action, the approved waiver should state the amount approved in dollar amounts per month, unless the waiver is for total pay and allowances in a general court-martial. If forfeiture of two-thirds pay is approved in a special court-martial, the forfeitures should be reflected in whole dollar amounts.

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

13.28.2.2. If mandatory forfeitures are waived before the decision on action, the convening authority must reflect approval in a signed and dated document at the time forfeitures are waived. (T-1) Such a waiver of mandatory forfeitures is also reported in the 14-day memorandum and in the convening authority's decision on action memorandum.

13.28.2.3. The local accounting and finance office should be consulted to determine the accused's entitlements and the actual amount of pay and allowances the accused and/or the accused's dependents may be entitled to receive. **Note:** These considerations could affect the enforceability of a plea agreement or pretrial agreement. A number of factors can impact the following entitlements:

13.28.2.3.1. Basic Allowance for Subsistence. The accused loses Basic Allowance for Subsistence upon entry into confinement, thus the convening authority cannot give the accused's family any portion of the accused's Basic Allowance for Subsistence.

13.28.2.3.2. Taxes. Federal and state taxes are withheld from any payments of deferred or waived forfeitures. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the amount of taxes should be factored into the calculation.

13.28.2.3.3. Grade Reduction. A reduction in grade may significantly lower the amount of the accused's pay that is eligible for waiver. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the effect of a reduction in grade should be taken into consideration. To the extent that it is allowed by law under Article 58a, a grade reduction can be deferred but cannot be waived.

13.28.2.3.4. Active Duty Air Force Spouse. A spouse who is also a Regular Air Force member may receive only waived forfeiture of pay, not pay and allowances. (T-0)

13.28.2.3.5. Expiration of Term of Service. There are no forfeitures to waive on any date after the accused's expiration of term of service. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond his or her expiration of term of service may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. (T-0) See *United States v. Perron*, 58 M.J. 78 (C.A.A.F. 2003).

13.28.2.3.6. Foreign Accounts. The Defense Finance and Accounting Services (DFAS) has experienced difficulties making deposits into certain foreign bank accounts. Plea agreement and pretrial agreement terms requiring deposits of pay into foreign account may be impractical to accomplish.

### **13.29. Dependency Determinations under Article 58b, UCMJ.**

13.29.1. Dependent is defined by 37 U.S.C. § 401.

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

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

13.29.2.2. Dependency determinations for a child over 21 years of age, parents or a ward are more complex because they only qualify as a dependent if the military sponsor provides more than one-half of their support. A precondition for waiving forfeitures for the benefit of one of these dependents should be an approval letter of dependency from the Defense Finance & Accounting Services. The accused, or other party requesting the waiver, should provide a copy of the Defense Finance & Accounting Services approval letter with any request to waive mandatory forfeitures. If an accused is unable to qualify one of these persons as a dependent with DFAS, then there will normally be insufficient evidence of dependency to support an Article 58b waiver of mandatory forfeitures.

**13.30. Required Adjustment of Forfeitures.** If the convening authority takes action on a sentence that then creates an illegal punishment (e.g., no confinement but a forfeiture exceeding 2/3 pay per month), legal offices should ensure that this is corrected before entry of judgment.

**13.31. Deferral and Waiver in Cases With Offenses Committed Prior to 1 April 1996.** See Attachment 11 for information on forfeitures related to offenses committed prior to 1 April 1996.

**Table 13.1. Relationship between Adjudged and Automatic Forfeitures**

FORFEITURE PERIOD	ADJUDGED FORFEITURES	MANDATORY/AUTOMATIC FORFEITURES (See Note 1)
DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)	Not in effect. Accused continues to be paid unless post expiration of term of service.	Not in effect. Accused continues to be paid unless post expiration of term of service.
14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED UNTIL ENTRY OF JUDGMENT	In effect, except for any portion the convening authority defers. (See Note 2)	In effect, except for any portion the convening authority defers (See Note 2), and/or waives and directs payment to the accused's qualifying dependents (in the case of a waiver). (See Notes 3 & 4)

ENTRY OF JUDGMENT	In effect unless the convening authority approves, disapproves, commutes or suspends the adjudged forfeitures in whole or in part.	In effect, except any portion the convening authority has waived. Waiver period may not exceed six months. (See Notes 4 & 5)
<p>NOTES:</p> <ol style="list-style-type: none"> <li>1. Automatic forfeitures only apply when the three conditions listed in paragraph 13.26.2.3 exist.</li> <li>2. If the accused applies for deferment, the convening authority may defer all or a portion of the adjudged forfeitures and/or automatic forfeitures 14 days after the date on which the sentence was adjudged until the entry of judgment. The accused should specify whether the deferment requested is for adjudged forfeitures, automatic forfeitures, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused is paid a sum equal to entitled pay and allowances, minus any amounts not deferred. The convening authority may rescind a deferment (adjudged forfeitures and/or mandatory forfeitures) at any time.</li> <li>3. The convening authority may waive available automatic forfeitures with or without a request from the accused. The convening authority may waive automatic forfeitures to the extent that the accused is entitled to pay and allowances (see Note 1 above).</li> <li>4. Automatic forfeitures may be waived until the earlier of: 1) a period not to exceed six months; 2) the accused's release from confinement; or 3) the last day the accused is otherwise entitled to pay and allowances (See Note 1 above).</li> <li>5. If the convening authority acts on the sentence, the convening authority may waive all or a portion of the available automatic forfeitures for the benefit of the accused's dependents. The convening authority may disapprove, commute or suspend all or a portion of the adjudged forfeitures to increase the amount of automatic forfeitures available for the convening authority to waive. See <i>U.S. v. Emminizer</i>, 56 M.J. 441 (C.A.A.F. 2002).</li> </ol>		

**13.32. Service of Legal Review on the Accused.** There is no requirement to prepare written legal advice to a convening authority pertaining to a request for deferment or waiver. However, if written legal advice is prepared the legal office must understand the distinction between advice that must be served on the accused and advice where service is not required. (T-1) Legal advice pertaining to deferral requests need not be served on the accused. Legal advice pertaining to waiver requests must be served on the accused. (T-0) In either case, legal offices should process requests promptly.

13.32.1. **Article 57(a), UCMJ, Deferral of Forfeiture Requests.** In *United States v. Key*, 55 M.J. 537 (A.F.C.C.A. 2001), the Court held that a SJA review of a request for deferral of forfeitures does not need to be served on the defense for comment prior to submission to the convening authority. The Court compared such a request to a request for deferral of confinement, for which no SJA recommendation is required and, when prepared, historically, is not served on the accused. The SJA or designee ensures that any decision by the convening authority on the request is included in the ROT. (T-1)

13.32.2. **Article 58b, UCMJ, Waiver of Forfeiture Requests.** In *United States v. Spears*, 48 M.J. 768 (A.F.C.C.A. 1998), the Court considered whether a legal review of a request for a waiver of forfeitures must be served on the defense prior to submission to the convening authority. The Court noted that SJAs are not required to prepare legal reviews of requests for waiver of automatic forfeitures. The Court treated the request for waiver of forfeitures as a clemency request and declared that practitioners must exercise care when addressing the request for waiver of forfeitures before the record is completed. This requires that the SJA or designee serves the legal review on the accused and defense counsel before submission to the convening authority and includes it as an attachment to the completed ROT.

### **Section 13F—Contingent Confinement**

**13.33. Contingent Confinement.** Contingent confinement is confinement authorized by a court-martial in the form of a fine-enforcement provision. See R.C.M. 1003(b)(3) and 1102. A fine-enforcement provision may be ordered executed in accordance with the procedures below.

13.33.1. **Authority to Execute Contingent Confinement.** A fine does not become effective, and the accused is not required to pay, until entry of judgment. See Article 57(a), UCMJ. The convening authority may not order an accused to serve contingent confinement until the entry of judgment is complete and the requirements of paragraph 13.34 are met. If the accused fails to demonstrate good faith efforts to pay the fine, the convening authority may order the sentence of confinement by following the procedures outlined in paragraph 13.34.

13.33.2. **Enforcement.** Once court-martial jurisdiction attaches, an accused remains subject to the UCMJ through the execution and enforcement of a sentence. Article 2(a)(1), UCMJ, confers jurisdiction over members of a regular component of the armed forces, including those awaiting discharge after the expiration of terms of enlistment. Jurisdiction continues for the purpose of enforcing an adjudged sentence for individuals discharged as the result of a court-martial conviction. *Carter v. McCloughry*, 183 U.S. 365 (1902); *Peebles v. Froehlke*, 46 C.M.R. 266 (C.M.A. 1973).

**13.34. Procedures for Executing Contingent Confinement.** Contingent confinement may be executed in accordance with the following procedures:

13.34.1. When the fine is ordered executed, the convening authority notifies the accused in writing the fine is due and payable. A specific due date should be included in the notification. If the accused is in confinement, the due date should normally be a reasonable period before the accused is scheduled for release from confinement to allow adequate time for a contingent confinement hearing and convening authority action.

13.34.2. After the fine is considered due, the SJA for the base where the accused was tried ascertains whether the accused has paid the fine. If it appears the fine has not been paid, the SJA notifies the convening authority. If the convening authority finds probable cause to believe a fine is unpaid, the convening authority may order a post-trial contingent confinement hearing. The convening authority for this hearing is the officer who convened the court-martial, a successor in command, or the officer exercising general court-martial convening authority over the command to which the accused is assigned. If the accused is no longer a member of the Air Force, AFDW/CC is the convening authority. The purpose of the hearing

is to determine whether the fine is delinquent, whether the delinquency, if any, resulted from the accused's indigence and whether the contingent confinement should be executed.

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

13.34.4. The SJA or designee provides the accused written notice of the time and place of the hearing. The convening authority provides the accused with temporary duty orders or invitational travel orders if the accused is not in confinement and the hearing is beyond reasonable commuting distance from the accused's residence. See AFMAN 65-605, Volume 1, *Budget Guidance and Technical Procedures*, (hereinafter "AFMAN 65-605v1"), for appropriate funding authority. The notice informs the accused of the following:

13.34.4.1. The accused's alleged failure to pay the fine;

13.34.4.2. The purpose of the hearing to determine whether the fine is delinquent and whether the delinquency, if any, is the result of the accused's indigence;

13.34.4.3. The accused's right to present witnesses and documentary evidence;

13.34.4.4. The accused's right to representation by military defense counsel; and

13.34.4.5. The evidence which was relied upon in issuing the notice of hearing and the options available to the convening authority.

13.34.5. Unless the hearing is otherwise waived, the hearing officer makes findings on whether payment of a fine is delinquent and whether any delinquency resulted from the accused's indigence. Payment of a fine is delinquent if not made within the period specified in the approved sentence or, if no period is specified, within a reasonable time. An accused's failure to pay a fine is not due to indigence if the failure to pay the fine resulted from a willful refusal to pay the fine or a failure to make sufficient good faith efforts to pay it. The Government bears the burden of proof, by a preponderance of the evidence, of showing that payment of the fine is delinquent. The accused bears the burden of proof, by a preponderance of the evidence, of showing that any delinquency resulted from indigence.

#### 13.34.6. **Hearing Procedures.**

13.34.6.1. The hearing officer determines the facts from the best evidence available. Rulings on evidentiary and procedural matters are final. Strict evidentiary rules do not apply and hearsay statements are admissible.

13.34.6.2. The accused may testify and present witnesses and documentary evidence. Witness testimony may be presented through sworn or unsworn statements, affidavits, depositions, prior testimony, stipulations of expected testimony, or telephone conference. The accused may not compel the production of a witness at Government expense unless the request is made to the hearing officer, in writing, before the hearing and the hearing officer determines:

13.34.6.2.1. The physical presence of the witness is critical to a fair determination of a material issue in dispute;

13.34.6.2.2. The witness is available to testify; and

13.34.6.2.3. There is no substitute for the live testimony of the prospective witness (e.g., written statements, affidavits, stipulations, or telephone conference).

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

13.34.6.4. The accused may be represented at the hearing by a civilian attorney or civilian representative of the accused's choice at no cost to the Government. The accused is also entitled to representation by either an Area Defense Counsel or military counsel of the accused's selection, if reasonably available. See paragraph 10.4. The accused is not entitled to representation by more than one military counsel.

13.34.6.5. A court reporter reports the hearing and prepares a summarized record of the proceeding. The record includes a summary of the evidence presented and any objections or requests considered by the hearing officer.

13.34.6.6. The hearing officer submits a written report to the convening authority through the SJA, including a statement of the evidence relied upon to support the findings. If the hearing officer chooses to make the findings and statement of evidence on the record, transcribe them verbatim. The hearing officer forwards the report and/or record to the convening authority.

13.34.6.7. The convening authority takes final action on the hearing officer's findings and determinations. The convening authority may adopt, modify, or reject the hearing officer's findings and determinations. If the hearing officer's findings and determinations are not adopted, the convening authority specifies the evidence relied upon and the reasons for the decision.

13.34.6.8. If the convening authority determines payment of the fine is delinquent and the failure to pay is not due to indigence, the convening authority may order the sentence of contingent confinement executed. A sample order executing contingent confinement is provided at Figure A9.9. If the convening authority determines the accused has made good faith efforts to pay the fine, but cannot because of indigency, the sentence of confinement may not be executed unless the convening authority determines that there is no other punishment adequate to meet the Government's interest in appropriate punishment. See R.C.M. 1113(d)(3). When electing not to execute confinement, the convening authority signs a supplemental order remitting contingent confinement. This supplemental order is attached to the ROT.

13.34.6.9. If the convening authority orders the accused into confinement or remits the contingent confinement, the action taken should be forwarded through the SJA to the military judge for completion of a new entry of judgment, which must be attached to the ROT.

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

*Section 13G—Notification of Adjudged Sentence, Convening Authority Action*

**13.35. Reporting by Base-Level SJA.** In all courts-martial with automatic forfeitures under Article 58b, adjudged forfeitures, or reduction in grade (enlisted only), the SJA of the office that prosecuted the case must send a memorandum by the most expeditious means available to the AFPC and the member's finance office, with informational copies to AFSFC/FC and DFAS-DE/FJPC. (T-1) A template memorandum is at Figure A9.7. The referenced memorandum must be sent 14 days after the sentence is announced or within 24 hours of the entry of judgment, whichever is earlier. (T-1) If any portion of the punishment or automatic forfeitures is deferred, or if the convening authority waives any portion of the automatic forfeitures prior to the date of the message, the memorandum must include the terms of such deferment or waiver. (T-1) Notification is made via email to Defense Finance & Accounting Services at [afcourtmarshals@dfas.mil](mailto:afcourtmarshals@dfas.mil); HQ AFPC/DPSOE at [afpc.dpppwm@us.af.mil](mailto:afpc.dpppwm@us.af.mil); and the Air Force Security Forces Center at [afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil).

**13.36. Reporting by Convening Authority's Staff Judge Advocate.** If the convening authority decides to take any action on a sentence more than 14 days after the sentence is announced, in any case where the approved sentence includes a reduction in grade or forfeitures (mandatory or adjudged), the SJA of the convening authority must send a second memorandum within twenty-four hours after the entry of judgment. (T-1) If any portion of the punishment or mandatory forfeiture is deferred or if the convening authority waives any portion of the mandatory forfeiture, the second memorandum must include the terms of such deferment or waiver. (T-1) The message should be sent to the same addressees listed on the Statement of Trial Results/Entry of Judgment distribution list discussed in paragraph 13.4 and, if the accused is confined, to the confinement facility. A template may be found at Figure A9.7. For members who enter a prisoner status requiring a permanent change of station, the memorandum should also be sent to the gaining Accounting and Finance Office (AFO).

*Section 13H—Entry of Judgment (R.C.M. 1111; Article 60c, UCMJ).*

**13.37. Entry of Judgment.** R.C.M. 1111, Article 60c, UCMJ. The Entry of Judgment reflects the results of the court-martial after all post-trial actions, rulings or orders.

13.37.1. The Entry of Judgment terminates trial proceedings and initiates appellate proceedings.

13.37.2. The convening authority's action in a SCM serves as the entry of judgment. There is no need to issue a separate document. Sample action language for SCMs is available at Figure A9.10.

**13.38. Preparing the Entry of Judgment.**

13.38.1. Trial counsel is responsible for providing the military judge a draft of the Entry of Judgment. The Entry of Judgment must include the contents listed in R.C.M. 1111(b), and the Statement of Trial Results must be included as an attachment. (T-0) Trial counsel must use the templates included at Figures A9.1 and 9.2. (T-1) An editable Word document version of both figures can be located on the Virtual Military Justice Deskbook. **Note:** In cases where an expurgated Entry of Judgment is required, both an expurgated and unexpurgated Entry of Judgment must be prepared and signed by the military judge. (T-1) Refer to paragraph 13.5 to determine whether an expurgated Entry of Judgment is required.

13.38.2. Once drafted, trial counsel submits the Entry of Judgment to the military judge for signature in accordance with guidance provided by AF/JAT.

13.38.3. First Indorsement. After the Entry of Judgment is signed by the military judge and returned, the SJA signs and attaches to the Entry of Judgment a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. (T-1) See Chapter 15 for further information on this requirement. Templates are located at A9.1 and A9.2. The first indorsement is distributed with the Entry of Judgment. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in their signature block.

**13.39. Distributing the Entry of Judgment.** The Entry of Judgment and first indorsement must be distributed in accordance with the Statement of Trial Results/Entry of Judgment Distribution List on the Virtual Military Justice Deskbook. (T-1) Refer to paragraph 13.5 to determine whether the Entry of Judgment must be expurgated.

### ***Section 13I—Post-Trial Confinement***

**13.40. Entry into Post-Trial Confinement.** Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused’s chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See R.C.M. 1102(b)(2). The DD Form 2707, *Confinement Order*, is used to enter an accused into post-trial confinement.

13.40.1. **Processing the DD Form 2707.** When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. Only list the offenses of which the accused was found guilty. The sentence adjudged by the court is included in item 5, even in cases where a plea agreement provides for a lesser sentence than that adjudged by the court. The person directing confinement, typically the trial counsel, signs item 7(a). The SJA signs item 8(d) as the officer conducting a legal review and approval. The same person cannot sign both item 7(a) and 8(d). Before signing the legal review, the SJA should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

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

13.40.3. If an accused is in pretrial confinement, confinement facilities require an updated DD Form 2707 for post-trial confinement.

**13.41. Effect of Pretrial Confinement.** Under certain circumstances, an accused receives day-for-day credit for any pretrial confinement served in military, civilian, or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States*

*v. Allen*, 17 M.J. 126 (C.M.A. 1984); *United States v. Murray*, 43 M.J. 507 (A.F.C.C.A. 1995); and *United States v. Pinson*, 54 M.J. 692 (A.F.C.C.A. 2001). An accused may also be awarded pretrial confinement credit for restriction tantamount to confinement, prior nonjudicial punishment for the same offense, violations of R.C.M. 305, or violations of Articles 12 or 13, UCMJ.

13.41.1. When a military judge directs credit for illegal pretrial confinement (violations of Articles 12 or 13, UCMJ, or R.C.M. 305), the military judge should ensure credit is listed on the Statement of Trial Results and Entry of Judgment.

13.41.2. Any credit for pretrial confinement should be clearly reflected on the Statement of Trial Results, Entry of Judgment and DD Form 2707, along with the source of each portion of credit and total days of credit awarded (e.g., “310 days of confinement credit based upon 10 days of credit for restriction tantamount to confinement, 100 days of credit for military pretrial confinement, and 200 days of administrative credit for illegal pretrial confinement.”).

### **13.42. Confinement Facility (R.C.M. 1101, 1102(b)(2)(F)).**

13.42.1. AFSFC/FC, which oversees Air Force correctional facilities worldwide, selects the corrections facility for post-trial confinement and rehabilitation. Refer to AFI 31-105 for confinement rules and practices.

13.42.2. Correctional facilities other than those in the Air Force Corrections System may be used to confine inmates. AFSFC/FC sends detailed instructions covering selection of inmates for these assignments, details of transfer, and other administrative matters. The GCMCA of an inmate transferred to such a facility exercises the same responsibilities as those assigned in this chapter to AFDW/CC, for inmates in the Air Force Corrections System.

13.42.3. If a military confinement facility is not reasonably available, then the installation commander may authorize confinees to be placed in civilian facilities in accordance with guidelines prescribed in AFI 31-105.

### ***Section 13J—Preparing, Serving, and Forwarding the ROT (R.C.M. 1104)***

#### **13.43. Preparing the ROT.**

13.43.1. **General and Special Courts-Martial.** Prepare ROTs in accordance with R.C.M. 1112 and AFMAN 51-203.

13.43.1.1. **Contents of the ROT.** The ROT in every GCM and SPCM must include the contents listed in R.C.M. 1112(b). (T-0)

13.43.1.2. **Attachments to the ROT.** Certain additional items are not considered part of the ROT, but they must be attached to the ROT for appellate review. (T-0) See R.C.M. 1112(f). Refer to AFMAN 51-203 for a full list of required attachments.

13.43.2. **Summary Courts-Martial.** Prepare SCM ROTs in accordance with R.C.M. 1305 and AFMAN 51-203.

#### **13.44. Certifying the ROT.**

13.44.1. **General and Special Courts-Martial.** ROTs are certified by the court reporter in accordance with R.C.M. 1112(c). If the court reporter is unable to certify that the ROT contains the required items because of the court reporter’s death, disability or absence, then the military

judge must certify the record. (T-0) “Absence” refers to a court reporter who is absent from duty for an extended period of time due to unforeseen circumstances. It does not refer merely to a court reporter who is not physically present at the installation where the ROT is certified.

13.44.1.1. Examination by Trial Counsel. Prior to authentication of the ROT by the court reporter, the court reporter should forward the ROT to the trial counsel, who examines it for accuracy and signs a certification verifying the examination as accomplished. (T-1). A sample certification is located in AFMAN 51-203.

13.44.1.2. Examination by Defense Counsel. The SJA must generally permit the defense counsel the reasonable opportunity to examine the ROT before authentication or certification. (T-1)

13.44.1.3. Examination by Military Judge. The military judge will review the exhibits to ensure exhibits are accurate and in the proper order prior to the court reporter’s certification of the ROT. (T-1)

13.44.1.4. The ROT shall be certified as soon as practicable after the entry of judgment. (T-0)

13.44.1.5. Practitioners should understand the consequences of an incomplete or defective ROT. If a ROT is incomplete or defective, R.C.M. 1112(d) allows the military judge to take corrective action, including reconstructing the portion of the record affected, dismissing the affected specifications, reducing the sentence, or declaring a mistrial as to the affected specifications. If corrective action is taken, the court reporter may be required to provide the corresponding log notes.

13.44.2. **Summary Courts-Martial.** The SCM officer certifies the ROT in a SCM by wet signing the record of trial. See R.C.M. 1305(c) and AFMAN 51-203.

**13.45. Serving the ROT, Generally (R.C.M. 1112(e)).** Promptly following certification of the ROT, the court reporter shall notify trial counsel and the case paralegal that the ROT is ready for service. (T-1) The court reporter must ensure that sealed exhibits, classified information and closed sessions are properly sealed in accordance with R.C.M. 1112(e)(3) and AFMAN 51-203. (T-0) The SJA then causes a copy of the ROT to be served on the accused and any eligible victim(s) in accordance with the below guidance and R.C.M. 1112(e). The SJA also ensures proof of service, or substitute service, is included as an attachment to the ROT. **Note:** Where this paragraph calls for redactions, those redactions shall be made to copies of the ROT provided to the accused and victim(s) only. (T-1) Legal offices shall not redact an original ROT or any copies provided for appellate review. (T-1)

13.45.1. When providing a copy of the ROT to an accused or victim(s), provide only the ROT items listed in R.C.M. 1112(b). (T-0) Do not provide the ROT attachments listed in R.C.M. 1112(f). (T-0) Further, do not provide the accused or victim(s) with a copy of the audio recording of open proceedings. (T-1) Instead, replace the audio recording with a redacted copy of the transcript. (T-1) See paragraph 13.46 for more information on transcription requirements.

13.45.2. **Serving the ROT on the Accused.**

13.45.2.1. The SJA must ensure that all third-party personally identifiable information is redacted from the copy of the ROT served on the accused. (T-1) The accused's own personal information does not have to be redacted from the accused's copy. (T-1)

13.45.2.2. The SJA must obtain proof of ROT service on the accused, or substitute service, and include it as an attachment to the ROT. (T-1) The ROT may be served on counsel only when service on the accused is impracticable. (T-0)

### 13.45.3. **Serving the ROT on Eligible Victim(s).**

13.45.3.1. The following victim(s) are entitled to a copy of the ROT upon certification:

13.45.3.1.1. A victim named in a specification who testified at trial automatically receives a copy of the ROT, regardless of the verdict.

13.45.3.1.2. A victim named in a specification who did not testify at trial receives a copy of the ROT upon request, regardless of the verdict.

13.45.3.2. The SJA must ensure that all third-party personally identifiable information is redacted from the copy of the ROT served on the victim(s). (T-1) The victim's own personal information does not have to be redacted from the victim's copy. However, the personal information of other witnesses and victims must be redacted. (T-1) Additionally, information about the accused that would normally be protected by the Privacy Act must also be redacted. (T-0)

13.45.3.3. The SJA must ensure that eligible victims are notified of the opportunity to receive a copy of the ROT. (T-0) A template notification is located at Figure A9.13. If the victim waives receipt of the ROT, the SJA must document that waiver in writing and attach it to the ROT. (T-1) The SJA must obtain proof of ROT service on the victim, or substitute service, and include it as an attachment to the ROT. (T-1) The ROT may be served on counsel only when service on the victim is impracticable.

**13.46. Transcription Requirements.** Transcription occurs simultaneous to the other post-sentencing phases (i.e. Statement of Trial Results, Convening Authority Action, and Entry of Judgment). The transcript is not required before entry of judgment. Once the transcript is complete, it is attached to the ROT.

13.46.1. **Verbatim Transcripts.** A certified verbatim transcript is required in cases that result in a dismissal, punitive discharge, or confinement for more than six months. (T-0) See R.C.M. 1114(a).

13.46.2. **Summarized Transcripts.** A certified summarized transcript is required for all other cases, including cases resulting in full acquittals. A verbatim transcript satisfies the requirement of a summarized transcript.

13.46.3. **Certification.** The transcript must be certified by the court reporter(s) who were detailed to the proceeding. (T-0) For certification requirements, refer to AFMAN 51-203.

**13.47. Forwarding the ROT.** After the entry of judgment is complete, the servicing SJA or convening authority's SJA promptly forwards the original ROT and required copies for post-trial review. See AFMAN 51-203 for in-depth instructions on forwarded ROTs.

13.47.1. SCMs requiring Article 64, UCMJ, review and GCM or SPCMs requiring Article 65(d) review are forwarded to the GCMCA's SJA using the most cost-effective method that provides for means of tracking. (T-1)

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

13.47.3. Incomplete ROTs (e.g., records of trial that are missing documents) should not be forwarded to AFLOA/JAJM. Incomplete ROTs will be returned to the responsible legal office and will not be considered transferred to AFLOA/JAJM for purposes of metrics and milestones.

### ***Section 13K—Excess Leave***

#### **13.48. Involuntary (Required) and Excess Leave.**

13.48.1. The convening authority will place an accused that either had no confinement adjudged or already completed the period of confinement on involuntary excess leave while awaiting appellate review of an unsuspended punitive separation. (T-0) See Article 76a, UCMJ. After serving an approved sentence of confinement, members of the Air Reserve Components may be removed from active duty status rather than being placed in excess leave and recalled as necessary to complete appellate review. AFRC/JA may be consulted for guidance on excess leave for members of Reserve Components.

13.48.2. Members with an adjudged sentence that includes a punitive discharge may volunteer to be placed on excess leave pending the convening authority's review. If the convening authority does not reduce, commute or suspend the punitive separation, the accused's voluntary excess leave status is terminated and the accused is placed on involuntary excess leave. If the convening authority reduces, commutes or suspends the punitive separation, the accused is returned to duty.

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

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

13.48.5. If the accused's sentence to a punitive separation is set aside or disapproved upon appellate review, the accused is entitled to pay and allowances for the period of required excess leave unless a rehearing or new trial is ordered and a punitive separation results from the rehearing. The amount of pay and allowances is reduced by the amount of income, unemployment compensation, and public assistance benefits received by the accused from any government agency during the period of excess leave.

13.48.6. The convening authority must cause the member's status to be changed to excess leave upon completion of a sentence to confinement where the member's unsuspended punitive discharge is still pending appellate review, subject to paragraph 13.48.3. (T-1) The procedures for doing so can be found in paragraph 13.50. Such involuntary excess leave may continue

until the date the discharge is executed, unless terminated at any earlier date. A template notification to the member is located at Figure A9.14.

**13.49. Excess Leave for Accused Assigned Outside the Continental United States.** When a convening authority directs excess leave for an accused serving in an overseas area at the time excess leave is directed, the convening authority will direct reassignment to the force support squadron at the base nearest the appellate leave address provided by the accused. (T-1) The convening authority may issue this direction through the SJA if appellate leave is provided for in the commander's decision on action memorandum.

13.49.1. An accused may go directly to a designated leave address without reporting into the gaining unit. Before departure, the accused determines whether to physically report into the gaining unit.

13.49.2. The losing commander, consistent with the accused's election, directs the accused to travel from the overseas location to either the appellate leave address or the gaining unit as soon as possible after completion of out-processing. After arrival, the accused commences taking accrued leave, if so elected, and/or required excess leave.

13.49.3. The accused will be considered assigned to the force support squadron at the gaining base on the date the member physically reports to the unit or, in cases where the accused does not physically report to the gaining unit, the date determined by the local force support squadron's personnel relocations element based upon the accused's departure date and travel time. (T-1)

13.49.4. Overseas members may provide an ordinary or voluntary leave address in an OCONUS state or territory of the United States (e.g., Alaska, Hawaii, Guam) and HQ AFPC may assign the member to the force support squadron nearest such leave address. Overseas Airmen assigned to units in foreign countries when placed on involuntary excess leave must provide an appellate leave address in a state or territory of the United States and will be reassigned to a force support squadron at the base nearest the appellate leave address. Overseas members in foreign countries at the time they are placed on involuntary excess leave will be required to depart the foreign country.

**13.50. Excess Leave Procedures.**

13.50.1. When the convening authority orders an accused to take excess leave, the convening authority (or the SJA, if the convening authority so directs in the decision on action memorandum) sends the accused a letter (Figure A9.14), through command channels, directing the excess leave and informing the accused of entitlements, status and responsibilities while on excess leave. The SJA for the convening authority directing excess leave ensures a signed copy of this letter, with the accused's receipt and any subsequent address changes, is sent to the servicing force support squadron. (T-1) A copy of all excess leave letters must be sent to AFLOA/JAJM and AFLOA/JAJA. (T-1) In cases of an accused being reassigned from overseas, a copy of the letter must also be sent to the SJAs of the SPCMCA and GCMCA of the gaining unit and the gaining, or excess leave, FSS/CC. (T-1) See Figure A9.14.

13.50.2. Action to place the accused on voluntary or involuntary excess leave must comply with *Joint Travel Regulations*, AFI 36-3003, *Military Leave Program*; AFI 36-2110; AFI 36-2102, *Base-Level Relocation Procedures*; and AFI 31-105. (T-1) Ensure AMJAMS is updated

to reflect the accused's appellate leave address and the base nearest the address when the accused was reassigned. (T-1)

**13.51. Travel of Personnel Awaiting Completion of Appellate Review.** An accused involuntarily placed on excess leave while awaiting completion of appellate review of a court-martial sentence to a punitive discharge or dismissal may be provided travel or transportation in kind, according to the *Joint Travel Regulations*. Ensure a special travel order is published in the "A" series if the court-martial convening authority directs involuntary appellate (excess) leave according to AFI 36-3003, *Military Leave Program*, and this instruction. If the accused's court-martial sentence is disapproved or set aside, and the member is restored to duty, the member is authorized travel or transportation in kind, according to the *Joint Travel Regulations*. In such cases, publish an "A" Series Travel Order in accordance with the publishing directive.

## Chapter 14

### APPEALS AND REVIEWS, REHEARINGS, RETRIALS, DUBAY HEARINGS AND CLEMENCY

#### *Section 14A—Effective Dates and Procedures*

**14.1.** For cases referred before 1 January 2019, apply the appellate procedures that were in place prior to 1 January 2019. These procedures are located at Figure A13.1.

**14.2.** In straddling cases, apply the Military Justice Act of 2016 appellate procedures and the guidance in this chapter. **Note:** The government does not have the authority to appeal a sentence under R.C.M. 1117 in this circumstance. See paragraph 9.13 in cases where additional charges may be referred.

**14.3.** For cases in which all charged offenses occurred on or after 1 January 2019, apply the Military Justice Act of 2016 appellate procedures and the guidance in this chapter, including the government's ability to appeal a sentence under R. C.M. 1117.

#### *Section 14B—Appellate Defense Counsel*

##### **14.4. Accused's Request for Appellate Defense Counsel (Article 70, UCMJ).**

14.4.1. Include an AF Form 304, *Request for Appellate Defense Counsel*, signed by the accused in every ROT forwarded to the Air Force Court of Criminal Appeals, to include cases referred by TJAG. (T-1)

14.4.2. The accused's trial defense counsel assists the accused in filling out the form, obtains the accused's signature, and submits it to the trial counsel or appropriate SJA as soon as practicable after sentence announcement.

14.4.3. The AF Form 304 provides the accused's preferred mailing address (appellate leave address, etc.) for all appellate review correspondence when the accused is not in a confinement facility. An adequate address must be obtained even if the accused waives appellate review. (T-1) Do not use the ADC office or the base organization address. (T-1)

14.4.4. If an accused's death sentence has been approved by the President pursuant to Article 57, UCMJ, and the accused seeks to file a post-conviction habeas corpus petition in Federal civilian court, the accused may request a military defense counsel from TJAG. Upon receipt of the accused's request, TJAG will detail military counsel under Article 70(f), UCMJ, to represent the accused in such proceedings and any appeals.

##### **14.5. Withdrawal of Request for Appellate Defense Counsel.**

14.5.1. The accused may decline appellate representation by checking the appropriate box on the AF Form 304.

14.5.2. If the accused initially declines appellate representation after sentence is announced, the accused must be given another opportunity to elect or decline appellate representation after the convening authority's action is served upon the accused. (T-0) See *United States v. Xu*, 70 M.J. 140 (C.A.A.F. 2011) (Summary Disposition).

14.5.2.1. If the accused again declines appellate representation after receiving the action, include both versions of the AF Form 304 in the ROT (the one served on the accused immediately after trial and the other served on the accused after action). (T-1) Forward only the original ROT to AFLOA/JAJM for appellate review.

14.5.2.2. In those instances where an accused's initial AF Form 304 indicates a waiver of appellate counsel, but a second AF Form 304 is not part of the ROT, the record will be returned to the servicing SJA for execution of this requirement. (T-1)

#### **14.6. Waiver or Withdrawal of Appellate Review (Article 61, UCMJ; R.C.M. 1115).**

14.6.1. If an accused wishes to waive or withdraw from Article 66 appellate review, follow the procedures outlined in R.C.M. 1115. The request to waive or withdraw must be filed after the Entry of Judgment. (T-1) The waiver or withdrawal should be accomplished on a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review*.

14.6.2. A valid waiver or withdrawal of appellate review bars review by the Air Force Court of Criminal Appeals. See Article 61(d). It does not prevent later submission of an Article 69(d), UCMJ application.

14.6.3. In the event of waiver or withdrawal, the base legal office must forward the original ROT and attachments to the GCMCA SJA for an Article 65(d) review conducted in accordance with R.C.M. 1201. (T-1) A judge advocate appointed by the SJA to the GCMCA over the accused at the time of trial conducts the review. A memorandum must be prepared addressing issues in R.C.M. 1112(d), inserted in the original and all copies of the ROT, and served on the accused. (T-1) The case will be forwarded to the GCMCA for a supplemental order if (1) the judge advocate who reviewed the case recommends corrective action; and (2) the sentence approved by the convening authority includes a dismissal, a dishonorable or bad conduct discharge, or more than six months confinement. (T-1)

#### ***Section 14C—Judge Advocate Review of Summary Courts-Martial (Article 64, UCMJ; R.C.M. 1307)***

**14.7. Overview.** Every SCM resulting in a guilty finding receives an Article 64 review by a judge advocate. If the judge advocate conducting the review finds that corrective action is required as a matter of law and the general court-martial convening authority fails to take such action, then the record is automatically forwarded to TJAG for an Article 69 review. In all other cases, the accused may petition TJAG for an Article 69 review after the Article 64 review is complete. Article 64 reviews are normally conducted by the GCMCA legal office unless all of the judge advocates within that office are disqualified. See R.C.M. 1307.

**14.8. Article 64 Review Requirements.** An Article 64, UCMJ, review by a judge advocate is required in each SCM where there is a finding of guilty. (T-0)

14.8.1. The GCMCA SJA over the accused at the time of trial appoints a judge advocate who conducts the review. No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty, or the accused is found not guilty for all offenses only because of lack of mental responsibility.

14.8.2. If the judge advocate conducting the review recommends corrective action, the judge advocate forwards the ROT to the GCMCA for action in accordance with R.C.M. 1307(f).

#### **14.9. Disqualification.**

14.9.1. A judge advocate who has acted in the same case as an accuser, PHO, SCM officer, counsel, or who has otherwise acted on behalf of the prosecution or defense may not conduct the Article 64 review. (T-0)

14.9.2. If the GCMCA acted as the convening authority for the SCM, then the GCMCA may take action subject to the limitations of R.C.M. 1307(c).

14.9.3. If all judge advocates on the GCMCA's staff are disqualified from conducting the Article 64 review, or the GCMCA is disqualified from taking any required action on the case, the MAJCOM SJA will select another GCMCA and SJA to perform the review and take any required action. (T-1) If there is not an eligible convening authority in the command a judge advocate assigned to the MAJCOM legal office may conduct the review. If the MAJCOM is disqualified from conducting the review, then the MAJCOM SJA may request another MAJCOM to act. The other MAJCOM may assign the review and action to a subordinate GCMCA. If agreement cannot be reached between MAJCOMs, contact AFLOA/JAJM for assistance in identifying an officer exercising general court-martial convening authority to act on the case.

#### **14.10. Form and Content of Article 64, UCMJ, Reviews.**

14.10.1. Article 64 reviews should contain only those matters required in R.C.M. 1307(d).

##### **14.10.2. Corrective Action Not Required.**

14.10.2.1. In those cases in which no corrective action is required, the review will consist of a stamped or typed entry on the cover of volume one of the original ROT, and on the back of the DD Form 2329, *Record of Trial by Summary Court-Martial*. (T-1) The entry shall be entitled, "Article 64, UCMJ, Review," and shall consist of the conclusions required in Article 64 and R.C.M. 1307(d), the command of the reviewer, the date, signature of the reviewer, and the reviewer's signature block. (T-1)

14.10.2.2. The judge advocate conducting the review must respond, in writing, to each written allegation of error made by the accused even if the case does not require corrective action. See R.C.M. 1307(d)(2). (T-1) The review is prepared, dated and signed by the reviewer, covers the matters required by Article 64, UCMJ, and includes a statement that the findings and sentence are correct in law and fact. The review is attached to the ROT. The DD Form 2329 is annotated with a typed or stamped notation consisting of the items required in paragraph 14.10.2.1.

##### **14.10.3. Corrective Action Required.**

14.10.3.1. When the GCMCA is required to take corrective or further action under Article 64, UCMJ, the judge advocate's review will be in writing, dated and signed by the reviewer, and will address the matters required in Article 64(a), as well as determine whether the findings and sentence are correct in law and fact. (T-1) After the convening authority takes action in accordance with Article 64(c), the review and action are included in the ROT.

14.10.3.2. If the judge advocate concludes that corrective action is required as a matter of law, and the GCMCA fails to take such action, the ROT, Article 64 review, and convening authority action are forwarded to AFLOA/JAJM for review under Article 69(a). See Article 64(c)(3) and R.C.M. 1307(g). (T-0)

14.10.3.3. If the officer taking action under Article 64, UCMJ, orders a rehearing, the ROT, Article 64 review and Article 64 action, if applicable, will be sent to the officer who convened the court-martial who determines whether a rehearing is practicable. (T-1) See paragraph 14.28. If a rehearing is to be held and the accused has been transferred to another command, the officer who convened the court-martial will coordinate with the officer presently exercising special court-martial jurisdiction over the accused. (T-1)

**14.11. Finality of SCM.** Except cases requiring Article 69, UCMJ, review under R.C.M. 1307(g),-SCMs are final under Article 76, UCMJ, upon completion of the judge advocate's review and any required action by the GCMCA. However, even after the SCM is final, the accused may petition TJAG to conduct a review under Article 69 to modify or set aside the findings of a sentence in whole or in part. In order to qualify for such a review, the accused must submit an application to TJAG, through AFLOA/JAJM, no later than one year after the completion of the Article 64 review. See R.C.M. 1201(h). (T-0)

**14.12. Article 64 Review Distribution.** After completing the Article 64 review and, when applicable, any action by the GCMCA, forward the original ROT and any supplementary orders to AFLOA/JAJM.

14.12.2. Provide a copy of the Article 64 review and any action taken by the GCMCA to the accused. (T-0) See R.C.M. 1307(f).

14.12.3. Provide one copy each of the DD Form 2329 indicating compliance with Article 64(a) to the same parties listed on the Entry of Judgment Distribution Checklist, available on the Virtual Military Justice Deskbook. (T-1)

***Section 14D—Review by The Judge Advocate General of GCMs and SPCMs Not Appealed to the Air Force Court of Criminal Appeals (Article 65, UCMJ)***

**14.13. Overview.** Every GCM and SPCM resulting in a finding of guilty that is not reviewed by the Air Force Court of Criminal Appeals receives an Article 65(d) review by an attorney designated by TJAG. Judge advocates assigned to the GCMCA legal office are designated to conduct Article 65 reviews unless all of the judge advocates within that office are disqualified. See R.C.M. 1201(a)-(g)

**14.14. Article 65(d) Review Requirements.** An Article 65(d), UCMJ, review is required for any GCM or SPCM where the accused waived or withdrew an Article 66 appeal to the Air Force Court of Criminal Appeals, failed to file a timely Article 66 appeal, and any GCM or SPCM not eligible for an Article 66 appeal (i.e. where the confinement was six months or less and no punitive discharge was adjudged).

14.14.1. The GCMCA SJA over the accused at the time of trial appoints a judge advocate to conduct the review. No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty, or the accused is found not guilty for all offenses only because of a lack of mental responsibility.

14.14.2. If the judge advocate conducting the review recommends corrective action, the record shall be forwarded to The Judge Advocate General, through AFLOA/JAJM, who may set aside the findings or sentence in whole or in part. (T-0) See Article 65(e).

#### **14.15. Disqualification.**

14.15.1. A judge advocate who has acted in the same case as an accuser, PHO, member of the court-martial, military judge, counsel, or has otherwise acted on behalf of the prosecution or defense may not conduct the Article 65(d) review. (T-1)

14.15.2. If all judge advocates on the GCMCA's staff are disqualified from conducting the Article 65(d) review, the MAJCOM SJA will select another legal office within the MAJCOM to perform the review. (T-1)

#### **14.16. Form and Content of Article 65(d), UCMJ, Judge Advocate Reviews.**

14.16.1. Article 65(d) reviews should contain only those matters required by R.C.M. 1201(d)-(e). In those cases in which no corrective action is required by TJAG, the review will consist of a stamped or typed entry on the cover of volume one of the original ROT, and on the Entry of Judgment for non-punitive discharge SPCMs and GCMs. (T-1) The entry shall be entitled "Article 65(d), UCMJ, Review," and shall consist of the conclusions required in Article 65(d)(2), the command of the reviewer, the date, signature of the reviewer, and the reviewer's signature block.

##### **14.16.2. Corrective Action Not Required.**

14.16.2.1. In SPCMs or GCMs where no corrective action is required, the review will consist of a stamped or typed notation signed and dated by the reviewing officer on the cover of the first volume of all copies of the ROT and on all copies of the Entry of Judgment. (T-1) Only the original ROT cover and Entry of Judgment require an original signature. The others may be mechanically reproduced.

14.16.2.2. The judge advocate conducting the review must respond, in writing, to each written allegation of error made by the accused even if the case does not require corrective action. (T-0) This requirement to address allegations of error in the Article 65(d) review only applies to cases where the sentence did not include six months confinement or a punitive discharge (i.e. cases not qualifying for Article 66 review). See R.C.M. 1201(d)-(e).

14.16.2.2.1. The review is prepared, dated, and signed by the reviewer, covers the matters required in R.C.M. 1201(d), and includes a statement that the findings and sentence are correct in law and fact.

14.16.2.2.2. The review is attached to the ROT. The cover of volume one and all copies of the Entry of Judgment are annotated with a typed or stamped notation consisting of the date, signature block, the command of the reviewer, and a statement that the requirements of Article 65(d), UCMJ, have been met.

14.16.3. **Corrective Action Required.** When the review indicates that corrective action may be required, the ROT and attachments must be forwarded to TJAG, who may set aside the findings or sentence, in whole or in part. See Article 65(e). In this scenario, the GCMCA SJA forwards the record, through the MAJCOM SJA, to AFLOA/JAJM. Any action taken by TJAG in accordance with Article 65(e) must be included in the ROT. (T-1)

**14.17. Distribution of Judge Advocate Reviews.**

14.17.1. After completing the Article 65(d) review and, when applicable, any action by TJAG, forward the original ROT and four copies of the revised Entry of Judgment to AFLOA/JAJM.

14.17.2. Provide a copy of the Article 65(d) review and any action taken by TJAG to the accused. (T-0) Notification must be accomplished via first class certified mail to the address provided by the accused. (T-0) Proof of service must be attached to the ROT. (T-0) See R.C.M. 1201(g).

14.17.3. Provide one copy each of the revised Entry of Judgment, indicating compliance with Article 65(d), to the same parties listed on the Entry of Judgment Distribution Checklist, available on the Virtual Military Justice Deskbook.

***Section 14E—Review by The Judge Advocate General (Article 69, UCMJ)***

**14.18. Scope of Article 69 Review (R.C.M. 1201(h)-(k)).** The Judge Advocate General may review a case under Article 69 in the following scenarios:

14.18.1. Following completion of an Article 64 or Article 65(d) review, the accused may submit an application to TJAG to modify or set aside, in whole or in part, the findings and sentence in a court-martial. The accused must submit any application for Article 69 review within the deadlines established by R.C.M. 1201(h)(2)-(3). (T-0)

14.18.2. If a judge advocate conducting an Article 64 review of an SCM states that corrective action is required as a matter of law, and the GCMCA does not take such action, the matter shall be forwarded to TJAG to conduct an Article 69 review. (T-0) See R.C.M. 1307(g), R.C.M. 1201(j), and paragraph 14.10.3.2.

14.18.3. The Judge Advocate General does not exercise Article 69 authority over cases reviewed by the Air Force Court of Criminal Appeals.

**14.19. Prerequisite of Finality of Review.** An application may not be filed and will not be reviewed under Article 69 unless a judge advocate completed the review and any other action required by Article 64 or Article 65(d). (T-0)

**14.20. Contents of Article 69(a) Application.** Template 1401 on the Virtual Military Justice Deskbook is a sample format for applications. In all cases, the application is written and signed by the accused or the applicant's legal representative under oath or affirmation. Defense counsel will not receive a copy of The Judge Advocate General's action unless counsel's name is on the application. The application must contain the following:

14.20.1. The accused's name, social security number, and present mailing address (T-1);

14.20.2. The date and place of trial and type of court-martial (T-1);

14.20.3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise (T-1);

14.20.4. A succinct statement of the specific relief requested and the specific grounds for the relief (a concise brief of the applicable law with appropriate citations is encouraged) (T-1); and

14.20.5. Any documentary or other evidence pertinent to the facts asserted under the specific grounds alleged, including copies of the court-martial order, if available. (T-1)

**14.21. Article 69(a) Application Procedures.** The accused or the defense counsel must submit a hardcopy application to AFLOA/JAJM by certified mail. (T-1)

**14.22. Notification of Article 69 Review Results.**

14.22.1. If TJAG does not direct a rehearing or a review by the Air Force Court of Criminal Appeals, then AFLOA/JAJM annotates the results of the Article 69 review and whether TJAG took any action on the initial Entry of Judgment or DD Form 2329. AFLOA/JAJM forwards the annotated judgement or DD Form 2329 to the convening authority's SJA. AFLOA/JAJM serves one copy upon the accused. If the defense counsel's name and address is included on matters submitted by the accused, AFLOA/JAJM also sends a copy of the results to the defense counsel.

14.22.2. If TJAG orders a rehearing, the procedures in paragraph 14.28 apply. If TJAG forwards the case for review by the Air Force Court of Criminal Appeals, AFLOA/JAJM notifies the convening authority's SJA and the accused of TJAG's decision to order a rehearing or forward the case to the Air Force Court of Criminal Appeals. If the defense counsel's name and address is included on matters submitted by the accused, AFLOA/JAJM also notifies the defense counsel. If a rehearing is held, the convening authority's SJA forwards the original and two copies of the ROT to AFLOA/JAJM.

***Section 14F—Review by the Air Force Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court of the United States***

**14.23. Air Force Court of Criminal Appeals Review (Article 66, UCMJ; R.C.M. 1203).**

14.23.1. The Air Force Court of Criminal Appeals reviews cases under Article 66 in the following scenarios:

14.23.1.1. Cases resulting in automatic appeal under Article 66(b)(3) (e.g., cases with a sentence which includes confinement for two years or more or a punitive discharge or dismissal).

14.23.1.2. Timely appeals submitted by an accused under Article 66(b)(1)(A) in which the sentence extends to confinement for more than six months and is not subject to automatic review under Article 66(b)(3). See Article 66(c)(1) for the timeliness requirements.

14.23.1.3. Cases referred to it by TJAG under R.C.M. 1201(k)(1)(A) following an Article 69 review.

14.23.1.4. Timely appeals by an accused under Article 66(b)(1)(B) in a case in which the government previously filed an Article 62 appeal. See Article 66(c)(1) for the timeliness requirements.

14.23.1.5. Timely appeals by an accused under Article 66(b)(1)(C) in a case where TJAG sent the case to the Air Force Court of Criminal Appeals for review of the sentence under Article 56(d). See Article 66(c)(2) for the timeliness requirements.

14.23.1.6. Timely appeals by an accused under Article 66(b)(1)(D) in a case where an accused files for review under Article 69(d)(1)(B) and the application is granted by the appellate court.

14.23.2. **Notification of the Air Force Court of Criminal Appeals's Decision.** The decision is transmitted to the accused directly from AFLOA/JAJM by certified mail. The notification will inform the accused about his or her right to petition the Court of Appeals for the Armed Forces (CAAF) for further review, and the timeliness and procedural requirements for any such petition under R.C.M. 1203(f)(2). (T-0) AFLOA/JAJM will request a receipt of the notification to the accused. See R.C.M. 1203(f)(3).

**14.24. The United States Court of Appeals for the Armed Forces Review (Article 67, UCMJ; R.C.M. 1204).** The United States Court of Appeals for the Armed Forces reviews the record in all cases: (1) in which the sentence, as affirmed by Air Force Court of Criminal Appeals, extends to death; (2) referred by TJAG after review by the Air Force Court of Criminal Appeals; and (3) upon petition of the accused on good cause shown, and after the Article 66 review is complete, if the Court of Appeals for the Armed Forces grants the petition.

14.24.1. If TJAG refers a case to the Court of Appeals for the Armed Forces, then AFLOA/JAJM will cause a copy of the order forwarding the case to be served on the accused and on appellate counsel. (T-0)

14.24.2. Any petition the accused wishes to file with the Court of Appeals for the Armed Forces must be filed directly with the Court in accordance with their rules of practice. (T-0)

**14.25. Petition by Writ of Certiorari for Supreme Court Review (Article 67a, UCMJ).** The accused or the United States may file petitions for Supreme Court review by writ of certiorari in those cases specified in Article 67a(a), UCMJ, and R.C.M. 1205(a). Such petitions are filed according to the rules of the Supreme Court of the United States.

14.25.1. Military appellate defense counsel may assist the accused in preparing a petition for writ of certiorari and provide representation before the Supreme Court when requested by the accused.

14.25.2. When requested to do so by the Attorney General of the United States, TJAG will appoint appellate government counsel to represent the United States.

***Section 14G—Petition for New Trial (Article 73, UCMJ; R.C.M. 1210)***

**14.26. Petition for New Trial.** Petitions for a new trial are prepared and processed under R.C.M. 1210, and are filed with AFLOA/JAJM on behalf of TJAG. A petition for new trial may be submitted because of newly discovered evidence or fraud on the court, in any kind of court-martial, within three years after the Entry of Judgment.

14.26.1. The petition must be in writing and contain the matters required by R.C.M. 1210(c). (T-1) When practicable, the petition should be typewritten and double-spaced. The petition is signed under oath or affirmation by the petitioner, a person possessing the power of attorney of the petitioner for that purpose, or a person with the authorization of an appropriate court of law to sign the petition as the petitioner's representative. The petitioner forwards the original and two copies of the petition and supporting documentation directly to AFLOA/JAJM. An accused may submit only one petition for new trial for the same reason within the three-year limitation period.

14.26.2. **Forwarding the Petition.**

14.26.2.1. If the petitioner's case is pending before the Air Force Court of Criminal Appeals, AFLOA/JAJM forwards the following documents to the Court: the signed petition, the original ROT, copies of each supporting document, and any prepared briefs. AFLOA/JAJM also forwards a copy of the petition, a copy of the ROT, and all documents to appellate defense and appellate government counsel. R.C.M 1210(e).

14.26.2.2. If the petitioner's case is pending before The United States Court of Appeals for the Armed Forces, AFLOA/JAJM forwards the following documents to the Court: the original petition plus seven copies, copies of each supporting document, and any prepared briefs. AFLOA/JAJM also forwards a copy of the petition and all documents to both appellate defense and appellate government counsel. R.C.M 1210(e).

**14.27. TJAG Review of the Petition.** If the petitioner's case is not pending before a court, AFLOA/JAJM, on behalf of TJAG or an officer designated by TJAG, shall review the petition. Upon request by the designated officer(s), TJAG shall appoint appellate defense counsel and appellate government counsel to act in the case. Upon such appointment, the designated officer(s) shall forward one copy of the petition and all documents to each appellate counsel. The designated officer(s) may direct appellate defense and government counsel to provide briefs in the case and upon written request or, if the designated officer(s) deem(s) it appropriate, may order oral arguments to be presented before the officer(s).

**14.27.1. Filing Briefs Requiring TJAG Review.**

14.27.1.1. **Form and Number of Briefs.** Briefs are to be typewritten, double-spaced on letter size white paper, and include an original plus three copies. Counsel shall be limited to filing one brief per side unless TJAG or the designated officer(s) reviewing the petition otherwise permit(s).

14.27.1.2. **Time for Filing.** The brief on behalf of the petitioner shall be filed with AFLOA/JAJM within 20 days after appellate defense counsel has been appointed by TJAG and a copy of the petition and supporting documents have been provided to counsel. (T-1) Appellate government counsel may file a brief within 20 days after petitioner's brief has been filed. If counsel for the petitioner has filed no brief, appellate government counsel will file a brief within twenty days after expiration of the time allowed for the filing of a brief on behalf of the petitioner. Upon written request, the time for filing briefs by either counsel may be extended at the discretion of TJAG or the designated officer(s) reviewing the petition.

**14.27.2. Oral Arguments.** If ordered by the designated officer(s) or granted upon the request of counsel, oral arguments shall be heard after written briefs are filed.

14.27.2.1. **Notice.** The designated officer(s) shall give appellate counsel at least 10 days' notice of the time and place of oral arguments.

14.27.2.2. **Time Limits.** No more than 30 minutes on each side shall be allowed for oral arguments unless the time is extended by the designated officer(s).

14.27.2.3. **Number of Counsel; Opening and Closing.** The designated officer(s) may limit the number of counsel making an oral argument. The counsel for the petitioner has the right to make opening and closing arguments.

14.27.2.4. Failure to Appear. Appellate counsel's failure to appear at the time and place set for oral argument may be regarded as a waiver thereof and the designated officer(s) may proceed on the case as submitted without argument or may continue the case for argument at a later date, giving due notice thereof.

14.27.2.5. Presence of Petitioner. The petitioner does not have a right to be present at the time of oral arguments before the designated officer(s).

14.27.2.6. Opinion and Action. A memorandum opinion and an action shall be prepared by the designated officer(s) for TJAG's consideration. (T-1) After the action has been signed AFLOA/JAJM shall cause a copy thereof to be served on petitioner and shall take such action as may be necessary to carry out the orders of TJAG as contained in the action. (T-1)

**14.28. Appeal of Sentence by the United States (R.C.M. 1117).** With the approval of TJAG, the government may appeal a sentence on the grounds that the sentence violates the law or is plainly unreasonable. See paragraph 12.38 for the procedural requirements for such an appeal.

***Section 14H—Rehearing and Other Remedial Action (Articles 63 and 66(f), UCMJ)***

**14.29. Case Remanded by an Appellate Court.**

14.29.1. When a decision of the Supreme Court, the United States Court of Appeals for the Armed Forces, or the Air Force Court of Criminal Appeals directs or authorizes further proceedings, reasonable efforts must be made to locate the accused and provide the accused with a copy of the decision. (T-1) Further proceedings in Air Force Court of Criminal Appeals cases need not be delayed solely to permit an accused to petition for a grant of review or otherwise appeal the matter. Any special instructions deemed necessary to carry out the mandate of the court are to be transmitted by AFLOA/JAJM with the remanded ROT.

14.29.2. Pursuant to Article 76(a), UCMJ, an accused may only be placed on involuntary appellate leave when the approved sentence includes a punitive discharge. (T-0) When an appellate court sets aside the action or the sentence, the accused should be taken off of appellate leave. A template notification can be found on the Virtual Military Justice Deskbook as Template 1402.

**14.30. Procedure When Rehearing is Authorized (R.C.M. 810).** When an order of a reviewing or convening authority, an order of TJAG, a decision of Air Force Court of Criminal Appeals, a mandate issued by the United States Court of Appeals for the Armed Forces, or a judgment of the Supreme Court authorizes a rehearing on the findings or sentence, the following procedures apply:

14.30.1. **Notification of the Court-Martial Convening Authority and Identification of the Responsible Court-Martial Convening Authority.** In accordance with R.C.M. 810(f), if remand is ordered by a court of criminal appeals, the order is directed to the Chief Trial Judge. The Chief Trial Judge then forwards the remand decision to AFLOA/JAJM. AFLOA/JAJM, or the Article 64 or 65, UCMJ, reviewing officer, as appropriate, sends a transmittal letter, and a copy of the pertinent decision, mandate, or order to the original court-martial convening authority's SJA (or the current court-martial convening authority if the original court-martial convening authority no longer exists). If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the accused's current convening authority with jurisdiction to convene the type of court-martial involved. See R.C.M. 810(f).

14.30.1.1. The “original court-martial convening authority” is the convening authority who made a decision whether or not to act on the accused’s sentence. The original court-martial convening authority is also the responsible convening authority if the accused is still under his or her jurisdiction.

14.30.1.2. If the accused is no longer under the jurisdiction of the original court-martial convening authority, the original convening authority decides whether to remain the responsible court-martial convening authority or to transfer responsibility for the case to the officer presently exercising authority over the accused to convene the type of court-martial involved.

14.30.1.2.1. If the original court-martial convening authority transfers responsibility, the current court-martial convening authority becomes the responsible court-martial convening authority.

14.30.1.2.2. If the original court-martial convening authority remains the responsible court-martial convening authority and determines that a rehearing should be held, the original court-martial convening authority requests that the accused be returned for the purpose of rehearing or reaches an understanding as to situs with the officer presently exercising court-martial convening authority over the accused for the type of court-martial involved.

14.30.1.2.3. If the original court-martial convening authority no longer exists, the person exercising authority over the accused to convene the type of courts-martial involved is the responsible court-martial convening authority.

14.30.2. **Remands.** In accordance with R.C.M. 810(f), when remand is ordered by a court of criminal appeals, the order is directed to the Chief Trial Judge. The Chief Trial Judge then forwards the remand to AFLOA/JAJM.

14.30.2.1. AFLOA/JAJM, as TJAG’s delegate under R.C.M. 810(f)(1), forwards the remand to the appropriate GCMCA.

14.30.2.1.1. The “appropriate GCMCA” is the GCMCA that originally convened the court-martial or whose subordinate SPCMCA convened the court-martial. The GCMCA is also the responsible convening authority if the accused is still under his or her jurisdiction.

14.30.2.1.2. If the accused is no longer under the jurisdiction of the original GCMCA, the original GCMCA decides whether to remain the responsible court-martial convening authority or to transfer responsibility for the case to the GCMCA presently exercising authority over the accused.

14.30.2.1.2.1. If the original court-martial convening authority transfers responsibility, the current GCMCA becomes the responsible court-martial convening authority.

14.30.2.1.2.2. If the original GCMCA remains the responsible court-martial convening authority, the original court-martial convening authority requests that the accused be returned for the purposes of the remand or reaches an understanding as to situs with the officer presently exercising GCMCA over the accused for the type of court-martial involved.

14.30.2.1.2.3. If the original GCMCA no longer exists, the GCMCA exercising authority over the accused is the responsible court-martial convening authority.

14.30.3. **Receipt of Decision and Speedy Trial Clock.** Receipt of decision by the SJA of the original convening authority (or the current convening authority if the original convening authority no longer exists) triggers the speedy trial clock for both rehearings on findings and rehearings on sentence only. In a sentence-only rehearing, an accused is “brought to trial” at the first Article 39(a) session. *United States v. Becker*, 53 M.J. 229 (C.A.A.F. 2000); R.C.M. 707(b)(3)(D).

14.30.4. **Notification of the Accused and Counsel.** When a post-trial review or action directs or authorizes further proceedings, the responsible court-martial convening authority’s SJA must make reasonable efforts to locate and provide both the accused and trial defense counsel with a copy of documents requiring additional action. (T-1) Ensure receipts are accomplished. (T-1)

14.30.5. **Notification of the Victim(s).** When a post-trial review or action directs or authorizes further proceedings and the case involved a victim who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense under the UCMJ, the responsible court-martial convening authority’s SJA must make reasonable efforts to locate and provide any victim and counsel (if applicable) with a copy of the document requiring additional action. See Article 6b(a)(2), UCMJ. Ensure receipts are accomplished.

14.30.6. **Supplemental Order.** The responsible convening authority should ensure action is taken consistent with the post-trial directions from the reviewing or appellate authority. The responsible convening authority publishes a supplemental order indicating either:

14.30.6.1. That a rehearing is ordered before another court-martial to be designated. See paragraph 9.7.2. for sample language for rehearing on sentence; or

14.30.6.2. If a rehearing on sentence is impracticable, that the sentence has been set-aside and a sentence of no punishment is approved; or

14.30.6.3. If a rehearing on findings is impracticable, that the findings of guilt and the sentence have been set aside and the charges are dismissed.

**14.31. Referral.** Whether referring the matter to a rehearing in full or for a limited purpose, the following actions shall be accomplished:

14.31.1. The responsible convening authority directs the rehearing. (T-1) This may be done at any location the convening authority determines to be appropriate. If the rehearing is held at a location requiring the accused to travel, the accused should be placed on temporary duty in accordance with the *Joint Travel Regulations*.

14.31.2. A new convening order is published with all new members. (T-1)

14.31.3. A new referral indorsement in the same form as on page 2 of the Charge Sheet is completed following normal rules of referral. (T-1)

14.31.3.1. The appropriate instructions concerning the rehearing are incorporated on the referral form. (T-1)

14.31.3.2. The new referral is attached to the original referral. See paragraph 9.7.1. (T-1)

14.31.4. A military judge is detailed. The military judge may be the same as in the original trial or a new one may be detailed. (T-1)

#### **14.32. ROT and Post-Rehearing Concerns.**

14.32.1. The original ROT and any copies must remain intact, except for documents needed for reintroduction at rehearing, such as the charge sheet and exhibits, if required. (T-1)

14.32.2. Any documents withdrawn from the original ROT and used at the rehearing should be substituted in the original record and all copies with a description of the document, reasons for withdrawal, and new location of the document should be included. Do not withdraw the original copies of a decision of a court, action of a convening authority, post-trial review or recommendation, pretrial advice, PHO report, Statement of Trial results, or Entry of Judgment. See AFMAN 51-203.

14.32.3. If the accused served confinement resulting from the original trial, the new Statement of Trial Results and Entry of Judgment must reflect that the accused will be credited for the time served. (T-1)

14.32.4. The charge sheet must be annotated to reflect the case is being sent for a rehearing. See paragraph 9.7. (T-1) At the conclusion of the rehearing, a new Statement of Trial Results and Entry of Judgment must be completed. (T-1)

14.32.5. The record of the rehearing is a separate volume from the original ROT. Place the record of rehearing on top of the original ROT. The original ROT volumes are renumbered as appropriate.

14.32.6. A verbatim transcript is required for a rehearing proceeding. (T-1) Forward the original and two copies of the verbatim rehearing record, along with the original ROT, to AFLOA/JAJM.

**14.33. DuBay Hearing.** A DuBay hearing is a post-trial hearing ordered by an appellate court or convening authority for the limited purpose of obtaining further evidence on a matter under consideration by the court. *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967). In accordance with Article 66, UCMJ, DuBay hearings on various matters may be directed by the Court of Appeals for the Armed Forces, the Air Force Court of Criminal Appeals, the convening and supervisory authorities, or the detailed military judge on his or her own motion prior to Entry of Judgment, so long as the subject of the proceeding is “one that can be verified without material prejudice to the substantial rights of the accused.” *United States v. Brickey*, 16 M.J. 258 (C.M.A. 1983). The following procedures apply when a DuBay hearing is ordered:

14.33.1. **Notification of Court-Martial Convening Authority.** AFLOA/JAJM sends a letter of transmittal and a copy of the pertinent mandate or order to the SJA of the convening authority at the time of the trial (or the current court-martial convening authority if the original convening authority is no longer the responsible convening authority). If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the accused’s current convening authority with the authority to convene the type of court-martial involved. (T-1)

14.33.1.1. The responsible convening authority, as identified in paragraph 14.33.1, ensures action is taken consistent with the post-trial directions from the authority directing

the DuBay hearing. The responsible Court-Martial Convening Authority publishes a supplemental order reflecting post-trial action on the case.

14.33.1.2. Receipt of Decision and Time Standards. The appellate court directing the hearing generally specifies a date by which the process must be completed. If the appellate court does not specify a date by which the process must be completed, the matter must be completed within 45 days. (T-1) Any time extension requests require coordination with AFLOA/JAJG through AFLOA/JAJM. (T-1)

14.33.2. **Notification of the Accused and Counsel.** When a post-trial review or action directs a DuBay hearing, the responsible-convening authority's SJA must make reasonable efforts to locate and provide both the accused and trial defense counsel with a copy of the document requiring additional action. (T-1) Ensure receipts are accomplished. (T-1)

14.33.2.1. The accused should be returned to active duty status for the limited purpose of participating in the DuBay hearing.

14.33.2.2. Appointment Letter. The SJA prepares a letter for the responsible convening authority to direct the DuBay hearing. A template can be found on the Virtual Military Justice Deskbook as Template 1403.

14.33.3. **Detail of a Military Judge.** After appropriate coordination, the SJA drafts a letter for the convening authority requesting a military judge be detailed and directing a hearing date to be scheduled. A military judge is detailed to a DuBay hearing in the same manner as detailed to any court-martial.

14.33.4. DuBay hearings are conducted in accordance with Article 39(a), UCMJ.

14.33.5. Exhibits. Number items admitted as evidence at the hearing numerically, beginning with "DuBay Hearing Exhibit 1."

14.33.6. Record of Hearing and Post Hearing Action. Prepare a verbatim transcript of the hearing, unless otherwise directed by the authority ordering the hearing. Certify the transcript of the hearing in the same format as required for records of trial. Return the original ROT, the original DuBay transcript and any accompanying exhibits, and two copies of the DuBay transcript to AFLOA/JAJM. See AFMAN 51-203 for further guidance.

### ***Section 14I—Remission and Suspension (Article 74, UCMJ)***

#### **14.34. General Information.**

14.34.1. After the Entry of Judgment, the Secretary of the Air Force has the authority to remit or suspend any part or amount of the unexecuted part of any sentence, except one approved by the President, unless the Secretary of the Air Force delegated such authority. See AFPD 51-2 for delegations under Article 74.

14.34.2. The term "unexecuted part of a sentence" includes that part which has been approved and ordered executed but which has not been carried out (e.g., punitive discharges or dismissals not ordered into execution, unserved confinement, hard labor without confinement or restriction, and uncollected forfeitures).

**14.35. Authority Over Confinees.** If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFI 31-105 or to the Federal

Bureau of Prisons, and the accused has been assigned to AFSFC/FC, Article 74 authority delegated to commanders in AFPD 51-2 is exercised by AFDW/CC or by the officer exercising general court-martial convening authority over Air Force personnel in those institutions. (T-1)

**14.36. Authority Reserved to Secretary of the Air Force.** Only the Secretary of the Air Force may remit or suspend, any part or amount of the unexecuted part of the sentences listed below. This limitation does not apply to the convening authority's powers under R.C.M. 1109-10; Article 60, UCMJ.

14.36.1. Any sentence of a person convicted by a military tribunal, under the Secretary of the Air Force's jurisdiction, resulting from the President's commutation of a sentence of death to a lesser punishment;

14.36.2. Any sentence the Secretary of the Air Force approved and ordered into execution;

14.36.3. A dismissal, dishonorable discharge, or bad conduct discharge that is imposed for the conviction of an offense when a sentence to death is authorized by the Manual for Courts-Martial;

14.36.4. Those cases referred to the Secretary of the Air Force for action by commanders authorized to exercise Article 74, UCMJ, authority. Commanders are encouraged to forward cases involving issues most appropriate for resolution at the Air Force policy level to AFLOA/JAJR for Secretary of the Air Force decision.

**14.37. Authority of The Judge Advocate General.** TJAG may exercise Secretary of the Air Force authority under Article 74(a), UCMJ, and remit or suspend in whole or in part any unexecuted part of a sentence, with the exception of those cases specified in paragraph 14.34. The Director, United States Air Force Judiciary, may act for TJAG to remit or suspend up to 90 days of an approved sentence to confinement.

**14.38. Authority of the Accused's Commander.** Except in cases listed in paragraph 14.36, and where The Judge Advocate General has not acted, the commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of an accused's sentence adjudged by a summary court-martial or a special court-martial, except for a bad conduct discharge, regardless of whether the person acting has previously approved the sentence.

14.38.1. A commander exercising only special court-martial convening authority over the command to which the accused is assigned may not remit a bad conduct discharge, but may suspend a bad conduct discharge only in the initial action.

14.38.2. A commander exercising general court-martial convening authority over the command to which the accused is assigned may remit or suspend any part or amount of the unexecuted part of any sentence except in cases listed in paragraphs 14.36-14.37.

14.38.3. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFI 31-105 or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, this authority is exercised only by the Commander, Air Force District of Washington, or the officer exercising general court-martial convening authority over Air Force personnel in those institutions. (T-1)

**14.39. Publication of Secretary of the Air Force Actions under Article 74, UCMJ.** Promulgate actions taken by the Secretary of the Air Force in cases specified in paragraph

14.34 in a final orders. The Director, Air Force Personnel Council and TJAG are authorized to announce the action taken by Secretary of the Air Force in all other cases.

***Section 14J—Final Order Following Appellate Review***

**14.40. Final Orders.** A final order is a used after appellate review is complete; it reflects the post-trial and appellate history of the case, including actions taken by the confening authority, the appellate courts, TJAG, and the Secretary of the Air Force. GCMCA final orders execute all punitive discharges, and Secretary of the Air Force final orders execute all dismissals. In cases involving rehearings, the final order only shows modifications to the findings and/or sentence. In addition, use a final order after withdrawal of appellate review or when appellate proceedings are abated upon the death of an accused.

**14.41. Drafting Final Orders.** Upon completion of appellate review, AFLOA/JAJM will notify the responsible legal office of the need to complete the final order. A sample final order is provided at Figure A9.15. See R.C.M. 1209 for more guidance on the finality of a court-martial.

## Chapter 15

### SEX OFFENDER NOTIFICATION, CRIMINAL INDEXING AND DNA COLLECTION

#### *Section 15A—Crimes Against Children and Sexually Violent Offender Notification*

**15.1. General Provision.** If the member has been convicted of a sexually violent offense or certain offenses against a minor, the Air Force is required to provide notice to federal, state, and local officials prior to the member's release from confinement, and the member may be required to register as a sex offender under state law. (T 0). See *Sex Offender Registration and Notification Act*, 34 U.S.C. § 20901 et al. (2006); see also *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (1994), 42 U.S.C. § 14071, Pub. L. 105-119, Title I, § 115(a)(8)(C)(i), 111 Stat. 2466 (1997); *Megan's Law*, Pub. L. 104-145 (1994), *modifying* 42 U.S.C. § 13701, *et seq.*; *Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and Megan's Law*, Department of Justice A.G. Order No. 2196-98 (1998); *Pam Lyncher Sex Offender Tracking and Identification Act*, Pub. L. 104-236, 110 Stat. 3093 (1996); *Jacob Wetterling Improvements Act*, Pub. L. 105-119 § 115 (1998); *Protection of Children from Sexual Predators Act*, Pub. L. 105-314, 112 Stat. 2974 (1998); *Adam Walsh Child Protection and Safety Act*, Pub. L. 109-248 (2006); The Acts are available at the Department of Justice website <http://www.ojp.usDoJ.gov/smart/legislation.htm>.

**15.2. Notification upon Conviction.** State sex offender registry and United States Marshals Service National Sex Offender Targeting Center notifications for service members convicted as sex offenders, subsequent to conviction under the UCMJ, and incarceration in a DoD Component confinement facility, will be carried out in accordance with procedures in DoD Instruction 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*. (T-0) See also AFI 31-105. Confinement facilities are notified that a member is subject to this notification requirement by a required annotation on the Report of Result of Trial Memorandum or Statement of Trial Results, which is distributed to the confinement facility upon completion.

**15.3. Report of Results of Trial Memorandum.** If a member is convicted of an offense referred to trial prior to 1 January 2019 that triggers the sex offender notification requirement (with or without confinement), the SJA or designee ensures the Report of Result of Trial memorandum indicates that compliance with this section is required. (T-1) See Figure A11.1, paragraph A11.3.1.4.4.

**15.4. Statement of Trial Results and Entry of Judgment.** If a member is convicted of an offense referred to trial on or after 1 January 2019, the appropriate box must be completed on the 1st Indorsement of the Statement of Trial Results and the Entry of Judgment by the SJA. (T-1) See paragraphs 13.3.3 and 13.38.1 and Attachment 9.

**15.5. Qualifying Offenses.** DoDI 1325.07, Appendix 4 to Enclosure 2, includes a list of offenses which trigger sex offender notification requirements. **Note:** Sex offender registration requirements vary by state and may be triggered by offenses not listed in Enclosure 2. A member convicted of an offense that does not trigger sex offender notification requirements under DoDI 1325.07 may still be required to register as a sex offender under state law.

15.5.1. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Further questions about whether an offense triggers notification requirements may be directed to AFLOA/JAJM.

15.5.2. The Security Forces Confinement Officer, or designee responsible for custody of the inmate, ensures compliance with federal and state laws with regards to sex offender registration and notifications to civilian agencies, in accordance with the requirements detailed in AFI 31-105 and DoDI 5525.20, *Registered Sex Offender (RSO) Management in Department of Defense*. (T-0)

**15.6. No Post-trial Confinement.** When compliance with Section 15A is required, but confinement is not part of the adjudged punishment (or sufficient pretrial or illegal pretrial confinement credit completely offsets the term of confinement imposed at trial):

15.6.1. The SJA notifies the appropriate corrections officer (or the Security Forces commander, if there is no corrections officer), in writing, within twenty-four hours of the member's conviction. (T-1) For purposes of this section, conviction includes announcement of the sentence. This notification occurs via distribution of the Statement of Trial Results for charges and specifications referred to court-martial on or after 1 January 2019, Report of Result of Trial for charges and specifications referred to court-martial prior to 1 January 2019, and DD Form 2707-1 irrespective of the date. Both forms must be distributed to the confinement facility. (T-1)

15.6.2. The corrections officer, or the Security Forces commander, as appropriate, ensures that the notifications required in AFI 31-105 are made. (T-1)

**15.7. Convictions by a Host Country.** Service members, military dependents, DoD contractors, and DoD civilians can be convicted of a sex offense outside normal DoD channels by the host nation while assigned overseas. When compliance with Section 15A is required in these cases, the SJA notifies the appropriate individuals. It is the SJA's responsibility to ensure the offender completes the DD Form 2791, *Notice Of Release/Acknowledgement Of Convicted Sex Offender Registration Requirements*, or equivalent document, upon release from the host nation. (T-1) The DD Form 2791 and copies of the ROT should be provided to the appropriate federal, state, and local law enforcement by DoD in accordance with paragraph 15.2 and DoDI 1325.07.

**Section 15B—Criminal Indexing and Fingerprint Collection (Title 28 United States Code § 534; 28 C.F.R. Sections 20.30-38; DoDI 5505.11)**

**15.8. General Provision.** The Air Force, through AFOSI and Security Forces, submits offender criminal history record information and fingerprints to the FBI ("criminal indexing") when there is probable cause to believe an identified individual committed a qualifying offense. (T-0) See DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*; 28 C.F.R. Part 20; 28 U.S.C. § 534.

15.8.1. **Criminal History Record Information.** Criminal history record information reported in accordance with DoDI 5505.11 consists of identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, nonjudicial punishment; administrative action; or administrative discharge). **Note:** Issuance of a Military Protective Order (MPO) in accordance with Section 16I is also indexed in the National Crime Information Center (NCIC). (T-0) See Title 10 United States Code § 1567a.

15.8.2. **Identified Individuals.** Provided the qualifications in paragraphs 15.9-15.10. are met, the Air Force submits criminal history data on any military member or civilian

investigated by an Air Force law enforcement agency (AFOSI or Security Forces). Likewise, the Air Force submits criminal history data for military service members, military dependents, DoD employees, and contractors investigated by foreign law enforcement organizations for offenses equivalent to those described as qualifying offenses in paragraph 15.9.

**15.9. Qualifying Offenses.** Qualifying offenses are listed in DoDI 5505.11. In addition to these offenses, issuance of an MPO also triggers a requirement for indexing in NCIC.

**15.10. Probable Cause Requirement.** Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. The collection of fingerprints under this paragraph does not require a search authorization or consent of the person whose fingerprints are being collected.

**15.11. SJA Coordination Requirement.** The law enforcement agency (e.g., AFOSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. See paragraphs 15.9. and 15.10. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise AFOSI or Security Forces for purposes of criminal history indexing. (T-0)

**15.12. Process for Submission of Criminal History Data.** After the probable cause determination is made, the investigating agency (e.g., AFOSI or Security Forces) submits the required data for inclusion in NCIC in accordance with DoDI 5505.11.

**15.13. Final Disposition Requirement.**

15.13.1. The final disposition (e.g., conviction at GCM or SPCM, acquittal, conviction of a lesser included offense, sentence data, etc.) is submitted by AFOSI or Security Forces for each qualifying offense reported in NCIC. AFOSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). In the case of a court-martial, this final disposition is memorialized on a Report of Result of Trial or Statement of Trial Results, and on the Court-Martial Order or Entry of Judgment, whichever is applicable. A first indorsement signed by the SJA must accompany the Statement of Trial Results and Entry of Judgment. (T-1)

15.13.2. Templates for the Statement of Trial Results, Entry of Judgment, and first indorsement are located at Figures A9.1 and A9.2. See paragraphs 13.3.3 and 13.38.1.

15.13.3. Because the Entry of Judgment may differ from the adjudged findings and sentence, both the Statement of Trial Results and Entry of Judgment must be promptly distributed to the local AFOSI detachment, Security Forces, and AFOSI/XI. (T-1) See paragraphs 13.3.3 and 13.39.

15.13.4. For information regarding final disposition where the final disposition consists of nonjudicial punishment, see AFI 51-202.

15.13.5. In cases where the allegations involve offenses listed in paragraphs 5.7.1. through 5.7.3., and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to the local AFOSI detachment and AFOSI/XI in accordance with paragraph 5.7.5.2. (T-1)

15.13.6. For all other final dispositions which must be submitted in accordance with Section 15E and DoDI 5505.11, the SJA must ensure disposition data requested by the local AFOSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. (T-1) See Section 15E for further distribution guidance.

**15.14. Expungement of Criminal History Data and Fingerprints.** Expungement requests are processed in accordance with guidance promulgated by the law enforcement agency responsible for submission to NCIC.

***Section 15C—DNA Collection (10 U.S.C. § 1565; DoDI 5505.14)***

**15.15. General Provision.** The Air Force, through AFOSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Index System (CODIS), through the U.S. Army Criminal Investigations Laboratory (USACIL), when there is probable cause to believe an identified individual committed a qualifying offense. (T-0) See DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*; 10 U.S.C. 1565; 34 U.S.C. § 50702, *Collection and Use of DNA identification information from certain Federal Offenders*; 28 C.F.R. 28.12.

**15.16. Qualifying Offenses.** Qualifying offenses are listed in DoDI 5505.14.

**15.17. Probable Cause Requirement.** DNA collection in accordance with DoDI 5505.14 occurs only where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. The collection of DNA under this paragraph does not require a search authorization or consent of the person whose DNA is being collected.

**15.18. SJA Coordination Requirement.** There is no requirement that a law enforcement agency (AFOSI or Security Forces) coordinate with the legal office prior to collecting DNA for a qualifying offense. However, the law enforcement agency coordinates with government counsel prior to forwarding DNA for inclusion in CODIS where the forwarding is based solely upon a determination of probable cause, rather than other triggers for collection and forwarding under DoDI 5505.14 and paragraph 15.20 below.

**15.19. Collection of DNA by Commanders.** In cases investigated by AFOSI or Security Forces, the applicable investigative agency collects DNA where DNA collection is required. In commander directed investigations or inquiries, the commander will coordinate with the servicing SJA and Security Forces, who will collect the DNA where it is required. (T-1)

**15.20. Timing of Collection and Forwarding.** AFOSI, Security Forces and Commanders (through collection by Security Forces) collect and expeditiously forward DNA in accordance with the procedures in DoDI 5505.14.

15.20.1. DNA may be collected upon a determination of probable cause that the identified suspect committed a qualifying offense. DNA may be forwarded at the time of the probable cause determination, provided AFOSI or Security Forces, whichever is applicable, makes the determination in coordination with government counsel.

15.20.2. DNA may be collected and forwarded, or forwarded if already collected, at pre-ferral of charges, provided the charges preferred are qualifying offenses.

15.20.3. DNA may be collected and forwarded, or forwarded if already collected, when a service member is ordered into pre-trial confinement for a qualifying offense after the

completion of the commander's 72-hour memorandum, if DNA has not already been submitted related to that specific qualifying offense.

15.20.4. DNA may be collected and forwarded, or forwarded if already collected, if a military member is convicted at a general or special court-martial for a qualifying offense.

15.20.5. If a service member is acquitted of all qualifying offenses at a SPCM or GCM and no DNA has been forwarded, DNA is not forwarded (or collected, if applicable) for the qualifying offenses. If additional qualifying offenses have not been adjudicated, paragraphs 15.20.1. through 15.20.3. apply.

**15.21. SJA Coordination with Commanders.** Base-level SJAs are required to brief commanders about DNA processing requirements and advise commanders when samples must be collected in commander-directed investigations. (T-1) The suspect's commander coordinates with Security Forces to ensure the DNA sample is obtained and forwarded to USACIL for inclusion in CODIS in accordance with DoDI 5505.14.

**15.22. Report of Result of Trial.** In cases where specifications alleging qualifying offenses were referred to trial prior to 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be annotated on the Report of Result of Trial. See Figure A11.1, paragraph A11.3.1.4.4.

**15.23. Court-Martial Order.** In cases where specifications alleging qualifying offenses were referred to trial prior to 1 January 2019 and the accused is found guilty of one or more qualifying offenses, "DNA PROCESSING IS REQUIRED" must be annotated in the header. (T-1)

**15.24. Statement of Trial Results and Entry of Judgment.** In cases where specifications alleging qualifying offenses were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be completed on the 1st Indorsement of the Statement of Trial Results and Entry of Judgment by the SJA. See paragraphs 13.3.3 and 13.38.1 and Figures A9.1 and A9.2.

**15.25. Final Disposition Requirement.** As DNA may be forwarded to USACIL at various times during the investigation or prosecution of a case, as noted in paragraph 15.20, final disposition of court-martial charges must be forwarded to AFOSI and Security Forces to ensure DNA is appropriately handled. (T-1) The final disposition is memorialized on the following forms: Report of Result of Trial memorandum (for offenses referred to trial prior to 1 January 2019) or Statement of Trial Results (for offenses referred to trial on or after 1 January 2019), and on the Court-Martial Order or Entry of Judgment, whichever is applicable. A first indorsement signed by the SJA must accompany the Statement of Trial Results and Entry of Judgment. (T-1) Templates for the Statement of Trial Results, Entry of Judgment, and first indorsement are located at Figures A9.1 and A9.2. Because the Entry of Judgment may differ from the adjudged findings and sentence, both the Statement of Trial Results and Entry of Judgment must be promptly distributed to the local AFOSI detachment, Security Forces and AFOSI/XI. (T-1) See paragraphs 13.3.9, 13.4. and 13.39. In cases where the allegations involve offenses listed in paragraphs 5.7.1. through 5.7.3., and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to AFOSI in accordance with paragraph 5.7.5.2. (T-1) For all other dispositions, the SJA must ensure disposition data requested by the local AFOSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. (T-1) See Section 15E for further distribution guidance.

**15.26. Expungement of DNA.** DoD expungement requests are processed in accordance with guidelines promulgated in DoDI 5505.14. If a current service member whose DNA was collected and forwarded for inclusion in CODIS requests expungement in writing through a commander who meets the requirements in DoDI 5505.14, the SJA shall advise the commander and criminal investigators whether expungement is authorized. (T-1) Expungement is authorized only if the case results in acquittal for all charged offenses for which DNA collection is mandated; findings of guilty are disapproved or set aside for all offenses for which DNA collection is mandated; or the case is disposed of by referral to SCM, nonjudicial punishment, administrative action, or a decision to take no action. See DoDI 5505.14. Former service members must follow the procedures outlined in DoDI 5505.14. (T-0)

***Section 15D—Possession or Purchase of Firearms Prohibited (18 U.S.C. § 921-22; 27 C.F.R. 478.11)***

**15.27. General Provision.** 18 U.S.C. § 922 prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person that fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement, etc.).

**15.28. Categories of Prohibition. (18 U.S.C. §§ 922(g), 922(n))**

15.28.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year. If a service member is convicted of a crime for which the maximum punishment listed in the MCM exceeds a period of one year, this prohibition is triggered, regardless of the term of confinement adjudged or approved. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

15.28.2. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial. 18 U.S.C. § 922(n).

15.28.3. Fugitives from justice. 18 U.S.C. § 922(g)(12).

15.28.4. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802. 18 U.S.C. § 922(g)(3).

15.28.4.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. See 27 C.F.R. 478.11.

15.28.4.2. The following conditions trigger the prohibition under 18 U.S.C. 922(g)(3): Conviction or nonjudicial punishment for use or possession, within the last year, of a controlled substance; admission to qualifying drug use; positive urinalysis result; administrative discharge for drug use or drug rehabilitation failure. **Note:** This list is not intended to be exhaustive. See 27 C.F.R. 478.11.

15.28.4.3. Convictions under this rule do not necessarily trigger the requirement for DNA submission under DoDI 5505.14 and Section 15C.

15.28.5. Any person adjudicated as a mental defective or who has been committed to a mental institution. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

15.28.6. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

15.28.7. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18 U.S.C. § 922(g)(6).

15.28.8. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

15.28.9. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under Section 15B. See also Section 16I.

15.28.10. Persons convicted of a misdemeanor crime of domestic violence (the “Lautenberg Amendment”). 18 U.S.C. § 922(g)(9). This includes conviction at a GCM or SPCM for any offense that includes the use or attempted use of physical force or threatened use of a deadly weapon against a person who is a current or former spouse, child or ward, a person with whom the accused shares a child in common, or a current or former intimate partner with whom the accused shares or has shared a common domicile. **Note:** Government counsel and law enforcement must look at this on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, etc.) meet the statutory criteria for a “crime of domestic violence.” (T-1) See 10 U.S.C. § 1562; DoDI 6400.07.

15.28.10.1. A “crime of domestic violence” is an offense that has as its factual basis one of the following: (1) the use or attempted use of physical force, or (2) the threatened use of a deadly weapon. The alleged offender must be (1) a current or former spouse; (2) parent or guardian of the victim; (3) a person with whom the victim shares a child in common; (4) a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or, (5) a person similarly situated to a spouse, parent or guardian of the victim. See DoDI 6400.06, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*; 18 U.S.C. § 922.

15.28.10.2. Qualifying convictions include a “crime of domestic violence” tried by GCM or SPCM which otherwise meets the elements of a crime of domestic violence as defined in paragraph 15.28.10.1. 18 U.S.C. § 922(d) and (g). SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of nonjudicial punishment under Article 15, UCMJ.

**15.29. Report of Results of Trial Memorandum.** In cases where specifications alleging offenses which trigger any prohibition under 18 U.S.C. § 922 were referred to trial prior to 1 January 2019 and the accused is found guilty of one or more such offenses, the appropriate box must be annotated on the Report of Result of Trial. (T-1) **Note:** If the accused is convicted of a

crime of domestic violence as defined in paragraph 15.28.10.1. and 18 U.S.C. § 922, both the “Firearms Prohibition” and “Domestic Violence Conviction” blocks should be marked “yes.”

**15.30. Court-Martial Order.** In cases where specifications alleging qualifying offenses were referred to trial prior to 1 January 2019 and the accused is found guilty of one or more qualifying offenses, “FIREARMS PROHIBITION – 18 U.S.C. § 922” must be annotated in the header. (T-1) In the event the prohibition results from a conviction for domestic violence, “CRIME OF DOMESTIC VIOLENCE – 18 U.S.C. § 922(g)(9)” should be listed in the header.

**15.31. Statement of Trial Results.** In cases where specifications alleging offenses which trigger a prohibition under 18 U.S.C. § 922 were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the 1st Indorsement of the Statement of Trial Results by the SJA. (T-1) **Note:** If the accused is convicted of a crime of domestic violence as defined in paragraph 15.28.10.1. and 18 U.S.C. § 922, both the “Firearms Prohibition” and “Domestic Violence Conviction” blocks should be marked “yes.”

**15.32. Final Disposition Requirement.** As the findings of a case may change after close of a court-martial, as noted in paragraph 15.13. and 15.25., final disposition of court-martial charges must be forwarded to the local AFOSI detachment, Security Forces, and AFOSI/XI to ensure reporting pursuant to 18 U.S.C. § 921-22 is appropriately handled. The final disposition is memorialized on a Report of Result of Trial or Statement of Trial Results, and on the Court-Martial Order or Entry of Judgment, whichever is applicable. Because the Entry of Judgment may differ from the adjudged findings and sentence, both the Statement of Trial Results and Entry of Judgment must be promptly distributed to the local AFOSI detachment, Security Forces, and AFOSI/XI. (T-1) A first indorsement signed by the SJA must accompany each. (T-1) Templates for the Statement of Trial Results, Entry of Judgment, and first indorsement are located at Figures A9.1 and A9.2. See paragraphs 13.4. and 13.39. The SJA must ensure disposition data requested by the local AFOSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. (T-1) See Section 15E for further distribution guidance.

**15.33. SJA Coordination with Commanders.** The SJA or designee must inform commanders of the impact of the conviction on the accused’s ability to handle firearms or ammunition as part of their official duties; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member’s authority to possess Government-issued firearms and ammunition in the event a member is convicted of an offense under the Lautenberg Amendment; and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition. (T-1)

#### *Section 15E—Distribution of Court-Martial Data for Indexing Purposes*

**15.34. General Provision.** In order to ensure that titling and indexing requirements pursuant to this chapter are met, SJAs must ensure the following documents are distributed to the local AFOSI detachment, and Security Forces Reports and Analysis (SFS/S2I), and the Air Force Indexing Cell:

15.34.1. Charge sheets in cases referred to any court-martial; (T-1)

15.34.2. Report of Result of Trial memoranda, regardless of verdict or sentence; (T-1)

15.34.3. Statement of Trial Results, regardless of verdict or sentence; (T-1)

15.34.4. Court-martial orders; (T-1)

15.34.5. Entry of Judgment; (T-1)

15.34.6. Final order reflecting judgment of the appellate court, TJAG or Secretary of the Air Force, where applicable; (T-1) and

15.34.7. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under Sections 15B-15D of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with paragraph 5.7; nonjudicial punishment records in accordance with AFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for resignation or retirement in lieu of trial by court-martial, etc.). (T-1)

15.34.8. **General Courts-Martial Continuances, Delays and Abatements.** Any continuance, delay or abatement that results in the announcement of a sentence or acquittal in a general court-martial occurring more than six months after referral may require modification of disposition information in the National Instant Background Check System (NICS). Government counsel must notify the investigating agency (e.g., local AFOSI detachment or Security Forces) and Air Force Indexing Cell in the event a continuance or delay is granted or abatement ordered in a general court-martial. (T-1)

**15.35. Electronic Submission Preferred.** These documents should be submitted to the Air Force Indexing Cell electronically to ensure prompt processing. Documents should be submitted to [AFOSI.XI.AFCriminalIndexPM@us.af.mil](mailto:AFOSI.XI.AFCriminalIndexPM@us.af.mil) and may be submitted as attachments or via other secure electronic method.

#### *Section 15F—Protective Order Submissions*

**15.36. National Crime Information Center (NCIC) Submission.** When a commander issues a Military Protective Order (MPO), the commander must forward the MPO to Security Forces in accordance with Section 16I. (T-0) Security Forces enters the MPO into NCIC. The commander also notifies Security Forces when any terms are modified or the MPO is terminated. (T-0) SJAs must be cognizant of these requirements and appropriately advise commanders of their responsibilities and the collateral effects of issuing, modifying or terminating MPOs. (T-1)

## Chapter 16

### VICTIM AND WITNESS ASSISTANCE

#### *Section 16A—Purpose and Objectives*

**16.1. Purpose.** This chapter describes the Air Force VWAP and implements the DoD Directive 1030.01, *Victim and Witness Assistance*, and DoD Instruction 1030.2, *Victim and Witness Assistance Procedures*. This chapter establishes responsibility for VWAP at the Headquarters Air Force and subordinate levels. It provides guidance for the treatment of victims and witnesses of offenses under the UCMJ, and victims and witnesses of offenses under the jurisdiction of local, state, other federal, or foreign authorities during those stages of the criminal justice process conducted primarily by the Air Force. This chapter provides guidance for the protection and assistance of victims and witnesses, enhances their roles in the military criminal justice process, and preserves the constitutional rights of an accused. Figure A10.1 provides a list of program responsibilities with the corresponding responsible base agencies. These provisions create no cause of action or defense in favor of any person arising out of a failure to comply with the program. VWAP places no limitations on the lawful prerogatives of Air Force personnel. Funding for the program is an operations and maintenance-type expense.

**16.1.1. Victim and Witness Assistance Program Council.** Each installation's Local Responsible Official (LRO) establishes a Victim and Witness Assistance Program council. (T-0) The following agencies or functions, when present on the installation, will designate program representatives: SARC, Family Advocacy Program, Security Forces, AFOSI, Surgeon General, Airman and Family Readiness Center, Chaplain, and SJA. (T-1) In addition, the LRO appoints a squadron commander and a first sergeant to the council and may appoint other representatives as appropriate. (T-1) The LRO chairs the council, which meets, at a minimum, annually.

**16.1.2. Access to the Victim and Witness Assistance Program.** VWAP assistance is available in all cases in which criminal conduct adversely affects victims or in which witnesses provide information regarding criminal activity if any portion of the investigation is conducted primarily by DoD components. VWAP personnel should pay special attention to victims of serious, violent crime, but ensure all victims and witnesses of crime who suffer direct physical, financial, or emotional trauma receive the assistance and protection to which they are entitled. A victim or victims of an offense shall be identified at the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation. (T-1) While various Air Force agencies have particular responsibility for the program, the provision of victim and witness assistance is to be a coordinated effort among all agencies providing services to individuals.

**16.2. Objectives.** The following are objectives of the Air Force VWAP:

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

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

16.2.3. Ensure best efforts are made to accord to victims of crime certain enumerated rights, including those described in Article 6b, UCMJ.

### ***Section 16B—Definitions***

**16.3. Victim.** A person who suffered direct physical, emotional, or financial harm as the result of an offense. Victims shall be identified at the earliest opportunity after the detection of a crime. **Note:** The definition of victim varies throughout this instruction based on statutory requirements. Where the definition of victim changes, it is annotated in the affected chapters, sections or paragraphs. See Section 3C.

16.3.1. Incompetent, Incapacitated, Deceased, or Underage Victims.

16.3.1.1. When a victim is incompetent, incapacitated, deceased, or under 18 years of age and not a member of the armed forces, one of the following, who is not the offender, may represent the victim (in order of priority):

16.3.1.1.1. Spouse;

16.3.1.1.2. Legal guardian;

16.3.1.1.3. Parent;

16.3.1.1.4. Child;

16.3.1.1.5. Sibling;

16.3.1.1.6. Another family member; or

16.3.1.1.7. Another person designated by a court.

16.3.1.2. When a victim is incompetent, incapacitated, deceased, or under 18 years of age but not a member of the armed forces, the detailed military judge shall designate a representative of the estate of the victim, a family member, or another suitable person who may assume the victim's rights under the UCMJ. (T-0) See Article 6b; R.C.M. 801(a)(6).

16.3.1.2.1. A "representative" means a person designated by the military judge for the sole purpose of exercising legal rights of the victim as they pertain to the victim's status as a victim of any offense(s) properly before the court.

16.3.1.2.2. The military judge shall not designate the accused as the representative of the victim. (T-0) See R.C.M. 801(a)(6)(B)(iv).

16.3.2. In the case of a victim that is an institutional entity, an authorized representative of the institutional entity may represent the institutional entity.

**16.4. Witness.** A person who has information or evidence of a crime and provides that information or evidence to an Air Force official. When the witness is a minor, the term includes an appropriate family member as discussed in paragraph 16.3.1.1. For purposes of VWAP, the term "witness" does not include a defense witness or an individual allegedly involved in a crime as a conspirator, accomplice, or principal.

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

**16.6. Component Responsible Official.** The Air Force official responsible for coordinating, implementing and managing the Air Force VWAP. TJAG is the Air Force component responsible official.

**16.7. LRO.** The individual responsible for identifying victims and witnesses of crimes and providing the services required by VWAP. Each installation commander or SPCMCA, as appropriate, is the LRO. LROs may delegate their official duties and responsibilities to the SJA. The delegation must be in writing and addressed to the base SJA by duty title rather than name. (T-1) The SJA may further delegate those duties and responsibilities in writing to a VWAP coordinator while maintaining oversight and overall responsibility for the program. References in this chapter to the LRO include the SJA or VWAP coordinator, if delegated local responsible official duties and responsibilities, and other individuals tasked by the LRO to assist with the victim and witness assistance program. Refer to paragraph 4.5. when determining local responsible officials for members of a stand-alone Air Reserve or Air National Guard Base.

**16.8. Victim and Witness Assistance Program Coordinator.** The individual selected by the SJA to implement and manage VWAP. The VWAP coordinator is responsible for ensuring the accomplishment of required training by all local agencies. The VWAP coordinator may also serve as a victim liaison in a particular case.

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

**16.10. Central Repository.** A central organization for confinee information, charged with establishing procedures to ensure victims are notified of changes in confinee status, if they so elect. The United States Air Force central repository is the Air Force Security Forces Center (AFSFC/FC), Confinement and Corrections Directorate/Victim and Witness Assistance Program Central Repository, 1517 Billy Mitchell Boulevard, Joint Base San Antonio-Lackland, Texas 78236-0119. COMM: (210) 925-5607, Toll Free (877) 273-3098.

### ***Section 16C—Victims’ Rights***

#### **16.11. Victims’ Rights.**

16.11.1. Victims of Any Offense. Victims of any offense who have suffered direct physical, emotional, or pecuniary harm as a result of the commission of that offense are afforded a number of rights under Article 6b, UCMJ, DoDI 1030.2 and other applicable rules, as outlined in the R.C.M. and this instruction, regardless of the nature of the offense. See, e.g., R.C.M. 405, 1001c, 1101, 1106A, 1108, 1109, 111, 1304. Among these rights are the following:

16.11.1.1. The right to be reasonably protected from the accused;

16.11.1.2. The right to reasonable, accurate, and timely notice of any of the following:

16.11.1.2.1. Any proceedings or hearings related to the accused’s pretrial confinement;

16.11.1.2.2. A hearing under Article 32, UCMJ, relating to the offense;

- 16.11.1.2.3. A court-martial relating to the offense, to include open Article 39a hearings and post-trial vacation hearings;
- 16.11.1.2.4. A proceeding of the Service clemency and parole board relating to the offense.
- 16.11.1.2.5. The release or escape of the accused, unless such notice may endanger the safety of any person.
- 16.11.1.3. The right to receive, upon request, a copy of, or access to, the recording of a preliminary hearing under Article 32, UCMJ, as soon as practicable following the conclusion of the hearing.
- 16.11.1.4. The right not to be excluded from any public hearing or proceeding described under paragraph 16.11.1.2 unless the military judge or PHO, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under the UCMJ would be materially altered if the victim heard other testimony at that hearing or proceeding.
- 16.11.1.5. The right to be reasonably heard at any of the following:
  - 16.11.1.5.1. A seven-day review concerning the continuation of confinement prior to trial of the accused or any other public Air Force hearing concerning continuation of confinement prior to trial of the accused.
  - 16.11.1.5.2. A sentencing hearing relating to the offense(s), to include any vacation hearings.
  - 16.11.1.5.3. A Military Department Clemency and Parole Board hearing relating to the offense(s). A victim may make a personal appearance before the Board or submit an audio, video, or written statement.
- 16.11.1.6. The right to reasonably confer with the counsel representing the government at any proceeding described in paragraph 16.11.1.2.
  - 16.11.1.6.1. Prior to questioning a victim about a sexual offense, the counsel for the government or other designated official advises the victim of the right to seek the advice of an attorney and of the potential eligibility for Special Victims' Counsel representation. (T-0) See Fiscal Year 2016 National Defense Authorization Act, Section 534.
  - 16.11.1.6.2. Victims eligible for the Air Force legal assistance program may also consult a legal assistance attorney in accordance with Title 10 United States Code § 1565b. All victims may also elect to seek the advice of a private attorney at their own expense.
- 16.11.1.7. The right to receive restitution as provided by law.
- 16.11.1.8. The right to proceedings free from unreasonable delay.
- 16.11.1.9. The right to be treated with fairness and with respect for the victim's dignity and privacy.

16.11.1.10. If the offense was tried by any court-martial and the accused was found guilty of the offense, the right to submit a written statement to the convening authority after the sentence is adjudged. See R.C.M. 1106A.

16.11.2. Victims of any offense referred to trial after 1 January 2019 who have suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty, and on which the convening authority may take action under R.C.M. 1109 and 1110 have the following additional rights:

16.11.2.1. The right to petition for an Article 30a, UCMJ, hearing before a military judge for matters arising under Article 6b(c) and (e).

16.11.2.2. The right to petition for an Article 30a, UCMJ, hearing before a military judge for relief or quashing of an investigative subpoena.

16.11.2.3. If represented by counsel, the right to be interviewed by defense counsel only in the presence of counsel, trial counsel, or victim advocate (VA). If unrepresented by counsel, the right to be interviewed by defense counsel only in the presence of trial counsel or VA.

16.11.2.4. If named in a specification being considered in an Article 32 preliminary hearing, the right to submit supplemental materials for consideration by the PHO and convening authority within 24 hours after the PHO closes the hearing.

16.11.2.5. The right, upon request, to receive a copy of the recording of all open sessions of the court-martial, subject to the limitations in paragraph 13.14.1.

16.11.2.6. The right, upon request, to receive a copy of the ROT, provided the victim was named in a specification of which the accused was charged. **Note:** Redactions may be required to protect the privacy interests of third parties.

16.11.2.7. The right to receive a copy of the ROT if the victim testified, regardless of the findings. **Note:** Redactions may be necessary to protect the privacy interests of third parties.

16.11.2.8. The right to receive a copy of any action taken by the convening authority, if applicable.

16.11.2.9. The right to receive a copy of the Entry of Judgment.

16.11.3. Victims of a Sex Offense. Victims of an offense occurring prior to 1 January 2019 under Articles 120, 120a, 120b, 120c, or, 125, and attempts thereof under Article 80, and victims of an offense occurring on or after 1 January 2019 under Articles 120, 120b, 120c, or 130, UCMJ, or attempts thereof under Article 80, have the following additional rights:

16.11.3.1. In cases where the offense occurs in the United States, or any political subdivision, possession or territory, thereof, the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

16.11.3.2. Provided the victim is eligible for assistance, the right to consult with a Special Victims' Counsel in accordance with 10 U.S.C. § 1044e.

16.11.3.3. The right to have the victim's counsel, including Special Victims' Counsel, provided with reasonable, accurate, and timely notice of the same proceedings the victim is entitled to be appraised of under Article 6b, UCMJ.

16.11.3.4. Non-Participating Victims. If the victim declines to participate in an investigation or prosecution, commanders and SJAs should refer to AFI 90-6001, *Sexual Assault Prevention and Response Program*, and DoDI 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, Enclosure 4.

16.11.4. If a victim of an offense under the UCMJ other than those listed at paragraph 16.11.3 requests SVC representation, refer the request to AFLOA/CLSV.

**16.12. Enforcement by the Air Force Court of Criminal Appeals.** A victim may petition the Air Force Court of Criminal Appeals for a writ of mandamus contesting a ruling in an Article 32 hearing or court-martial if the victim believes the ruling violates the victim's rights as enumerated in Article 6b or afforded by M.R.E. 412 (evidence of sexual history), M.R.E. 513 (psychotherapist-patient privilege), M.R.E. 514 (victim advocate privilege), or M.R.E. 615 (exclusion of witnesses). Article 6b(e), UCMJ. However, the victim should exhaust other judicial remedies first (e.g., if contesting an Article 32 ruling, the victim must first petition the military judge for a hearing under Article 30a, UCMJ).

#### ***Section 16D—Services Provided to Victims***

**16.13. LRO Responsibilities.** The LRO or designee will:

16.13.1. Designate a victim liaison to assist individual victims when necessary. (T-1)

16.13.2. Inform the victim of the place where the victim may receive emergency medical and social services, and when necessary provide appropriate assistance in securing the care. (T-1)

16.13.3. Inform eligible victims of the availability of an SVC in accordance with 10 U.S.C. § 1044e and legal assistance in accordance with 10 U.S.C. § 1565b if they are otherwise eligible for legal assistance under AFI 51-304, *Legal Assistance, Notary, Preventative Law, and Tax Programs*. (T-0) If a victim requests a SVC, refer the request to AFLOA/CLSV. (T-1)

16.13.4. Inform the victim of any restitution or other relief to which the victim may be entitled and generally how to obtain the relief. (T-1)

16.13.4.1. Restitution may be available from, or offered by, an accused as a condition in the terms of a plea agreement, during the sentencing process, or as a part of post-trial mitigation (R.C.M. 1105), or as a term or condition of parole or clemency. (T-1) Local responsible officials or their designee should provide general information on possible restitution from local, state or federal crime victims' funds, including procedures for applying for such funds.

16.13.4.2. Inform victims that Article 139, UCMJ, may provide relief if the property loss or damage resulted from wrongful taking or willful damage by a member of the Armed Forces due to riotous, violent, or disorderly conduct. (T-1) See AFI 51-502, *Personnel and Carrier Recovery Claims*. Ensure an Article 139 investigation does not interfere with any criminal investigation or court-martial proceedings.

16.13.5. Inform victims of intra-familial abuse offenses of the availability of limited transitional compensation benefits, waiver of automatic forfeitures, and possible entitlement to a portion of the member's retirement benefits. (T-1) See 10 U.S.C. §§ 1058, 1059, and 1408; DoDI 1342.24, *Transitional Compensation for Abused Dependents*.

16.13.6. Inform the victim of available public and private counseling, treatment and support programs. (T-1)

16.13.7. Assist the victim in contacting agencies providing necessary services and relief. (T-1)

16.13.8. Inform the victim concerning protection from intimidation or similar threats, and, if appropriate, arrange for the victim to receive reasonable protection from an accused and from individuals acting in concert with the accused. See 18 U.S.C. §§ 1512 and 1513. (T-1)

16.13.8.1. The victim should be instructed to immediately report any intimidation, harassment or similar conduct to military or civilian authorities. (T-1)

16.13.8.2. In cases where a victim's life, well-being or safety is jeopardized or threatened by participation in the reporting, investigation, or military justice process, the LRO or designee ensures immediate notification of appropriate law enforcement agencies. (T-1) Air Force law enforcement agencies promptly take measures to provide protection for the victim, as allowed by jurisdictional restrictions. The LRO or designee assists victims in obtaining restraining orders or similar protections available from civilian agencies.

**16.14. Law Enforcement Responsibilities.** In accordance with DoDI 1030.2 during investigation of a crime, law enforcement investigators inform all victims as appropriate of the following:

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

16.14.2. The arrest of the suspected offender; and

16.14.3. A decision not to pursue further investigation.

**16.15. Commander's Responsibilities.**

16.15.1. The immediate commander of the subject of an investigation or the accused should take reasonable and necessary steps to ensure victims are adequately protected from the subject during the period of investigation and prosecution. In certain cases, this may require the commander to issue a protective order. See DoDI 6400.06; DoDI 6495.02; AFI 90-6001.

16.15.2. An explanation of the different types of protective orders and appropriate use of protective orders is located at Section 16I. In the event the commander issues a MPO, the commander forwards the MPO to Security Forces for indexing in accordance with DoD Policy Memorandum, *Placing Military Protective Orders in the National Crime Information Center Protective Order File*, dated 26 June 2014 and DoDI 6400.06.

**16.16. SJA Responsibilities.**

16.16.1. Notification. The SJA or designee ensures the victim is provided with the earliest possible notification of their rights under paragraph 16.11. (T-1) This includes:

16.16.1.1. The availability of an SVC, if applicable;

- 16.16.1.2. The accused's pretrial status and any subsequent changes in that status, including but not limited to, the accused being placed in pretrial confinement, being released from pretrial confinement, or escaping from pretrial confinement;
- 16.16.1.3. Preferral and referral of charges or a decision not to pursue prosecution;
- 16.16.1.4. A pretrial confinement hearing and/or Article 32 preliminary hearing, including the intent to introduce any evidence implicating M.R.E. 412, 513 or 514;
- 16.16.1.5. The scheduling, including changes and delays, of each court-martial proceeding the alleged victim is entitled or required to attend. In cases involving an alleged victim of a qualifying offense, as defined in paragraph 16.11.3, the servicing SJA or designee shall ensure any counsel of the victim, including a SVC, is provided reasonable, accurate, and timely notice of proceedings as required in paragraph 16.11.3.3. (T-1) A template for this notification is included at Figure A10.2.
- 16.16.1.6. The disposition of the case, to include the acceptance of a guilty plea, the rendering of a verdict, or the withdrawal or dismissal of charges;
- 16.16.1.7. If named in a specification being considered in an Article 32 preliminary hearing, the right to submit supplemental materials for consideration by the PHO and convening authority within 24 hours after the PHO closes the hearing.
- 16.16.1.8. The right, upon request, to receive a copy of the recording of all open sessions of the court-martial, subject to the limitations in paragraph 13.14.1.
- 16.16.1.9. The right, upon request, to receive a copy of the ROT, provided the victim was named in a specification of which the accused was charged. **Note:** Redactions may be required to protect the privacy interests of third parties.
- 16.16.1.10. The right to receive a copy of the ROT if the victim testified, regardless of the findings. **Note:** Redactions may be required to protect the privacy interests of third parties.
- 16.16.1.11. The right to receive a copy of any action taken by the convening authority, if applicable.
- 16.16.1.12. The right to receive a copy of the Entry of Judgment.
- 16.16.1.13. The opportunity to present to the court at sentencing, in compliance with applicable law and regulations, a statement of the impact of the crime on the victim, including financial, social, psychological, and physical harm suffered by the victim;
- 16.16.1.14. The sentence imposed, including the date on which the accused becomes eligible for release from confinement or parole, if applicable; and
- 16.16.1.15. In a general or special court-martial in which charges were referred prior to 1 January 2019 that involve victims of crimes punishable under Articles 120, 120b, 120c, 125, or any attempt to commit such offenses in violation of Article 80, the right to receive a copy of the ROT free of charge as soon as the records are certified. See R.C.M. 1103(g)(3) (MCM 2016 ed.). In special or general courts-martial in which charges were referred on or after 1 January 2019, the right of testifying victims to receive a copy of the certified ROT and the right of non-testifying victims who were named in a specification to receive a copy of the certified ROT upon request. See R.C.M. 1112(e)(1). The SJA or

designee ensures any declination of the ROT is documented in writing and attached to the original record. (T-0)

16.16.1.16. If the offense was tried by a court-martial and the accused was found guilty of the offense, the opportunity to submit a written statement to the convening authority after the sentence is adjudged. See R.C.M. 1106A. Section 13C provides additional guidance on victim impact statements.

16.16.2. **Consultation.** Under ordinary circumstances, the SJA or designee ensures the victim is consulted on the below decisions. Consultation should provide the victim with a meaningful opportunity to communicate the victim's views to the disposition authority. The victim's views must be solicited in writing. (T-1) However, the victim may also consult through oral (e.g., telephonic, video teleconference, or in person) communication. When the victim requests an oral consultation with the disposition authority, the SJA or designee shall ensure the disposition authority is notified of this request prior to the disposition decision. (T-1) If the victim elects not to provide written matters, this should be annotated in the second indorsement on the template memorandum, located at Figure A2.4.

16.16.2.1. Victim(s)' preference as to disposition of the charge of which the individual is a victim. The preference expressed by the victim, while not binding, should be considered by any convening authority in making a decision whether to refer or forward a recommendation to refer the charge(s) or specification(s) for the offense to a court-martial for trial. A template memorandum used to notify the victim of his or her opportunity to express their views on disposition of relevant charges is located at Figure A2.4. If the victim has a SVC or other counsel, the SVC or counsel representing the victim may provide the victim's views on behalf of the client. These views include:

16.16.2.2. Decisions not to prefer charges or disposition of the offense by means other than court-martial;

16.16.2.3. Dismissal of charges or referral decisions;

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

16.16.2.5. Plea agreement negotiations, including relevant plea agreement terms;

16.16.2.6. Plea negotiations;

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

16.16.2.8. Scheduling of judicial or administrative proceedings where the victim is required or entitled to attend. **Note:** If requested by the victim, the SJA or designee takes reasonable steps to inform the victim's employer of the reasons for the victim's absence from work. In appropriate cases, the SJA or designee assists a victim subjected to serious financial strain directly resulting from a crime, or cooperation in the investigation or prosecution of an offense, in explaining reasons for financial strains to creditors. However, this does not entitle non-eligible victims to formal legal assistance. See AFI 51-304.

16.16.3. Consultation as required by paragraph 16.16.2 may be limited if it could endanger the safety of the victim or a witness, jeopardize an ongoing investigation, disclose classified or privileged information, or unduly delay disposition of an offense. Although the victims' views should be considered, VWAP does not limit the responsibility and authority of officials

involved in the military justice process from taking any action deemed necessary in the interest of good order and discipline and the prevention of service-discrediting conduct.

16.16.4. Upon receiving a written request from the victim or victim's counsel for a copy of the recording of a preliminary hearing under Article 32, UCMJ, the SJA, through trial counsel or other designee, provides the victim with a copy of, or access to, the recording upon completion of the preliminary hearing report. See paragraph 7.8.2.

16.16.5. During trial proceedings, the SJA or designee provides the victim with:

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

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

16.16.6. After trial proceedings, the SJA or designee takes appropriate action to ensure that any property of the victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed or required to be retained by law.

16.16.7. Upon written request from the victim or victim's counsel for a copy of the recording of all open sessions of the court-martial, the SJA, through trial counsel or other designee, provides the victim with a copy of the recording.

16.16.8. Upon written request from a victim named in a specification of which the accused was charged, or victim's counsel, the SJA, through trial counsel or other designee, provides the victim with a copy of the ROT.

16.16.9. In cases where the victim testified, the SJA ensures the victim receives a copy of the ROT, regardless of the findings.

16.16.10. The SJA ensures the victim receives a copy of any action taken by the convening authority.

16.16.11. Upon written request from a victim or victim's counsel, the SJA ensures the victim receives a copy of the Entry of Judgment, regardless of the findings in the case.

16.16.12. A victim's request for additional information, other than that provided above, relating to the investigation and prosecution of a crime, is processed in accordance with DoD 5400.7-R\_AFMAN 33-302, *Freedom of Information Act Program*.

**16.17. Additional Rights for Victims of Certain Sex-Related Offenses.** For cases involving victims of an offense occurring prior to 1 January 2019 under Articles 120, 120a, 120b, 120c, or 125, UCMJ, and attempts thereof under Article 80, UCMJ, and victims of an offense occurring on or after 1 January 2019 under Articles 120, 120b, 120c, or 130, UCMJ, or attempts thereof under Article 80, UCMJ, the victims have the following additional rights:

16.17.1. In cases where the offense occurred in the United States, or any political subdivision, possession or territory, thereof, the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. The SPCMCA, through the servicing SJA or designee, requests and considers the victim's views, if any. See Figure A2.1. Under no circumstances will the victim's SVC be the SJA's designee.

16.17.2. The convening authority, through the servicing SJA, ensures the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution. See Figure A2.2.

16.17.3. The convening authority, through the servicing SJA, ensures the victim is notified of any decision by the civilian jurisdiction to prosecute or not prosecute the offense in a civilian court. See Figure A2.3.

16.17.4. In cases where initial disposition decisions are required to be forwarded to the GCMCA under paragraph 5.7.5., the SJA ensures that any statements solicited from the victim with regards to disposition are made available to the GCMCA. Additionally, if the victim in such a case makes any oral statements to the disposition authority, the SJA or designee ensures said statements are summarized in writing.

16.17.5. In cases where a decision not to refer charges requires review by Secretary of the Air Force or the next superior GCMCA, refer to the procedures set forth in paragraph 9.11. If the victim in such a case makes any oral statements to the disposition authority, the SJA or designee ensures the oral statements are summarized in writing.

**16.18. Victim Interviews.** There are requirements related to interviews of the victim. For cases involving a victim of an offense under Articles 120, 120a, 120b, 120c, or 125, and attempts thereof under Article 80, where the offense occurred before 1 January 2019 and charges were referred before 1 January 2019, the following rights apply. These same rights apply to victims of any crime where charges were preferred on or after 1 January 2019.

16.18.1. If requested by a victim of an alleged sex-related offense who is subject to a request for interview, any interview of the victim by defense counsel takes place in the presence of trial counsel, counsel for the victim, or a victim advocate. (T-0)

16.18.2. If the victim elects to have trial counsel present during an interview with the defense counsel, the trial counsel should explain to the victim that the trial counsel does not represent the victim in an attorney-client relationship.

16.18.3. At all defense counsel interviews of the victim that the trial counsel attends, an additional person other than the trial counsel should be present (e.g., paralegal or VWAP liaison).

**16.19. Confinement Facility Responsibilities.** If applicable, the VWAP coordinator at the military confinement facility provides the victim the earliest possible notice of:

16.19.1. Consideration of the accused by the Secretary of the Air Force Clemency and Parole Board for clemency or parole;

16.19.2. The transfer of the inmate from one facility to another;

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

16.19.4. The death of the accused if the accused dies while in custody.

**16.20. Airman and Family Readiness Center Responsibilities.**

16.20.1. The Airman and Family Readiness Center maintains information on available treatment, counseling and support programs, and acts as the focal point between victims and

those programs. The Airman and Family Readiness Center chief or a designee works with other installation agencies to identify victims' needs and determine appropriate forms of assistance and resources available through military and community services. The Airman and Family Readiness Center provides information to victims on available medical, financial, legal, and other social services, and assists victims in obtaining those services. At installations without an Airman and Family Readiness Center, the local responsible official appoints an individual to provide information to victims.

16.20.2. In cases where referring a victim to the Airman and Family Readiness Center for information may potentially cause undue embarrassment for the victim, local responsible officials are encouraged to provide victim and witness assistance program information directly to the victim.

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

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

16.21.2. Victim Advocates are appointed by the SARC to provide essential support, liaison services and care to the victim. Responsibilities include providing crisis intervention, referral and ongoing non-clinical support, including information on available options and resources to assist the victim in making informed decisions about the case. Victim Advocate services will continue until the victim states support is no longer needed. (T-1) Victim Advocates do not provide counseling or other professional services to a victim, but refer the victim to the appropriate agency for clinical, legal, and other professional services. Victim Advocates may accompany the victim, at the victim's request, during investigative interviews and medical examinations.

16.21.3. The VWAP and SAPR Programs are distinct but complementary programs providing support and services to the victims as required by their governing directives. The LRO, or other officials appointed in this chapter, and the SARC and Victim Advocate, must work in concert to discharge their individual responsibilities and provide the victim appropriate information on available options and resources, notice of relevant events in the investigative and judicial processes, and support. (T-1) The LRO, or any other official appointed in this chapter, remains responsible for the delivery of VWAP services. (T-1)

### ***Section 16E—Services Provided to Witnesses and Others***

#### **16.22. Local Responsible Official Responsibilities.**

16.22.1. The LRO or designee informs eligible witnesses about protection from intimidation or similar threats, and, if appropriate, arranges for a witness to receive reasonable protection from an accused and from individuals acting in concert with the accused. The LRO or designee further advises witnesses to report immediately any intimidation, harassment, or similar conduct to military authorities.

16.22.2. In a case where a witness's life, well-being, or safety is jeopardized or threatened by participation in the military justice process, the LRO ensures immediate notification to appropriate law enforcement agencies, in which case the Air Force law enforcement agencies promptly take measures to provide protection for the witness, as allowed by jurisdictional restrictions. Assist witnesses in obtaining protective orders, restraining orders or similar protections available from civilian agencies. Inform witnesses of any changes in an accused's pretrial status, including, the accused being placed in pretrial confinement, being released from pretrial confinement, or escaping from pretrial confinement.

**16.22.3. Local Responsible Official Responsibilities to Others Entitled to Notice.** Relatives of minor victims and witnesses and relatives of homicide victims are entitled to receive prompt notification of information concerning cases. If requested, the LRO or other officials designated in this chapter shall notify the individuals of the following:

16.22.3.1. Apprehension of a suspect or an accused; (T-1)

16.22.3.2. Initial appearance of an accused before a PCRO or other judicial official; (T-1)

16.22.3.3. Pretrial release of an accused or any changes in pretrial restrictions; (T-1)

16.22.3.4. Court-martial proceedings, including any pleas by the accused, findings, and the sentence imposed, including the date on which the accused becomes eligible for release from confinement or parole, if applicable. (T-1)

**16.23. Staff Judge Advocate Responsibilities.** The SJA or designee will:

16.23.1. If requested by a witness, take reasonable steps to inform the witness's employer of the reasons for the witness's absence from work. (T-1) In appropriate cases, the SJA assists a witness subjected to serious financial strain directly resulting from a crime, or cooperation in the investigation or prosecution of an offense, in explaining reasons for financial strains to creditors. This does not entitle a non-eligible witness to formal legal assistance under AFI 51-304.

16.23.2. Provide witnesses with appropriate assistance in obtaining available services such as transportation, parking, child care, lodging, and courtroom translators or interpreters. (T-1)

16.23.3. To the extent possible and when appropriate, afford witnesses the opportunity to wait in an area separate from the accused or defense witnesses to avoid embarrassment, coercion, or similar emotional distress. (T-1)

16.23.4. Inform witnesses of the time and place of each trial proceeding the witness is either required or entitled to attend. (T-1) Promptly notify the witness of any scheduling changes. (T-1)

16.23.5. Determine the extent to which each individual witness is provided services or information under this paragraph. (T-1) For example, Regular Air Force, expert, or character witnesses ordinarily do not require all these services.

16.23.6. Provide information and services to witnesses for a suspect or accused, if requested by defense counsel, and authorized by the local responsible official. (T-1)

### ***Section 16F—Notifications, Form Processing, and Miscellaneous Information***

**16.24. Law Enforcement and Investigative Personnel.** At the earliest opportunity after identification of a crime victim or witness and when appropriate, law enforcement and investigative personnel provide to each victim and witness DD Form 2701, *Initial Information for Victims and Witnesses of Crime*. (T-0) Annotate on incident reports the date of distribution of the DD Form 2701. When circumstances dictate, law enforcement and investigative personnel promptly inform victims about the availability of emergency medical care and applicable social services. As appropriate, coordinate with the Airman and Family Readiness Center or victim liaison to make available victim support service. Record and report to the installation SJA or equivalent the number of DD Forms 2701 distributed annually. (T-0)

### **16.25. Staff Judge Advocate and Trial Counsel.**

16.25.1. Prior to trial, the trial counsel or victim liaison provides the victim with a DD Form 2702, *Court-Martial Information for Victims and Witnesses of Crime*, explaining victims' rights and access to services. The SJA and trial counsel record and report the number of DD Forms 2702 distributed annually to the LRO or designee. (T-0)

16.25.2. Witnesses requested or ordered to appear at Article 32, UCMJ, preliminary hearings or courts-martial may be entitled to reimbursement for their expenses under Articles 46 and 47, UCMJ, and R.C.M. 405(h). The SJA or designee provides victims and witnesses assistance in obtaining prompt payment of witness fees and related costs. When possible, the SJA should establish local procedures for paying vouchers after normal duty hours when necessary to avoid undue hardship.

16.25.3. When required by DoDI 1030.2, the trial counsel or victim liaison provides the victim with a DD Form 2703, *Post-Trial Information for Victims and Witnesses of Crime*, explaining the victim's post-trial rights. Record and report the number of DD Forms 2703 distributed annually. (T-0)

16.25.4. For all cases resulting in a sentence to confinement, the trial counsel or victim liaison completes a DD Form 2704, *Victim/Witness Certification and Election Concerning Prisoner Status*. Record and report the number of DD Forms 2704 distributed annually. (T-0)

16.25.4.1. One copy of the DD Form 2704 is sent to the Central Repository, Air Force Security Forces Center (AFSFC/FC), 1517 Billy Mitchell Boulevard, Joint Base San Antonio-Lackland, Texas, 78236-0119; one copy to the confinement facility where the accused is in post-trial confinement; and a redacted copy to each of the appropriate victims and witnesses. A victim's or witness's copy must not contain the accused's personal information or any information concerning other victims or witnesses. (T-1)

16.25.4.2. The SJA ensures the DD Form 2704 is not included in any portion of any record to which the convicted member has access, including the ROT. (T-1) The DD Form 2704 is exempt from Freedom of Information Act release.

### **16.26. Confinement Notification.**

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

16.26.2. Upon an offender's entry into confinement, the VWAP coordinator at the military confinement facility obtains the DD Form 2704 to determine victim or witness notification requirements. If the form is unavailable, the VWAP coordinator at the military confinement facility consults the SJA. The VWAP coordinator ensures the accused's confinement records are clearly marked to indicate that the case involves a victim who wants to be informed of the inmate's status.

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

16.26.4. When a victim or witness has requested notification of changes in confinee status on the DD Form 2704, and that status changes as listed below, the DD Form 2705, *Notification to Victim/Witness of Prisoner Status*, is used to notify the victim or witness. (T-0) The VWAP coordinator at the military confinement facility records the date notifications are made and reports the number of DD Forms 2705 distributed annually to the Central Repository, AFSFC/FC. The VWAP coordinator must provide victims and witnesses the earliest possible notice of:

16.26.4.1. The scheduling of a clemency or parole hearing for the inmate; (T-1)

16.26.4.2. The transfer of the inmate from one facility to another; (T-1)

16.26.4.3. The escape (and subsequent return to custody), work release, furlough, or any other form of release of the inmate from custody, including release into parole supervision; (T-1)

16.26.4.4. The death of the inmate if the inmate dies while in custody; (T-1)

16.26.4.5. Changes in confinee status for any emergency or special temporary home release granted the inmate; (T-1)

16.26.5. On transfer of a confinee to another military confinement facility, forward the DD Form 2704 to the gaining facility, with an informational copy to the Central Repository, AFSFC/FC; (T-1)

16.26.6. Report the status of victim and witness notification requests to the Central Repository, AFSFC/FC, annually; (T-1) and

16.26.7. A confinee's disposition board prior to a parole eligibility date or the confinee going before the Air Force Clemency and Parole Board. (T-1) Each victim is responsible to keep HQ AFSFC/FC informed of the victim's current address.

**16.27. Local Civilian Agencies.** Local responsible officials are encouraged to consider agreements with local civilian agencies to ensure cooperative relationships in identifying, reporting, investigating, and providing services and treatment to victims and witnesses.

*Section 16G—Victim and Witness Assistance Program Training and Inspections***16.28. Victim and Witness Assistance Program Training.**

16.28.1. All personnel involved in the military criminal justice process and those responsible for providing required services to victims and witnesses must be familiar with the requirements of the Air Force VWAP. (T-1) This includes legal office personnel responsible for military justice matters or the provision of legal assistance. The LRO is responsible for developing and implementing a program at each installation. (T-1) The LRO is also responsible for ensuring the completion of annual training by local agencies. (T-0)

16.28.2. **Development of Training.** Together, the installation SJA, Security Forces Commander, AFOSI detachment commander, SARC, Family Advocacy Program (FAP), Airman and Family Readiness Center, Installation Chaplain, commanders, and first sergeants develop local training to ensure compliance with the VWAP. A list of references for use in developing a training program is located on the Virtual Military Justice Deskbook.

16.28.3. **Accomplishment of Training.** Each individual agency is responsible for training the agency's personnel on their responsibilities under this chapter annually. The SJA trains commanders and first sergeants annually. (T-1) The SJA or LRO should consider conducting VWAP training at the Community Action Information Board (CAIB) on an annual basis. See AFI 90-501, *Community Action Information Board (CAIB) and Integrated Delivery System (IDS)*. The LRO coordinates all training required by this chapter and ensures the provisions of this chapter are publicized to all military and civilian agencies providing victim and witness services within their communities.

16.28.4. **Preparation of Victim Information Packet.** Prepare a victim information packet at each installation through the coordinated efforts of the SJA, Security Forces, AFOSI, SARC, FAP, Airman and Family Readiness Center, Installation Chaplain, commanders and first sergeants. Provide the packet to each identified victim or witness. AFLOA/JAJM publishes a model packet on its online Deskbook, which may be used as a starting point for a victim or witness handout depending on local circumstances. Legal offices should consult with AFLOA/JAJM for additional comprehensive guidance in this area.

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

16.28.5.1. Identify the victim of a crime.

16.28.5.2. Inform the victim of the name, title, business address and telephone number of the Airman and Family Readiness Center director or the victim liaison (or, when applicable, the SARC and FAP) to whom a request for services should be addressed and assist the victim in making contact with those individuals when necessary.

16.28.5.3. Inform the victim of available emergency medical and/or social services. If the victim alleges a sex-related offense, investigative and law enforcement personnel inform the victim of their opportunity to request assistance from the SARC, VA, or SVC in accordance with 10 U.S.C. 1565b, unless emergency circumstances prevent doing so.

16.28.5.4. Inform the victim or witness of the right to receive reasonable protection if his or her life, well-being, or safety is jeopardized by participation in the military justice process.

**16.29. SAPR Program First Responder Training for Legal Personnel.** AFJAGS develops and provides training to satisfy the annual requirement for SAPR Program first responder training for certain legal personnel (judge advocates, victim and witness assistance program personnel, legal assistance attorneys, and trial counsel in accordance with DoD Instruction 6495.02, Enclosure 10, paragraph 7, *Responder Training Requirements*).

16.29.1. SAPR Program First Responder training is mandatory for the following:

16.29.1.1. Regular Air Force and Air Reserve Component judge advocates who practice in military justice (including Article 32 PHOs) or legal assistance (this may include SVCs and defense counsel) or who serve as trial counsel;

16.29.1.2. Regular Air Force and Air Reserve Component paralegals who provide legal assistance support or directly contribute to a VWAP;

16.29.1.3. Any civilian attorney whose core document or position description references, or who through assigned duties, directly contributes to military justice, legal assistance, or a VWAP; and

16.29.1.4. Any other civilian personnel (including volunteers) assigned to a legal office whose core document or position description references, or who through assigned duties, contributes to a VWAP.

16.29.2. Training must be completed initially upon assuming a position or duties requiring the training as described above and annually thereafter. (T-0) There is no further requirement to repeat training prior to deployment.

16.29.3. AFLOA/JAJ is responsible for tracking, in coordination with AFJAGS, compliance with the annual training requirement for legal personnel.

### **16.30. Inspections.**

16.30.1. Responsible Officials should employ a system to assess the effectiveness of their VWAP. Procedures should include creating and maintaining a record of each case involving victim(s), witness(es), or others entitled to notice that documents completion dates of notifications and issuance of DD Forms 2701-2704. Responsible Officials should use the VWAP Self-Inspection Checklist available on the Virtual Military Justice Deskbook.

16.30.2. Staff assistance visits and other inspections examine the effectiveness of victim and witness assistance program and compliance with VWAP requirements.

### ***Section 16H—Reporting Requirements***

**16.31. Reporting Requirements.** TJAG submits an annual report using the DD Form 2706, *Annual Report on Victim and Witness Assistance*, to the Under Secretary of Defense for Personnel and Readiness, Attention Legal Policy Office, 4000 Defense Pentagon, Washington, DC 20301-4000. The report is submitted by 15 March for the preceding calendar year quantifying the assistance provided victims and witnesses of crime via distribution of the DD Forms 2701 through 2705. (T-0)

16.31.1. Each installation SJA or equivalent reports the information listed below through functional channels to the major command or equivalent. MAJCOMs, field operating agencies and direct reporting units consolidate the reports and each command forwards one consolidated DD Form 2706 to AFLOA/JAJM to arrive no later than 15 February of each year. The report includes the following:

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

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

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

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

16.31.2. Each confinement facility reports the information listed below to the Central Repository, Headquarters AFSFC/FC. AFSFC/FC forwards a consolidated report to AFLOA/JAJM to arrive no later than 15 February of each year. The report includes the following:

16.31.2.1. The number of victims and witnesses who were notified by confinement facility VWAP coordinators, via the DD Form 2705, of changes in confinee status.

16.31.2.2. The cumulative number of confinees for whom victim or witness notifications must be made by each confinement facility. This number is obtained by totaling the number of confinees with victim or witness notification requirements as of 1 July 1995, adding the number of new confinees with the requirement, and subtracting the number of those confinees who were released, deceased, or transferred to another facility (federal, state, or sister service) during the reporting year.

16.31.3. AFLOA/JAJM consolidates the numbers from the major commands, field operating agencies, direct reporting units and AFSFC/FC, records them on the DD Form 2706, and forwards the DD Form 2706 to TJAG.

### ***Section 16I—No Contact and Military Protective Orders***

**16.32. General Provision.** There are two types of orders that fall under this category which are issued by military members, to military members: informal “no-contact” orders and formal MPOs. SJAs must ensure that they advise commanders on the issuance of any such order, to include which type of order is appropriate in each situation. (T-1)

**16.33. “No-Contact” Orders.** Informal “no-contact” orders may be verbal or in writing in the form of a memorandum addressed to the person being given the order to have no contact with another. If a no-contact order is given verbally, it should be reduced in writing as soon as practicable. No-contact orders are appropriately used to temporarily stop communications between two parties who are involved in a dispute that does not rise to the level of a criminal investigation or to safeguard the investigative process. No-contact orders may be issued by commanders, first sergeants, and other members senior in rank to the person being given the order.

**Note:** No-contact orders should not be used with the intent to stop defense counsel from contacting witnesses as part of their duty to investigate changes pertaining to the accused.

**16.34. Military Protective Orders.** An MPO is a formal protective order. MPOs are appropriately used to ensure a victim is protected from a subject during criminal investigations and prosecutions. Unlike a “no-contact” order, an MPO offers broad protections to the person being protected. A MPO affords the commander the opportunity to: limit communications; prohibit an accused from being within a certain physical distance of a victim or victim’s household, residence and workplace; mandate counseling; require disposal of firearms located on the installation; and take other such measures necessary to ensure adequate protection of the victim. MPOs must be completed on DD Form 2873, *Military Protective Order*. (T-0) If a MPO is issued verbally, the commander documents it on DD Form 2873 within three duty days. (T-0) Only a commander may issue an MPO.

16.34.1. **Service.** Copies of a completed MPO are served on each of the parties involved in the order.

16.34.2. **Security Forces Notification.** An MPO is forwarded by the issuing commander to Security Forces for indexing in accordance with DoD Policy Memorandum, *Placing Military Protective Orders in the National Crime Information Center Protective Order File*, dated 26 June 2014 and DoDI 6400.06.

16.34.3. **Local Authorities Notification.** In the event one of the parties involved in the order does not reside on the military installation at any time during the existence of the order, the installation commander is required to notify the civilian authorities of the issuance of the order, the identities of individuals involved in the order, any modifications to the order, and the termination of the protective order. (T-0) See 10 U.S.C. § 1567a. This requirement is satisfied when the issuing commander provides the required information to Security Forces and Security Forces submits the order to NCIC. See Section 15F.

**16.35. Orders Issued in Conjunction with Civilian Protective Orders.** A commander may issue a “no-contact” order or a MPO in conjunction with a protective order issued by civilian authorities. In determining whether issuance of a “no contact” order or MPO is appropriate, commanders should review the terms and length of any civilian protective order (e.g., prohibition against being within 500 feet of a person or prohibition against carrying a firearm vice merely preventing communication). This will help commanders determine which type of order is appropriate and prevent issuance of an order with terms that are contrary to that issued by civilian authorities. See also 10 U.S.C. § 1561a. Commanders must also consider the civilian authorities will not enforce a “no-contact” order, but may enforce a MPO with a civilian protective order. (T-1)

**16.36. Military Protective Orders and Unrestricted Sexual Assault Reports.** In cases involving an unrestricted report of a sexual assault, the commander ensures the issuance of any military protective order complies with DoD Instruction 6495.02. (T-0) If a victim requests a military protective order, be it an informal “no-contact” order or a formal MPO, and the commander elects to deny the victim’s request, the commander documents in writing the basis for denial and forwards the request and basis for denial to the installation commander or equivalent.

## Chapter 17

### AUTOMATED MILITARY JUSTICE ANALYSIS AND MANAGEMENT SYSTEM (AMJAMS)

#### *Section 17A—General Information*

**17.1. Purpose.** The purpose of AMJAMS is to collect data pertaining to investigations, nonjudicial punishment imposed pursuant to Article 15, UCMJ, trials by court-martial, and related military justice activity. Use of AMJAMS is required. (T-1) The information collected is required:

- 17.1.1. To conduct statistical studies that measure disciplinary rates and trends and evaluate military justice involvement as it affects the quality of the force and the personnel needs of the service;
- 17.1.2. To provide various management reports to judge advocate personnel at all levels;
- 17.1.3. To provide statistical data to the DoD concerning military justice;
- 17.1.4. To provide raw data to DIBRS; and
- 17.1.5. To reply to inquiries concerning military justice.

**17.2. Uses.** AMJAMS collects detailed information on offenses and processing timelines as well as demographic information on subjects of the judicial and nonjudicial punishment process. The information in AMJAMS provides effective management tools for use by Headquarters, MAJCOMs, general and special court-martial jurisdictions, the judiciary, and the appellate divisions. When used properly, the information will assist in eliminating or highlighting excessive processing delays and in monitoring the current status of military justice actions from the investigation stage through to completion of the appellate process.

**17.3. Release.** AFLOA/JAJM is the release authority for data collected and stored in AMJAMS and the reports it generates. Generally, AMJAMS data and products are protected as attorney-work product. Requests for release of AMJAMS data and products will be considered in light of applicable direction and guidance on release of information For Official Use only or in accordance with the Freedom of Information Act and Privacy Act. (T-1)

**17.4. Policy.** The AMJAMS inputs are to be timely, complete, and accurate. Timely collecting, reporting, and processing of military justice information is essential to SJAs at all levels. They are also important to keep senior leadership apprised of and prepared to answer questions about developing investigations that may generate high-level attention. Inputs are ordinarily completed within one duty day of a military justice “event” in a case, beginning with the Investigation module. For the purpose of this instruction, “events” include but are not limited to investigation, preferral, referral, etc. If the data field is applicable to a case, an input should be made as soon as the data is available and updated as the need arises.

#### **17.5. Responsibilities.**

- 17.5.1. SPCMCA and GCMCA legal office personnel have primary responsibility for AMJAMS data entry except appellate information. AMJAMS data should be complete, accurate, and timely.

17.5.2. GCMCA legal office personnel have primary responsibility for reviewing AMJAMS inputs with regard to cases in the command.

17.5.3. AFLOA/JAJM and appellate personnel have primary responsibility for AMJAMS data entry of appellate information.

### *Section 17B—Case Processing*

**17.6. Investigation.** New cases should be opened in AMJAMS as investigations within one duty day of any personnel in the legal office becoming aware of a potential Article 15, court-martial, or circumstances reportable as a special interest case. See Section 17D. When Air National Guard members are the subject of an investigation, NGB/JA will be notified. (T-1) When data entry would potentially compromise an investigation, delayed data entry is authorized. In those cases, report circumstances of the investigation via email to AFLOA/JAJM and document the rationale for the delayed entry in AMJAMS case notes.

**17.7. AMJAMS Data Completion.** AMJAMS data must be filled out in accordance with guidance promulgated by JAJM. (T-1) AMJAMS guidance is found on the Virtual Military Justice Deskbook.

### *Section 17C—Reports, Queries and Slides*

**17.8. Reports.** Reports generated by AMJAMS can be accessed through the Management System itself, or from FLITE. Legal offices at all levels of command should review their AMJAMS reports on a weekly basis for accuracy.

17.8.1. In AMJAMS, go to the “Reports” drop-down menu and select “Reports.”

17.8.2. In FLITE, go to the “Reports” drop-down menu and select “Automated Military Justice Analysis and Management System.”

**17.9. Queries.** Generate queries via AMJAMS by going to the “Reports” drop-down menu and selecting “Reports” or “Query.” Then select the type of query and its parameters.

**17.10. Slides.** Generate data slides via AMJAMS by going to the “Reports” drop-down menu and selecting “Reports” or “Query” then select “Slides.”

### *Section 17D—Special Interest Reports*

**17.11. Reporting Special Interest Cases.** Certain cases involving Air Force members generate interest within Headquarters Air Force, whether because of the nature of the offense, the subject’s grade, or some other reason. SJAs must be sensitive to Special Interest Report requirements and make accurate and timely reports. (T-1)

**17.12. Responsibilities.** Reporting special interest cases is a base-level responsibility. Reports should be prepared and forwarded to AFLOA/JAJM within twenty-four hours of learning of the incident by the base legal office responsible for the case or supporting the subject’s unit of assignment. (T-1) If a base legal office learns of a Special Interest Report case but another office is responsible for it, the base legal office with knowledge of the case should promptly inform the responsible legal office. Legal office reporting responsibilities do not preclude or pre-empt and should not precede commanders’ reporting responsibilities or command authorities. The SJA

should coordinate Special Interest Report reporting, especially initial reports, with the wing commander or equivalent authority.

**17.13. Requirements.** Special Interest Reports must be created in the following circumstances:

17.13.1. Officer, CMSgt and SMSgt Cases. Regardless of offense, report all allegations and investigations involving officers, CMSgts, and SMSgts. (T-1)

17.13.2. Serious Crimes. Regardless of the subject's grade, report all cases involving the following crimes, including attempts, conspiracies, and solicitations to commit these crimes:

17.13.2.1. Offenses relating in death, including violations of Articles 118 (Murder), 119 (Manslaughter); 119a (Death or injury of an unborn child), and 134 (Negligent Homicide); (T-1)

17.13.2.2. For offenses occurring prior to 1 January 2019, violations of Articles 120, 120a, 120b, 120c, 125 (Forcible Sodomy), or 134 (Child Pornography or Indecent Conduct), UCMJ, and attempts thereof; (T-1)

17.13.2.3. For offenses occurring on or after 1 January 2019, violations of Articles 117a, 120, 120b, 120c, 130, or 134 (Child Pornography or Indecent Conduct), UCMJ, and attempts thereof; (T-1)

17.13.2.4. Domestic violence, including violations of Articles 115 (Communicating a Threat, on or after 1 January 2019), 120, 120a, 120c, 128, 128b, or Article 134 (Threat, communicating, prior to 1 January 2019), UCMJ. (T-1) **Note:** A Special Interest Report is required for domestic violence involving an offense committed by a current or former spouse, parent or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, guardian, or other directly related family member; or by a person similarly situated to a spouse, parent or guardian of the victim.

17.13.2.5. Retaliation, in violation of Article 132, UCMJ, and attempts thereof; (T-1)

17.13.2.6. Espionage, subversion, aiding the enemy, sabotage, spying, or violations of punitive regulations or statutes regarding the handling of classified information or the foreign relations of the United States; (T-1)

17.13.2.7. Environmental crimes, including civilian felony prosecution; (T-1)

17.13.2.8. Fraternalization and unprofessional relationships (with the exception of those fraternization/unprofessional relationships strictly between United States Air Force Academy cadets); (T-1)

17.13.2.9. Prohibited activities with military recruit or trainee by person in position of special trust in violation of Article 93a; (T-1)

17.13.2.10. Other circumstances if required by the relevant major command or Numbered Air Force, e.g., recruiter misconduct (coordinated with Air Force Recruiting SJA, AFRS/JA) or misconduct by a military training leader or technical training leader (coordinated with 2 AF/JA) or Academy Military Trainer and Air Officer Commanding at the United States Air Force Academy; (T-1)

17.13.3. Cases Involving Command or Media Interest. (T-1)

17.13.3.1. Any case where the chain of command is required or likely to report the case. SJAs should work with the Command Post to ensure it is aware of criminal activity and other legal-related events reported to higher headquarters via Operational Event/Incident Report (OPREP3) per AFMAN 10-206, *Operational Reporting (OPREP)*.

17.13.3.2. Any case with potential or actual community or local concerns or potential or actual media interest.

**17.14. What to Report.** Use AMJAMS to generate the Special Interest Report, which should include case details, including a description of the alleged offenses, dates and locations, UCMJ articles and specifications, media interest, investigating agency, next steps, and any unusual or significant features of the case. (T-1) Identify missing information and follow up as soon as possible.

17.14.1. If at the time of an incident, the alleged perpetrator is unidentified, report the case to AFLOA/JAJM via email.

17.14.2. Ensure law enforcement-sensitive investigative information is not included in the Special Interest Report without concurrence of the AFOSI Detachment Commander/Special Agent-in-Charge or investigating agency. See paragraph 22.6 for examples of sensitive information.

17.14.3. For matters investigated by commander-directed investigation (CDI), Inspector General (IG), or Military Equal Opportunity (MEO), summarize the allegations and, when the investigation is done, identify substantiated and not-substantiated findings.

17.14.4. For cases disposed of by nonjudicial punishment or administrative action (e.g., letter of reprimand (LOR) or letter of counseling (LOC)), identify the wrongdoing or offenses alleged (e.g., "On (date), Subject received nonjudicial punishment/LOR for...").

17.14.5. For cases handled by civilian authorities, include information that identifies the investigative and prosecutorial authorities, court, jurisdiction, and a summary of the charges, pleas, findings and sentence.

17.14.6. For sexual assault cases, indicate whether a Circuit Trial Counsel was consulted under the "Pending Offense" subfolder, "Case Information" tab.

17.14.7. If a case was closed without action, explain why.

**17.15. When to Submit a Special Interest Report.**

17.15.1. Within twenty-four hours of learning of an incident that requires a Special Interest Report. If AMJAMS cannot be accessed in a timely fashion, submit case information using the most expeditious means possible, which will likely be email, and input the case into AMJAMS as soon as possible.

17.15.2. When a significant event in a reported case occurs. Significant events include disposition of investigation; response to a request for jurisdiction from civilian authorities; preferral of charges; referral of charges; results of trial; convening authority action; dismissal of any charges; nonjudicial punishment offer; imposition; and media interest.

17.15.3. Continue to submit reports until completion of the court-martial, nonjudicial punishment or administrative action, including the decision whether to file nonjudicial

punishment action in an Officer Selection Record or Senior Noncommissioned Officer Selection Record, or as directed.

#### **17.16. How to Report.**

17.16.1. Use AMJAMS to generate the Special Interest Report. Secretary of the Air Force and NAF/MAJCOM Special Interest Report buttons are located in the Special Interest Folder of AMJAMS. Click the “Special Interest reporting required” button for cases requiring special interest reporting as directed in this Section. The “NAF/MAJCOM Special Interest Reporting” button is selected when a NAF or MAJCOM requires additional reporting not required by this Instruction. Once a case is marked as a Special Interest Report, it remains a Special Interest Report for the life of the case. Also, the “NAF/MAJCOM Special Interest Reporting” button, once selected, remains selected unless otherwise directed by the NAF or MAJCOM.

17.16.2. Transmitting Special Interest Reports to AFLOA/JAJM. Go to AMJAMS Reports page and select Special Interest Report. Enter the case ID, select case notes and run the Special Interest Report. Save a .pdf copy of the Special Interest Report and upload it to the following SharePoint® site:

<https://cs2.eis.af.mil/sites/10707/AFLOA/JAJ/JAJM/SIR%20Report/Forms/Dropoff.aspx>.

Further instructions for transmitting Special Interest Reports to AFLOA/JAJM via SharePoint® are available on the Virtual Military Justice Deskbook.

17.16.3. When submitting an initial Special Interest Report, use the following subject line/title: For Official Use Only (FOUO) NEW Special Interest Report: CASE ID # - RANK SURNAME – BASE. When submitting an updated Special Interest Report, use the following subject line/title: For Official Use Only (FOUO) UPDATED Special Interest Report: CASE ID # - RANK SURNAME – BASE. When submitting a final Special Interest Report, use the following subject line/title: For Official Use Only (FOUO) FINAL Special Interest Report: CASE ID # - RANK SURNAME – BASE.

## Chapter 18

### EXPLANATION OF THE UCMJ (ARTICLE 137, UCMJ) AND STATUS OF DISCIPLINE

#### *Section 18A—Article 137 Briefings*

#### **18.1. Responsibilities.**

18.1.1. The FSS/CC identifies enlisted and officer personnel on the installation required to complete an Article 137 briefing. See paragraphs 18.1.4-18.1.6.

18.1.2. The Staff Judge Advocate:

18.1.2.1. The SJA, in coordination with the FSS/CC, must ensure that base personnel are briefed on the UCMJ, as required by Article 137, UCMJ. (T-0)

18.1.2.2. A judge advocate, a Department of the Air Force civilian attorney, or a 5-level or higher paralegal, provides an Article 137, UCMJ, briefing to personnel within the command who require training. (T-1) This includes all first term enlisted and officer personnel. Instructional aids may be used, provided a qualified briefer is present to answer questions. Members should receive the briefing in person when practicable.

18.1.2.2.1. If it is not practicable for a member to receive the briefing in person, the member may be briefed by a qualified briefer via telephone, video teleconference or other remote means.

18.1.2.2.2. For the purposes of this provision, a “5-level or higher paralegal” includes a civilian paralegal who (1) carries a 5-level paralegal certification as a Reservist, or (2) prior to entering civilian service served as a Regular Air Force paralegal with a 5-level or higher certification.

18.1.2.2.3. Record attendance for all officer and enlisted personnel through sign-in sheets or other means to allow for verification that specific individuals received the mandatory training. (T-1)

18.1.2.3. Frequency, Content and Duration. The SJA determines the frequency content, and duration of training sessions, provided they meet the requirements of paragraphs 18.1.3 through 18.1.6. (T-1)

18.1.2.4. The SJA for the 502 ISG, Joint Base San Antonio-Lackland, ensures trainees receive the required briefing from regular instructors at the Air Force Military Training Center within 14 calendar days of entry on active duty. (T-1) The SJA for the United States Air Force Academy ensures cadets receive the required briefing from instructors at the United States Air Force Academy within 14 calendar days of entry on active duty. (T-1)

**18.2. Content.** The Article 137 briefing covers the following topics:

18.2.1. Articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139 (T-0);

18.2.2. Types of punitive and administrative discharges (T-1);

18.2.3. Bases for characterizing service (T-1);

18.2.4. The benefits, disadvantages, and possible future effects of each type of service characterization (T-1);

18.2.5. The denial of certain benefits to most persons who fail to complete at least two years of an original enlistment (Title 38 United States Code § 5303A) (T-1); and

18.2.6. A detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces (T-1)

### **18.3. Briefings for Enlisted Members.**

18.3.1. Complete the initial explanation within 14 calendar days of the entry of enlisted personnel on active duty; (T-0)

18.3.2. Complete the six-month explanation for enlisted personnel within 30 calendar days of the last day of the month in which the individual completed six months of active duty; (T-0) and

18.3.3. Complete the reenlistment explanation within 30 calendar days of an individual's reenlistment. (T-1)

18.3.4. Enlisted members of the Reserve or Air National Guard receive the initial explanation within 14 calendar days of initial entrance on a duty status with an air reserve component, again after completing basic training, and at the time of reenlistment.

### **18.4. Briefings for Officers.**

18.4.1. Complete officer training within six months of commissioning, regardless of whether initial commissioning is in a reserve component or active duty. (T-0)

18.4.2. The SJA for the Holm Center, Maxwell Air Force Base, ensures trainees in the Total Force Officer Training and Commissioned Officer Training receive the required briefing prior to graduation. (T-1)

18.4.3. The SJA at each Training Wing ensures officers that commission through the Reserve Officers' Training Corps (ROTC) receive the required briefing during training. (T-1)

### **18.5. Briefings for Commanders.**

18.5.1. SJAs should complete Article 137 training for officers being granted the authority to convene courts-martial or initiate nonjudicial punishment prior to conducting the legal sufficiency reviews of their G-series orders, when practicable. In the event an officer is not able to receive an Article 137 briefing prior to being placed on G-series orders, this training must be accomplished within 30 days of each time an officer begins an assignment which has such authority. (T-1) Such training does not necessarily need to cover the list of Articles required for an enlisted or officer briefing, but it must cover the parts of the UCMJ that are pertinent to the command function and to the exercise of disciplinary authority. (T-1) The following information, at a minimum, should be covered: Articles 2, 3, 7-15, 25, 31, 37, 55, and 137-139, and search authorization under M.R.E. 315. Additionally, the SJA should consider briefing commanders about new crimes under the UCMJ.

18.5.2. Temporary Commanders. Where an officer is placed on "temporary" orders when the appointed unit commander is off-station or otherwise unavailable for a period of time, that "temporary commander" should receive Article 137 training prior to or within 30 days of being

temporarily appointed to or assuming command. If the officer is temporarily appointed or temporarily assumes command repeatedly, the officer need only receive the Article 137 training once every 365 calendar days.

### ***Section 18B—Status of Discipline Briefings***

**18.6. Status of Discipline Briefings.** A Status of Discipline (SOD) briefing will be conducted by the legal office on behalf of the wing commander or equivalent installation authority on at least a quarterly basis. (T-1)

18.6.1. The SJA facilitates the SOD briefing and invites host and tenant commanders and first sergeants to attend. Pursuant to the direction of the wing commander, the SJA may invite additional personnel to all or specific SOD briefings. For example, vice and deputy commanders, superintendents, and AFOSI and Security Forces senior investigators may be invited to all SOD briefings while the SARC or ADC may be invited to participate in a portion of a specific SOD briefing. The SJA and legal office staff will create the SOD briefing materials and coordinate as necessary and appropriate.

18.6.2. The following items will be discussed at the Status of Discipline briefing (T-1):

18.6.2.1. Results of trial for courts-martial closed in the quarter. Do not disclose the name of an accused who was acquitted of all charges and specifications.

18.6.2.2. Information on nonjudicial punishment actions completed through SJA review in the quarter. Do not disclose any names of individuals who were offered or received nonjudicial punishment. The SJA should consider having the responsible commander brief his or her squadron's nonjudicial punishment actions.

18.6.2.3. Nonjudicial punishment processing times for nonjudicial punishment actions completed through SJA review by squadron, wing, NAF if applicable, MAJCOM, and Air Force for year-to-date.

18.6.2.4. Information on involuntary discharge cases completed through discharge or retention in the quarter. Do not disclose any names of individuals notified of discharge, discharged, or retained. The SJA should consider having the responsible commander brief his or her squadron's discharge cases.

18.6.2.5. Discharge processing times for enlisted notification and board cases for discharge cases completed through discharge by squadron, wing, NAF if applicable, MAJCOM, and Air Force for year-to-date.

18.6.2.6. At least once per calendar year, rates per thousand overall and by officer/enlisted, gender, and race for courts-martial and nonjudicial punishment by wing, NAF if applicable, MAJCOM, and Air Force for the year.

18.6.2.7. Special interest items identified by the wing commander or equivalent authority or the SJA, such as alcohol-related incidents, drug offenses, and unlawful command influence.

18.6.3. AMJAMS and Web-Based Administrative Separation Program (WASP) are used to generate SOD briefing slides.

## Chapter 19

### REQUESTS FOR AND RELEASE OF INFORMATION

#### *Section 19A—Extrajudicial Statements and Release of Information*

**19.1. General Provision.** Information may not be disseminated if it could reasonably be expected to interfere with law enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudication in a criminal proceeding. (T-1) The determination of whether a release is permissible includes an assessment of the type and details of information to be released and its source, the type of proceeding, and the stage of the proceeding. The release of information relating to a criminal proceeding is subject to the Air Force Rules of Professional Conduct, the Air Force Standards for Criminal Justice, implementing directives, security requirements, judicial orders protecting information, and applicable laws such as the Privacy Act, the Freedom of Information Act, and the Victim and Witness Protection Act. Paragraph 19.2.1 discusses FOIA's required balancing test concerning the privacy rights of an accused.

19.1.1. Air Force representatives must not encourage or assist news media in photographing or televising an accused being held or transported in custody.

19.1.2. This section does not apply to the release of information by military or civilian defense counsel. However, defense counsel, both military and civilian, must comply with the Air Force Rules of Professional Conduct and the Air Force Standards for Criminal Justice, portions of which address trial publicity by defense counsel. (T-1) Military defense counsel must comply with the requirements and restrictions of FOIA and the Privacy Act with respect to the release of Air Force records. (T-0)

**19.2. Extrajudicial Statements.** Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication. There are valid reasons for making certain information available to the public in the form of extrajudicial statements, when such release otherwise complies with applicable rules and regulations as described in paragraph 19.1. However, extrajudicial statements should not be used for the purpose of influencing the course of a criminal proceeding. Usually, extrajudicial statements should include only factual matters and should not offer subjective observations or opinions. The question of whether a statement is extrajudicial will depend upon the circumstances.

19.2.1. Under the Privacy Act, information from a system of records, such as a court-martial file maintained in a judge advocate office about an individual, may not be released to the public without the individual's consent unless release is required by FOIA. (T-0) FOIA requires release except when specified circumstances exist, one of which is when release would constitute an unwarranted invasion of an individual's personal privacy. See 5 U.S.C. § 552a(b) and 5 U.S.C. §§ 552(b)(6) and 552(b)(7)(C).

19.2.1.1. An unwarranted invasion of personal privacy exists when an individual's privacy interests outweigh the public's interest in disclosure of the information. See *Chang v. Dep't of the Navy*, 314 F. Supp. 2d 35 (D.D.C. 2004); *Schmidt v. Dep't of the Air Force*, 2007 U.S. Dist. LEXIS 69584 (C.D. Ill. 2007). The public's interest is defined by the degree to which disclosure sheds light on the performance of an agency's statutory function. *Dep't of Justice v. Reporters Comm.*, 489 U.S. 749, 773 (1989). This can include

information about how the government holds its employees accountable. See *Schmidt* at \*32.

19.2.1.2. Whether disclosure of data regarding the accused and the alleged offenses constitutes an unwarranted invasion of privacy depends upon the assessment of whether the accused has a reasonable expectation of privacy as measured by various factors, including, but not limited to, the accused's rank, duties, alleged offense(s), existing publicity about the allegation(s), and stage of the proceedings. Considering the fact that anyone subject to the UCMJ can act as an accuser under the UCMJ, the accused normally retains a reasonable expectation of privacy upon preferral of charges. When the convening authority directs the charges toward a public forum, such as an Article 32 hearing or referral to trial, the accused's reasonable expectation of privacy begins to decline.

**19.2.2. Extrajudicial Statements After Disposition.** Employing the FOIA balancing test described above, the information release authority may normally release the following information after the convening authority has disposed of preferred charges by directing an Article 32 preliminary hearing or has referred the charges to a court-martial:

19.2.2.1. The accused's name, unit and assignment;

19.2.2.2. The substance or text of charges and specifications, provided there is a statement included explaining that the charges are merely accusations and that the accused is presumed innocent until and unless proven guilty. As necessary, redact all Victim and Witness Protection Act and Privacy Act protected data from the charges and specifications (such as the names of all victims, signature of the accuser, and social security number of the accused).

19.2.2.3. The scheduling or result of any stage in the judicial process;

19.2.2.4. Date and place of trial and other proceedings, or anticipated dates, if known;

19.2.2.5. Identity and qualifications of appointed counsel;

19.2.2.6. Identities of convening and reviewing authorities;

19.2.2.7. A statement, without comment, that the accused has no prior criminal or disciplinary record or that the accused denies the charges; and

19.2.2.8. The identity of the victim where the release of that information is not otherwise prohibited by law. Generally, however, do not release the names of victims of sex offenses, the names of children, or the identity of any victim when release would be contrary to the desire of the victim or harmful to the victim.

19.2.2.9. Exceptional cases may warrant earlier release of information but, prior to any earlier release, the relevant authority should apply a public interest balancing test; assess the reasonable expectation of privacy factors; and exercise due caution.

**19.2.3. Disclosing the Identities of Court Members and the Military Judge.** Do not volunteer the identities of the court members or the military judge in material prepared for publication. This information may normally be released, if requested, after the court members or the military judge have been identified in the court-martial proceeding, and the SJA to the convening authority determines release would not prejudice the accused's rights or violate the members' or the military judge's privacy interests.

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

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

19.2.5.1. General information to educate or inform the public concerning military law and the military justice system;

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

19.2.5.3. Requests for assistance in obtaining evidence and information necessary to obtain evidence;

19.2.5.4. When requested or otherwise in the best interest of the Air Force, after applying Freedom of Information Act exemption principles, as appropriate: facts and circumstances of an accused's apprehension, including the time and place of apprehension;

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

19.2.5.6. Information contained in a public record, without further comment; and

19.2.5.7. Information that protects the military justice system from matters that have a substantial likelihood of materially prejudicing the proceedings. Information in the form of extrajudicial statements shall be subject to paragraph 19.2. and limited to that which is necessary to correct misinformation or to mitigate the substantial undue prejudicial effect of information or publicity already available to the public. (T-1) This can include, but is not limited to, information that would have been available to a spectator at an open Article 32, UCMJ preliminary hearing or an open session of a court-martial. Unless TJAG has withheld the authority to coordinate on command release of this information for individual cases or types of cases, the MAJCOM SJA (or equivalent) coordinates on release of this information by the appropriate command authority. If TJAG has withheld the authority to coordinate on release of extrajudicial statements, requests for TJAG coordination must be forwarded through the MAJCOM SJA to AFLOA/JAJM by the most expeditious means appropriate to the sensitivity of the information. (T-1)

**19.2.6. Impermissible Extrajudicial Statements.** Extrajudicial statements relating to the following matters ordinarily have a substantial likelihood of prejudicing a criminal proceeding and should not be made:

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

19.2.6.2. Observations about the accused's character and reputation;

19.2.6.3. Opinions regarding the accused's guilt or innocence;

19.2.6.4. Opinions regarding the merits of the case or the merits of the evidence;

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

19.2.6.6. Statements concerning the identity, expected testimony, disciplinary or criminal records, or credibility of prospective witnesses;

19.2.6.7. The possibility of a guilty plea or other disposition of the case other than procedural information concerning such processes;

19.2.6.8. Before sentencing, facts regarding the accused's disciplinary or criminal record, including nonjudicial punishment, prior court-martial convictions, and other arrests, indictments, convictions, or charges. Generally, do not release information about nonjudicial punishment or administrative actions even after sentencing unless admitted into evidence. This rule does not prohibit, however, a statement that the accused has no prior criminal or disciplinary record; and

19.2.6.9. Information that trial counsel knows or has reason to know would be inadmissible as evidence in a trial.

**19.2.7. Responsibility for Extrajudicial Statements.** The release of extrajudicial statements is a command responsibility. The convening authority responsible for the criminal proceeding makes the ultimate decision about release of extrajudicial statements relating to that criminal proceeding. MAJCOM (or equivalent) commanders may withhold release authority from subordinate commanders

19.2.7.1. The installation SJA and the installation Public Affairs officer must work closely together to provide informed advice to the commander. (T-1) SJAs should consult with their MAJCOM SJAs when there is a question about the nature of a statement proposed for release. If the extrajudicial statement is based on information contained in agency records, the office of primary responsibility for the record should also coordinate on the extrajudicial statement prior to release. In high interest cases, the SJA and the public affairs officer should consult with their MAJCOM representatives, AFLOA/JAJM and AFLOA/JAA as necessary.

19.2.7.2. The SJA, trial counsel and defense counsel ensure investigators, law enforcement personnel, employees and other persons assisting or associated with the respective counsel do not make extrajudicial statements that counsel are prohibited from making.

**19.3. Release of Information from Records of Trial or Related Records.** Once a completed record is forwarded to AFLOA/JAJM, AFLOA/JAJM is the disclosure authority for all records and associated documents. This subsection does not apply to documents or records that originate outside the military justice system of records (e.g., AFOSI reports). The disclosure authority for such documents and records is the office of primary responsibility (OPR) for those records under the provisions of AFI 33-332, *Air Force Privacy and Civil Liberties Program*, and/or DoD 5400.7-R\_AFMAN 33-302.

**19.3.1. Release of Record of Trial.** R.C.M. 1112(b) defines a court-martial ROT. A ROT is subject to release determination under FOIA and the Privacy Act. Information marked as classified, controlled, or sealed by judicial order should not be released unless authorized by

proper authority (e.g., military judge). A transcript of oral proceedings is not a record until certification. When releasing ROTs under this paragraph, redact Privacy Act protected data and other sensitive information, to include the names of victims of sex offenses, the names of children (under the age of 18), and the identity of victims who could be harmed by disclosure of their identity. (T-0)

**19.3.2. Attachments to the ROT.** R.C.M. 1112(f) and AFMAN 51-203 list the attachments to a ROT (e.g., transcript). Attachments are not considered part of the ROT, so they would not be included in a release seeking the “record of trial.” However, if the attachments are specifically requested for release, then they are subject to a release determination under FOIA and the Privacy Act, as described in the previous paragraph.

**19.3.3. Release of Other Military Justice Documents or Records.** All other documents or records that are not made part of the ROT or attached to the ROT are also subject to release determination under the Privacy Act and Freedom of Information Act. However, due regard will be given to the potentially heightened privacy interests of an accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. (T-0) Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity. (T-0)

**19.3.4. Cases Disposed of by Acquittal or Action Other Than Court-Martial.** When the charges against an accused were disposed of by an action other than court-martial, or when a court-martial results in an acquittal, due consideration must be given to the likelihood that the accused may have increased privacy interests in the protection of information contained in military justice documents or records. See *ACLU v. Dep’t of Justice*, 750 F.3d 927, 933 (D.C. Cir. 2014). Less serious misconduct, which is handled administratively rather than judicially, is usually not considered of sufficient public interest to outweigh the privacy interest of the individual.

**19.3.5. Requests for Information from Law Enforcement Agencies.** Disclose data about the accused, the charges, and the evidence in accordance with Blanket Routine Uses and System of Records Notice (SORN) Routine Uses concerning military justice records. See <http://dpclo.defense.gov/privacy/Privacy/DODComponentArticleList/tabid/6799/Category/277/department-of-the-ari-force.aspx>; F051 AFJA I, Military Justice and Magistrate Court Records.

## ***Section 19B—Direct Communications and Reports***

### **19.4. AFLOA/JAJM Requests for Information.**

19.4.1. AFLOA/JAJM routinely receives inquiries concerning military justice cases and relies on information from base-level legal offices to answer the inquiries. Complete, accurate and timely responses to requests for information are critical. To that end, AFLOA/JAJM may communicate directly with any legal office at any level of command. It is incumbent on the contacted SJA or designee to coordinate with intermediate levels of command. (T-1) Contact

or requests from AFLOA/JAJM to a legal office should not be construed as criticism of case handling or as a mandate for any particular action in a case.

**19.4.2. Responses.** Generally, the SJA or designee should respond to AFLOA/JAJM via e mail directly to the requestor or to [usaf.pentagon.af-ja.mbx.afloa-jajm-workflow@mail.mil](mailto:usaf.pentagon.af-ja.mbx.afloa-jajm-workflow@mail.mil). All responses should include:

19.4.2.1. Detailed answers to any specific questions asked;

19.4.2.2. Case information, including details about the subject or accused and any relevant incidents and allegations;

19.4.2.3. Case background and any unique or significant aspects of the case; and

19.4.2.4. As necessary and appropriate, mark and protect information as Privacy Act-protected or For Official Use Only (FOUO).

**19.4.3. Responses Involving Courts-Martial.** In addition to the information described in paragraph 19.4.2, include the following information for courts-martial:

19.4.3.1. Dates and nature of pretrial restraint or confinement and associated proceedings;

19.4.3.2. Type of court-martial and summary of charges and specifications;

19.4.3.3. Dates of preferral, referral and trial;

19.4.3.4. Information about the Article 32 preliminary hearing, including who directed it, identity of accused's counsel and victim's counsel, if any, names of government and defense witnesses, summary of witness testimony and evidence presented, and the PHO's findings and recommendations;

19.4.3.5. Summary of witness testimony and evidence;

19.4.3.6. Pleas, findings, sentence, and court composition;

19.4.3.7. Any history of misconduct of the accused;

19.4.3.8. Date and action of the convening authority;

19.4.3.9. Date and outcome of Article 64, UCMJ, review, if an SCM;

19.4.3.10. Date ROT forwarded to AFLOA/JAJM; and

19.4.3.11. Information concerning post-trial confinement, excess leave, and other post-trial matters.

**19.4.4. Responses Involving Nonjudicial Punishment.** In addition to the information described in paragraph 19.4.2, include the following information for nonjudicial punishment: names, dates, and elections for the nonjudicial punishment action; summary of charged misconduct; imposing commander's findings; imposed nonjudicial punishment; appeal outcome; and information on related matters, such as Unfavorable Information File (UIF), Officer Selection Record (OSR), and discharge.

**19.4.5. Responses Involving Civilian Jurisdiction.** In addition to the information described in paragraph 19.4.2, include the following information for cases involving civilian jurisdiction:

19.4.5.1. Jurisdiction involved and status of waiver request; (T-1)

- 19.4.5.2. Charges; (T-1)
- 19.4.5.3. Detention or confinement; (T-1)
- 19.4.5.4. Place and dates of civilian proceedings; (T-1)
- 19.4.5.5. Name of defense counsel, if any; (T-1)
- 19.4.5.6. Summary of the evidence; (T-1)
- 19.4.5.7. Maximum authorized punishment; (T-1)
- 19.4.5.8. Pleas, findings, and sentence; (T-1)
- 19.4.5.9. Appeal; (T-1)
- 19.4.5.10. Administrative or disciplinary action taken or contemplated by military authorities. (T-1)

**19.5. Field Response to High-Level Inquiry.** When a legal office receives and responds directly to a high-level inquiry, such as a congressional inquiry, concerning a military justice case or matter, retain a copy of the inquiry and response. (T-1) AFI 90-401, *Air Force Relations with Congress*, Chapter 3, provides additional guidance.

## Chapter 20

### METRICS AND MILESTONES

#### *Section 20A—Case Processing Overview*

##### **20.1. Case Processing Time.**

20.1.1. The Air Force must account for resource investments, system and program effectiveness, and personnel impacts of military justice in an enterprise environment. An increase in processing time stands in contrast to the decrease in number of cases tried in recent years. Our separate system of military justice provides different or diminished constitutional rights to account for military requirements, including efficiency and effectiveness of the military justice system. It follows that an even greater emphasis on diligence and timeliness should be pursued under the UCMJ than in the civilian system. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). This is not to say that fairness, due process, or accused or victim considerations are forfeited in the name of promptness, but it does recognize that diligence and timeliness are entirely consistent with good order and discipline and necessary for fairness and justice.

20.1.2. **Coordination with Investigators.** SJAs should develop local procedures with the local AFOSI detachment commander to coordinate with agents as early as possible in the investigative stage of a case.

20.1.3. **Time Management.** SJAs and chiefs and NCOs in charge of military justice, at all levels of command, should regularly analyze available AMJAMS data relating to each stage of court processing over which they have significant control to determine specific areas for improvement to maximize effectiveness and efficiency. The expeditious processing of courts-martial is essential to minimize disruptions in the Air Force mission, the lives of victims, witnesses, and the accused, and to minimize Air Force costs. Metrics and milestones provide a framework by which we can maintain healthy military justice processes while also remaining faithful to legal requirements of diligence and timeliness. Decisions on how to address disciplinary matters should not be made solely to produce seemingly quick results, but decision-makers and practitioners must be cognizant of the negative impacts generated by unnecessary delays. Metrics and milestones are offered to help calibrate military justice processes; the goals are derived from historical data and from legal requirements. Airmen are cautioned against dismissing military justice goals as a career field-driven interest item; good order and discipline, and the health of the processes and protections that accompany it, are a common pursuit for all who swear to support and defend the Constitution.

#### *Section 20B—Metrics*

**20.2. General Provision.** Metrics are standards of measurement by which certain requirements can be assessed. Metrics for courts-martial assess compliance with time-based, legal requirements. Compliance with the legal requirement is presented as a percentage of times actions were in compliance with the targeted measurement standard. The law and practicality recognize that there can be valid exceptions to compliance; therefore, explanations for such exceptions must be captured and documented to demonstrate applicability of an exception. The below metrics ensure

focus is appropriately dedicated to time requirements established by law. The metrics in Section 20B of this chapter are 100% compliance.

**20.2.1. Speedy Trial.** Bring an accused to trial within 120 days of preferral, imposition of pretrial restraint, or entry onto active duty. (T-1) R.C.M. 707. Arraignment will toll the speedy trial clock. *United States v. Doty*, 51 M.J. 464 (C.A.A.F. 1999). Practitioners who seek to stop the speedy trial clock through arraignment should first attempt to meet all relevant discovery obligations and charge sheet modifications. **Note:** Separate from the metric, practitioners should also consider speedy trial considerations under the 6th Amendment and Article 10, UCMJ, whenever pretrial restraint is imposed, as these standards are different from R.C.M. 707.

**20.2.2. Action or ROT Completion and Moreno.**

20.2.2.1. For cases in which charges were referred prior to 1 January 2019, action or publication of the final order, whichever is earlier, must be completed within 120 days of completion of a trial. (T-1) See *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006).

20.2.2.2. For cases in which charges were referred on or after 1 January 2019, the ROT, with all attachments, must be completed within 120 days of announcement of sentence. (T-1)

**20.2.3. Forwarding and Moreno.**

20.2.3.1. For cases in which charges were referred prior to 1 January 2019, a complete and accurate ROT must be forwarded to the appropriate office for processing appellate review within 14 days of action.

20.2.3.2. For cases in which charges were referred on or after 1 January 2019, a complete and accurate ROT, including all attachments, must be forwarded to the appropriate office for processing appellate review within 14 days of the completion of the ROT and all attachments.

20.2.3.3. The appropriate office for processing cases wherein the accused has an opportunity for Article 66, UCMJ, review is AFLOA/JAJM. The appropriate processing office for cases wherein the accused has an opportunity for Article 64, UCMJ, review or Article 65(d), UCMJ review is the GCMCA SJA. While not an enumerated metric, healthy military justice processes should ensure a complete and accurate ROT in all cases subject to Article 64 or Article 65(d) review is forwarded to AFLOA/JAJM within 7 days of completion of the review.

**Section 20C—Milestones**

**20.3. Milestones Generally.** Milestones are time-based goals to assist in expediting the administration of justice. The goals are displayed as benchmarks for certain stages of the trial process and the process in its entirety. The goals are established through an analysis of past case processing times and they reflect analysis of the historical median of the number of calendar days it has previously taken to complete phases of the court-martial process. Milestones provide a destination marker and a piece of an entire collective processing effort.

**20.3.1. Using Milestones.** Milestones provide practitioners with the ability to manage near-term and long-term processing issues and to orient them to lessons-learned, positive and

negative, in their military justice program. They ensure practitioners manage near-term and long-term processing issues thereby maintaining a healthy military justice program that balances protections, effectiveness, and efficiencies. The intent is to encourage legal offices to focus on strengths, weaknesses, and improvements to their entire process; milestones offer a way to better understand each part of the whole process.

#### **20.4. General Court-Martial Milestones.**

20.4.1. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and Reports of Investigation (ROIs). In cases in which a ROI (or similar product) is published, complete the ROI investigation within 75 days of the date of discovery of the offense.

20.4.2. Prefer charge(s) within 40 days of the date the AFOSI, Security Forces or Commander-Directed Investigation ROI is published.

20.4.3. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the publication of the ROI, AMJAMS should reflect "0" days between publication of the ROI and preferral.

20.4.4. Complete the Article 32, UCMJ, hearing and report within 36 days of the date of preferral of charge(s).

20.4.5. Refer the charge(s) within 21 days of the date of the completion of the Article 32, UCMJ, hearing and report.

20.4.6. Complete the trial (sentence/acquittal) within 75 days of the date of referral.

20.4.7. Trial Complete (Sentence/Acquittal) to ROT or ROT and Attachments.

20.4.7.1. For cases referred before 1 January 2019, complete a ROT within 15 days of the date of trial completion (sentence/acquittal).

20.4.7.2. For cases referred on or after 1 January 2019, complete the ROT, including all attachments, within 64 days of trial completion (sentence/acquittal). **Note:** This includes any action taken by the convening authority, Entry of Judgment and all attachments, including a completed transcript.

20.4.8. **ROT to Action.** For cases referred prior to 1 January 2019, complete action (or in the case of an acquittal, the promulgating order) within 49 days of the date of ROT completion.

20.4.9. **Forwarding ROTs for Post-Trial Review.**

20.4.9.1. For cases referred before 1 January 2019, forward the ROT to the appropriate office for post-trial review within 14 days of action.

20.4.9.2. For cases referred on or after 1 January 2019, forward the ROT, with all attachments, to the appropriate office for post-trial review within 14 days of completion of the ROT and all attachments.

20.4.9.3. Forward the ROT to the appropriate office for post-trial review within 250 days of the date the AFOSI, Security Forces or Commander-Directed Investigation ROI is published.

## **20.5. Special Court Martial Milestones.**

20.5.1. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral. Early and regular judge advocate assistance to investigative agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results and report of investigations. In cases in which a ROI (or similar product) is published, complete the report of investigation within 75 days of the date of discovery of the offense.

20.5.2. Prefer charge(s) within 24 days of the date the AFOSI, Security Forces or Commander-Directed Investigation (CDI) ROI is published.

20.5.3. Charge(s) may always be preferred prior to publication of the report of investigation. If charge(s) are preferred prior to the report of investigation, AMJAMS should reflect "0" days between publication of the report of investigation and preferral.

20.5.4. Refer the charge(s) within 4 days of the date of preferral of charge(s).

20.5.5. Complete the trial (sentence/acquittal) within 40 days of the date of referral.

20.5.6. Trial Complete (Sentence/Acquittal) to ROT.

20.5.6.1. For cases referred before 1 January 2019, complete a ROT within 11 days of the date of trial completion (sentence/acquittal).

20.5.6.2. For cases referred on or after 1 January 2019, complete the ROT, with all attachments, within 38 days of trial completion (sentence/acquittal). **Note:** This includes any action taken by the convening authority, Entry of Judgment and a completed transcript.

20.5.7. **ROT to Action.** For cases referred prior to 1 January 2019, complete action (or in the case of an acquittal, the promulgating order) within 27 days of ROT completion.

20.5.8. **Forwarding ROTs for Post-Trial Review.** Forward the ROT to the appropriate office for post-trial review within 120 days of the date the AFOSI or Commander-Directed Investigation ROI is published.

20.5.8.1. For cases referred before 1 January 2019, forward the ROT to the appropriate office for post-trial review within 14 days of action.

20.5.8.2. For cases referred on or after 1 January 2019, forward the ROT, with all attachments, to the appropriate office for post-trial review within 14 days of completion of the ROT and all attachments.

**20.6. Transcription Milestones.** Every effort should be made to complete the court-martial transcript prior to completion of the Entry of Judgment. However, in no case should transcription exceed the following milestones:

20.6.1. In a GCM, transcription should be complete within 64 days following the completion of trial.

20.6.2. In a SPCM, transcription should be complete within 38 days following the completion of trial.

*Section 20D—Summary Court-Martial Measures*

**20.7. SJAs are expected to enable expeditious processing of all cases by closely monitoring activities and providing legal guidance to investigative agencies from the date of discovery of the offense through preferral.** Early and regular judge advocate investigative assistance to agencies is essential in helping to foster efficient processes while ensuring sufficient investigative results.

20.7.1. Prefer charge(s) within 40 days of the date of discovery.

20.7.2. Complete action within 21 days of preferral of charge(s).

20.7.3. Forward a complete and accurate ROT to the appropriate office for processing post-trial review within 14 days of action.

**20.8. Date of Discovery.** The date of discovery of the offense is defined as the date when an investigative agency (e.g., AFOSI, Security Forces, Inspector General), legal office, commander, supervisor, or first sergeant becomes aware of an allegation and a subject has been identified, including when notification is made by civilian authorities. In a case involving a Commander-Directed Investigation, the date of discovery of the offense is when a commander is notified of an allegation that an offense has been committed and a subject has been identified. If an allegation is investigated by Commander-Directed Investigation and is subsequently turned over to an investigative agency for further investigation, use the date the commander first became aware of the allegation and initiated the Commander-Directed Investigation. In all cases where additional allegations against an identified subject are discovered, use the earliest date of discovery of all offenses (e.g. allegation one is uncovered on 1 January and allegation two is uncovered on 1 March, the date of discovery is 1 January).

## Chapter 21

### STAFF JUDGE ADVOCATE SUPPORT TO EXTERNAL PROGRAMS

#### *Section 21A—Staff Judge Advocate’s Responsibilities to Defense Counsel*

**21.1. The Area Defense Counsel Program.** The ADC Program is one of the great strengths of the Air Force military justice system and will continue to be so as long as the defense function is, and is perceived to be, independent. A critical responsibility of the SJA is to foster that independence in words and actions and to treat the ADC as equal with the prosecution function at the bar of justice.

#### **21.2. Staff Judge Advocate Responsibilities.**

21.2.1. It is a primary role of a SJA to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands SJAs protect and promote all facets of the military justice process, including the ADC. SJAs are charged with providing commanders candid and objective advice on all legal matters, especially in regard to military justice. An SJA is responsible for ensuring the government is well represented and its personnel are properly trained to execute their various military justice responsibilities. In executing their duties, SJAs are expected to execute multiple roles and responsibilities in safeguarding the justice process and in enhancing good order and discipline, to include properly preparing counsel and effectively providing command with an unbiased perspective and legal advice on the full range of military justice options, which take into account the needs of all the parties involved, the mission, and the Air Force.

21.2.2. The SJA’s position and seniority demands that he or she set the tone for how military justice is viewed across the installation by maintaining open lines of communication with defense counsel, promoting civility in practice, and maintaining a productive relationship within the legal community. The SJA must never make denigrating, demeaning, or hostile comments about the ADC nor condone such comments by others. (T-1) Instead, when the SJA considers it necessary to question or criticize the actions of the ADC, the SJA will raise such matters through the ADC’s supervisory and command chain. At all times, the SJA must remember that professionalism requires civility, a continuous, cordial relationship with the defense bar, vigorous promotion of defense independence, and appropriate recognition of the ADC’s achievements. (T-1)

21.2.3. The quality of the ADC’s facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit ADC offices will not perceive that the system is operating on a level playing field unless defense facilities and equipment achieve this standard. SJAs are responsible for assisting ADCs in obtaining and maintaining suitable facilities and equipment.

#### *Section 21B—Staff Judge Advocate’s Responsibilities to Special Victims’ Counsel*

**21.3. The Special Victims’ Counsel Program.** The SVC Program is one of the great strengths of the Air Force military justice system and will continue to be so as long as the Special Victims’

Counsel function is, and is perceived to be, independent. A critical responsibility of the SJA is to foster that independence in words and actions.

#### **21.4. Staff Judge Advocate Responsibilities.**

21.4.1. It is a primary role of a SJA to ensure the military justice system is administered in a fair and impartial manner in perception and in reality. To accomplish this objective, effective leadership within the military justice arena demands SJAs protect and promote all facets of the military justice process, including the SVC Program.

21.4.2. The SJA's position and seniority demands that he or she set the tone for how military justice is viewed across the installation by maintaining open lines of communication with the SVC, promoting civility in practice, and maintaining a productive relationship within the legal community. If the SJA considers it necessary to question or criticize the actions of the SVC, the SJA will raise such matters through the SVC's supervisory and command chain. (T-1) At all times, the SJA must remember that professionalism requires civility, a continuous, cordial relationship with the members of the SVC program, vigorous promotion of the SVC Program's independence, and appropriate recognition of the SVC's achievements.

21.4.3. The quality of the SVC's facility and equipment must be equal to or better than that of the base legal office. (T-1) Clients and others who visit SVC offices will not perceive that the system is operating on a level playing field unless the facilities and equipment achieve their standard. SJAs are responsible for assisting SVCs in obtaining and maintaining suitable facilities and equipment.

21.4.4. The SVC program is separate and distinct from VWAP. The SJA must ensure that legal office personnel understand the distinction between the two programs. (T-1) VWAP responsibilities are not abrogated by a victim's representation by counsel.

#### ***Section 21C—Support of Defense Sexual Assault Incident Database (DSAID)***

**21.5. Defense Sexual Assault Incident Database.** The DSAID is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoDD 6495.01, *Sexual Assault Prevention and Response Program*, and DoDI 6495.02. The DSAID captures available information, not limited by restricted reporting or otherwise prohibited by law, about the nature of the assault, the victim, the offender, and the disposition of reports associated with the assault. The DSAID is intended to implement Congressional reporting requirements. The DSAID is maintained at base level by the installation SARC and requires information, as necessary, from appropriate base agencies to complete designated data fields.

21.5.1. The base SJA provides the SARC with disposition data on cases entered into DSAID by completing the DSAID Subject Case Disposition form. (T-1) Data to be provided includes information on pretrial confinement, whether the case was substantiated as defined in DoDI 6495.02, command action, and the relevant dates. Other DSAID data may also be required as necessary.

21.5.2. The requested DSAID data will be accurate and complete and provided to the SARC as soon as possible after the triggering event occurs.

## Chapter 22

### STAFF JUDGE ADVOCATE SUPPORT TO INVESTIGATIONS

**22.1. General Provision.** An effective military justice process starts with a timely, thorough, and accurate investigation. Judge advocate and investigative personnel must develop a collaborative relationship focused on integrating investigative efforts and the legal process. The goal is thorough, case-ready reports of investigation, robust litigation preparation, and timely resolution of military justice cases. SJAs will establish local procedures to implement these goals for all investigations. (T-1)

#### *Section 22A—Investigative Support Teams*

**22.2. Initial Process.** An effective team approach starts at the beginning of the military justice process. In matters involving alleged violations of the UCMJ or MEJA, the investigating AFOSI detachment or Security Forces investigators will notify the local judge advocate when substantive criminal investigations are initiated. (T-1) At a minimum, the SJA will designate an attorney to provide initial counsel to the case agent on the new investigation. (T-1)

**22.3. Investigative Support Team.** The SJA will designate an investigative support team as early as practicable in the investigative process. (T-1)

22.3.1. The investigative support team will be composed of judge advocate(s), as well as civilian attorney(s) and paralegal(s) when appropriate, who will work with the AFOSI case agent(s) or Security Forces investigator(s) during the investigation to provide legal support. (T-1) Members of the investigative support team are not investigators and they should be careful not to depart from their role. The team should properly safeguard all attorney work-product material. See *Hickman v. Taylor*, 329 U.S. 495 (1947); *United States v. Romano*, 46 M.J. 269 (C.A.A.F. 1997); *United States v. Vanderwier*, 25 M.J. 263 (C.M.A. 1987).

22.3.2. If the investigation involves violations of the following, the SJA should appoint a trial counsel as soon as practicable:

22.3.2.1. For offenses occurring prior to 1 January 2019: Articles 120, 120a, 120b, 120c, 125, 128 (for offenses that qualify as domestic violence in accordance with paragraph 15.28.9.1.), and 134 (Child Pornography or Indecent Conduct), UCMJ, or attempts to commit any of these offenses under Article 80, UCMJ.

22.3.2.2. For offenses occurring on or after 1 January 2019: Articles 117a, 120, 120b, 120c, 128b, 130, 134 (Child Pornography or Indecent Conduct), UCMJ, attempts to commit any of these offenses under Article 80, UCMJ, or conspiracy to commit any of these offenses under Article 81, UCMJ.

**22.4. Investigative Plan Development.** The attorney designated by the SJA and the investigative support team will receive a briefing on the initial investigative steps. (T-1) The designated attorney or the investigative support team will continue the collaborative process during the development of the investigative plan and work with the AFOSI case agent or Security Forces investigator in identifying potential criminal offenses for investigation, and comparing the evidence in the case with the elements of proof for a given offense. (T-1) Judge advocates will coordinate with the case agents or investigators on subject interviews. (T-1)

## 22.5. Case Development.

22.5.1. The investigative support team and the case agents will continue their collaborative efforts as the investigation proceeds. (T-1) As appropriate, designated investigative support team members or judge advocate staff members will attend AFOSI case review meetings. (T-1) Likewise, AFOSI personnel and Security Forces investigators should be encouraged to attend relevant judge advocate military justice meetings.

22.5.2. The investigative support team will review and update the initial proof analysis crafted by trial counsel to address the elements, evidence, anticipated objections, and potential defenses for each specification as appropriate, but at least on a monthly basis. (T-1) Judge advocates will discuss the results of the analysis with the AFOSI case agent or Security Forces investigator. (T-1) A final proof analysis is typically attorney work-product material, and should be substantially completed contemporaneously with the publication of the report of investigation. This will also assist in pre-trial preparation efforts. Counsel should continue to update and modify the proof analysis as they prepare for trial.

22.5.3. In accordance with AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*, the SJA initiates the coordination process as early as possible for cases falling under MEJA.

**22.6. Disclosure and Reporting of Sensitive Case Information.** As a case develops, both the SJA and law enforcement are required to provide case information and status updates to higher commands through their respective reporting channels. To avoid compromising an on-going investigation, the SJA will not allow disclosure of sensitive investigative information without the AFOSI Detachment Commander's/Special Agent-in-Charge's concurrence. (T-1) Some examples of sensitive investigative information would include investigative techniques, case leads, and confidential source information. Once a case proceeds to trial, the rules of discovery will control the release of any sensitive investigative information. In addition, portions of the ROI that are in draft form should not be released outside legal office channels without detachment concurrence.

**22.7. Lessons Learned.** Within 30 calendar days of the conclusion of trial, the legal office trying the case and the AFOSI detachment responsible for the investigation of the case are encouraged to conduct a "hot wash." The "hot wash" should include the SJA or DSJA, Chief of Military Justice, and trial team from the legal office, as well as the detachment commander or lead criminal investigations agent, and the case agent(s) from the AFOSI detachment. Other legal office and AFOSI personnel may attend. Lessons learned may be captured in an after action report, but an after action report is not required.

### *Section 22B—Special Victim Investigation and Prosecution Capability (SVIP)*

**22.8. Applicability.** This section applies to the following types of investigations: (1) all unrestricted reports of adult sexual assault, (2) all unrestricted reports of domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, and (3) child abuse involving sexual assault and/or aggravated assault with grievous bodily harm. See Fiscal Year 2013 National Defense Authorization Act, Section 573.

**22.9. General Provision.** Specially trained prosecutors, paralegals, and victim witness assistance personnel (collectively referred to as "SVIP personnel") will collaboratively work with specially

trained investigators, often from investigative agencies such as AFOSI, to provide advice, guidance, and support during the investigative and military justice process. (T-0) For each case, an SVIP Team will be assigned and will be composed of at least four personnel: (1) AFOSI case agent, (2) judge advocate, (3) paralegal, and (4) victim liaison. (T-1) These designated personnel will collaborate with SARCs, victim advocates, FAP managers, and domestic abuse victim advocates during all stages of the investigative and military justice process to ensure an integrated capability, to the greatest extent possible. (T-1)

**22.10. Training.** All personnel detailed as members of a SVIP Team are required to have completed the SAPR Program training requirements listed in DoDI 6495.02, Enclosure 10, to include annual training and responder training requirements. Additionally, all judge advocates must have completed the judge advocate training requirements detailed in Enclosure 10, paragraph 7, of DoDI 6495.02.

**22.11. Initial Process.** The SJA develops relationships with relevant agencies (OSI, Security Forces, SARC, and FAP) to ensure that the legal office is notified within 24 hours of a reported allegation that meets the criteria in paragraph 22.8 for activation of the SVIP.

22.11.1. The SJA designates the judge advocate and paralegal that will serve on the SVIP Team for that case. Those individuals will work the AFOSI case agent during the investigation to provide legal support. (T-1) The designated judge advocate will meet or consult with the AFOSI case agent within forty-eight hours of the determination that the allegation meets the criteria for activating the SVIP Team. (T-1)

22.11.2. The SJA should assign judge advocates to the SVIP who have been certified according to Article 27(b), UCMJ, and AFI 51-101, *The Air Force Judge Advocate General's Corps (AFJAGC) Operations, Accessions, and Professional Development*. If an uncertified judge advocate is the only judge advocate assigned to the SVIP for a given case, that counsel is required to consult with a Circuit Trial Counsel or Special Victims Unit Circuit Trial Counsel whenever practicable.

22.11.2.1. The SJA should assign a paralegal to the SVIP who has completed the Paralegal Craftsman Course. If more than one paralegal is assigned to the SVIP, at least one of the paralegals designated should have completed the Paralegal Craftsman Course.

22.11.2.2. The SJA or LRO's delegate designates a victim liaison to provide support to the victim through the VWAP. See Chapter 16. The SJA or LRO's delegate certifies that the victim liaison possesses the necessary level of military justice experience and VWAP training to support the victim.

## **22.12. Case Development.**

22.12.1. Members of the SVIP will comply with the requirements of the investigative support team above in Section 22A. (T-1)

22.12.2. The locally designated judge advocate will consult with the assigned case agent at least bi-weekly to assess progress in the investigation or prosecution, including ensuring any matter raised by the victim (or their SVC, SARC, victim advocate, FAP managers, domestic abuse victim advocates, or other person designated to assist or represent the victim) is properly addressed. (T-1)

**22.13. Special Victim Investigation and Prosecution Capability Prosecutors.** Circuit Trial Counsel designated as members of the Special Victims Unit by the Chief, Government Trial and Appellate Division (AFLOA/JAJG) are the primary SVIP prosecutors.

22.13.1. The Chief, Government Trial and Appellate Division, must certify that each Special Victims Unit-Circuit Trial Counsel possesses the requisite litigation skills, professionalism, and leadership to provide the highest quality of legal representation for the government and support to victims. (T-1) Special Victims Unit-Circuit Trial Counsel must be capable of supervising, mentoring, and training junior counsel while providing candid, independent legal advice and expert prosecutorial support to responsible legal offices. (T-1)

22.13.2. Prior to being designated as a member of the Special Victims Unit, a Circuit Trial Counsel will generally have completed one year as either Circuit Trial Counsel or Circuit Defense Counsel, attended two or more advanced litigation skills courses, received specialized training in prosecuting or defending sexual assaults, and demonstrated an ability to prosecute or defend a variety of sexual assault and/or complex cases.

22.13.3. Based upon the severity of the case, as determined by the Chief, Government Trial and Appellate Division or Chief, Circuit Trial Counsel, Special Victims Unit-Circuit Trial Counsel are detailed to Special Victim Capability cases. (T-1) If a determination is made that the case does not warrant detailing a Special Victims Unit-Circuit Trial Counsel, a Special Victims Unit-Circuit Trial Counsel are available to consult and provide litigation support to local trial counsel remotely.

22.13.4. When possible, Special Victims Unit-Circuit Trial Counsels will be detailed in the early stages of the investigation to provide support to local trial counsel and AFOSI case agents.

22.13.5. If a Special Victims Unit-Circuit Trial Counsel is detailed to the case, the legal office should consult with the Special Victims Unit-Circuit Trial Counsel prior to the first legal office interview of the victim and prior to preferral of charges in the case.

**22.14. Legal Assistance.** The trial counsel, victim liaison, and Special Victims Unit-Circuit Trial Counsel ensure that victims of crime under this section entitled to military legal assistance are notified of the opportunity to consult with a legal assistance attorney or Special Victims' Counsel in accordance with AFI 51-304.

**22.15. Victim's Rights and Information.** The victim liaison ensures that victims of crime under this section are afforded the rights and entitlements described below. This requirement extends to trial counsel and the Special Victims Unit-Circuit Trial Counsel for unrepresented victims. For victims represented by counsel, the trial counsel and Special Victims Unit-Circuit Trial Counsel coordinate with the victim's counsel to ensure the victim is:

22.15.1. Informed of their rights as a crime victim under Article 6b, UCMJ and Section 16C of this publication;

22.15.2. Provided with a comprehensive explanation of the military justice process;

22.15.3. Provided with regular case updates, including notifications under Section 16D; and

22.15.4. Consulted on the matters set forth under Section 16D.

**22.16. Victim's Rights in Certain Sex Related Offenses.** A comprehensive listing of rights provided to victims of sex related offenses, to include required notifications to the victim and victim's counsel, is provided in Chapter 16

**22.17. Pediatric Forensic Interviewers.** Legal offices will request specially trained pediatric forensic interviewers to support the investigation and prosecution of complex child abuse and child sexual abuse cases, when appropriate. (T-1)

**22.18. Coordination with Key Organizations and Victim Support Services.** Legal offices will establish active liaisons with the following organizations and key individuals, if available or present, to ensure victim care:

22.18.1. Local AFOSI detachment; (T-1)

22.18.2. Local civilian law enforcement agencies and prosecutor offices; (T-1)

22.18.3. Local civilian victim advocacy organizations; (T-1)

22.18.4. SARC and SAPR Program Victim Advocates; (T-1)

22.18.5. SVC; (T-1)

22.18.6. FAP clinicians, FAP managers, and domestic abuse victim advocates; (T-1)

22.18.7. Military chaplain offices; (T-1)

22.18.8. Medical and mental health care providers; (T-1) and

22.18.9. Commanders and First Sergeants. (T-1)

**22.19. Review Measures for Special Victim Investigation and Prosecution Capability.** AFLOA/JAJ will be responsible for compiling the review measures below on an annual basis.

22.19.1. Percentage of all preferred court-martial cases that involve SVIP offenses in each fiscal year.

22.19.2. Percentage of SVIP offense courts-martial tried by, or with the direct advice and assistance of, a Special Victims Unit-Circuit Trial Counsel.

22.19.3. Compliance with DoD victim and witness assistance program reporting requirements to ensure that victims are consulted with and regularly updated by SVIP legal personnel.

22.19.4. Percentage of Special Victims Unit-Circuit Trial Counsels, judge advocates, paralegals, and victim liaisons that have received additional and advanced training in SVIP topical areas.

22.19.5. Victim feedback on effectiveness of SVIP prosecution, and legal support services and recommendations for possible improvements. AFLOA/JAJ will compile this information from applicable surveys (e.g., those fielded by DoD SAPR Office, AF/CVS, and AFLOA/JAJM if necessary). Legal offices should not conduct their own survey or formal victim feedback mechanism to gather this information. Participation by all victims is voluntary.

## Chapter 23

### MISCELLANEOUS MILITARY JUSTICE MATTERS

#### *Section 23A—Court-Martial Checklists*

**23.1. Mandatory Use of Court-Martial Checklists.** The base legal office responsible for prosecuting a court-martial must use the applicable AFLOA/JAJM court-martial checklists available on AFLOA/JAJM’s Virtual Military Justice Deskbook. (T-1) Supplemented checklists may be used if reviewed and approved by AFLOA/JAJM. Checklists used for an individual court-martial case are maintained and disposed of in accordance with the disposition schedule for the ROT.

#### *Section 23B—Title of Staff Judge Advocate*

**23.2. Title of Staff Judge Advocate.** Unless otherwise specified by TJAG, the senior judge advocate on a commander’s staff is designated the “Staff Judge Advocate” of that command. All other judge advocates assigned to a command are designated “Assistant Staff Judge Advocates” for the purpose of pretrial advice, post-trial recommendations and court-martial orders.

23.2.1. The DSJA or other assistant staff judge advocate signs “Acting as the Staff Judge Advocate” when the SJA is absent or ineligible to act in a particular case. (T-1) In all other matters, titles such as “Deputy Staff Judge Advocate” or “Chief, Military Justice Section,” may be used.

23.2.2. Convening authorities may delegate military justice administrative duties to the SJA or any other attorney assigned to the servicing SJA’s office. Template 1801, found on the Virtual Military Justice Deskbook, is a sample delegation letter. In addition to the duties listed in Template 1801, convening authorities may delegate any other military justice administrative duties not expressly requiring convening authority action. When signing a military justice matter for the convening authority, use the signature element, “FOR THE COMMANDER.” (T-1)

#### *Section 23C—Reporting Referral of Additional Charges in Cases Pending Review*

**23.3. Reporting Referral of Additional Charges in Cases Pending Review.** If a case is pending review under Articles 65, 66, 67 or 69, UCMJ, the legal office processing the referral of additional charges must contact AFLOA/JAJM. (T-3)

#### *Section 23D—Reporting Cases Involving Foreign-National USAF Members*

**23.4. Foreign-National USAF Member.** A foreign-national United States Air Force member is a member of the United States Air Force who is a national of a foreign country and who is not a citizen or national of the United States. For purposes of this section, any Air Force member who claims to be a foreign national shall be considered so. (T-1) This section does not apply when a foreign national is charged with a crime, arrested, confined or detained in custody by the civil authorities of the United States, or any political subdivision, possession or territory thereof, or by the authorities of any foreign government.

**23.5. When to Report.** Notify Headquarters USAF/JAO when a foreign-national United States Air Force member is:

- 23.5.1. Apprehended under circumstances likely to result in confinement or trial by court-martial, and states that he or she is a foreign national; (T-1)
- 23.5.2. Ordered into arrest or confinement; (T-1)
- 23.5.3. Held for trial with or without any form of restraint; (T-1) or
- 23.5.4. Pending court-martial charges that have been referred for trial. (T-1)

**23.6. What to Report.** Include in the notification the following:

- 23.6.1. The name, grade, social security number, organization and station of the member; (T-1)
- 23.6.2. Any evidence, including information from the member's military record, that is inconsistent with a claim of foreign nationality; (T-1)
- 23.6.3. A thorough description of the offenses, including dates, UCMJ articles allegedly violated, the number of specifications under each offense, sufficient detail to provide clear understanding of the facts and circumstances involved, and any other unusual or significant features of the case; (T-1)
- 23.6.4. The name of defense counsel, if any; (T-1) and
- 23.6.5. The exact and current location of the member (e.g., Joint Base Andrews confinement facility). (T-1)

**23.7. Examination of Member's Records.** Whenever charges against a foreign national United States Air Force member are referred for trial, the SPCMCA's SJA has the member's military records examined to ascertain the member's nationality, even if the member has not entered a claim of foreign nationality.

**23.8. Notification Not Required.** Notification is not required:

- 23.8.1. For issues resulting in nonjudicial punishment or administrative action, or
- 23.8.2. If the foreign national United States Air Force member is apprehended or confined in anticipation that only nonjudicial punishment or administrative action is contemplated.

JEFFREY A. ROCKWELL  
Lieutenant General, USAF  
The Judge Advocate General

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

UCMJ (10 U.S.C. § 801, et seq)

MCM 2019 Edition

AFPD 51-2, *Military Justice, Individual Military Counsel, and Other Criminal Proceedings*, 31 August 2018

Privacy Act (5 U.S.C. § 552)

10 U.S.C. § 8013, *Secretary of the Air Force*

10 U.S.C. § 8037, *Judge Advocate General*

10 U.S.C. § 854, *Record of Trial*

10 U.S.C. § 865, *Disposition of Records*

EO 9397, *Numbering System for Federal Accounts Relating to Individual Persons*

AFMAN 33-363, *Management of Records*, 1 March 2008

AFI 33-360, *Publications and Forms Management*, 1 December 2016

Pub. L. 114-328, 130 Stat. 2000, Division E *National Defense Authorization Act for Fiscal Year 2017, Military Justice Act*, 23 December 2017

AFI 51-204, *United States Air Force Judiciary and Air Force Trial Judiciary*, 10 September 2018

10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses*

EO 13825, *2018 Amendments to the Manual for Courts-Martial, United States*, 1 March 2018

AFI 38-101, *Air Force Organization*, 31 January 2017

AFI 90-1001, *Planning Total Force Associations*, 9 January 2017

10 U.S.C. § 802 – Art. 2, *Persons subject to this chapter*

*Joint Travel Regulations*, 1 January 2019

AFI 51-202, *Nonjudicial Punishment*, 31 March 2015

DoDI 5525.07, *Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, 18 June 2007

18 U.S.C. § 3056, *Powers, authorities, and duties of United States Secret Service*

18 U.S.C. § 3261, et seq, *Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States (Military Extraterritorial Jurisdiction Act of 2000)*

- AFI 51-205, *Delivery of Personnel to United States Civilian Authorities for Trial and Criminal Jurisdiction over Civilians and Dependents Overseas*, 10 September 2018
- AFI 51-402, *International Law*, 6 August 2018
- DoD 4525.6-M, *Department of Defense Postal Manual*, 31 August 2018
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10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*

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28 C.F.R. § 28.12, *Collection of DNA samples*

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### ***Prescribed Forms***

AF Form 1176, *Authority to Search and Seize*

AF Form 3226, *Authority to Apprehend in Private Dwelling*

AF Form 1092, *Court-Martial Findings Worksheet*

AF Form 1093, *Sentence Worksheet (Special Court-Martial)*

AF Form 835, *Sentence Worksheet (General Court-Martial)*

AF Form 304, *Request for Appellate Defense Counsel*

### ***Adopted Forms***

AF Form 847, *Recommendation for Change of Publication*

DD Form 458, *Charge Sheet*

DD Form 456, *Interrogatories and Depositions*

DD Form 1610, *Request and Authorization for TDY Travel of Department of Defense Personnel*

DD Form 457, *Preliminary Hearing Officer's Report*

DD Form 1351-2, *Travel Voucher or Subvoucher*  
DD Form 493, *Extract of Military Records of Previous Convictions*  
DD Form 453, *Subpoena*  
DD Form 454, *Warrant of Attachment*  
Standard Form 1034, *Public Voucher for Purchases and Services Other than Personal*  
Standard Form 1164, *Claim for Reimbursement for Expenditures on Official Business*  
DD Form 1722, *Request for Trial Before Military Judge Alone*  
DD Form 2707, *Confinement Order*  
DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts- Martial Subject to Review by a Court of Military Review*  
DD Form 2329, *Record of Trial by Summary Court-Martial*  
DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*  
DD Form 2701, *Initial Information for Victims and Witnesses of Crime*  
DD Form 2702, *Court-Martial Information for Victims and Witnesses of Crime*  
DD Form 2703, *Post-Trial Information for Victims and Witnesses of Crime*  
DD Form 2704, *Victim/Witness Certification and Election Concerning Prisoner Status*  
DD Form 2705, *Notification to Victim/Witness of Prisoner Status*  
DD Form 2706, *Annual Report on Victim and Witness Assistance*  
DD Form 2873, *Military Protective Order*  
AF Form 899, *Request and Authorization for Permanent Change of Station*  
AF Form 988, *Leave Request/Authorization*  
DD Form 455, *Report of Proceedings to Vacate Suspension of a General Court-Martial Sentence or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge Under Article 72, UCMJ, and Rule for Courts-Martial 1109*  
DD Form 2331, *Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General*  
DD Form 2707-1, *Department of Defense Report of Result of Trial*

### ***Abbreviations and Acronyms***

**ACM—AFLOA/JAJM General Court—**Martial Reference Number

**ADC—**Area Defense Counsel

**AFI—**Air Force Instruction

**AFLOA—**Air Force Legal Operations Agency

**AFMAN—**Air Force Manual

**AFJAGC**—The Air Force Judge Advocate General’s Corp  
**AFJAGS**—Air Force JAG School  
**AFO**—Accounting & Finance Office  
**AFOSI**—Air Force Office of Special Investigations  
**AFPC**—Air Force Personnel Center  
**AFPD**—Air Force Policy Directive  
**AFSFC**—Air Force Security Forces Center  
**AFRC**—Air Force Reserve Command  
**AMJAMS**—Automated Military Justice Management System  
**ANG**—Air National Guard  
**CAAF**—United States Court of Appeals for the Armed Forces  
**CAIB**—Community Action Information Board  
**CDI**—Commander Directed Investigation  
**C.F.R.**—Code of Federal Regulations  
**CLSV**—Special Victims’ Counsel Division  
**CODIS**—Combined DNA Index System  
**CMO**—Court Martial Order  
**DFAS**—Defense Finance & Accounting Services  
**DIBRS**—Defense Incident-Based Reporting System  
**DJAG**—Deputy Judge Advocate General  
**DNA**—Deoxyribonucleic Acid  
**DoD**—Department of Defense  
**DoDD**—Department of Defense Directive  
**DoDI**—Department of Defense Instruction  
**DSAID**—Defense Sexual Assault Incident Database  
**DSJA**—Deputy Staff Judge Advocate  
**FAP**—Family Advocacy Program  
**FOIA**—Freedom of Information Act  
**FLITE**—Federal Legal Information Through Electronics  
**FOUO**—For Official Use Only  
**GCM**—General Court-Martial  
**GCMCA**—General Court-Martial Convening Authority

**IG**—Inspector General  
**JAC**—Civil Law and Litigation Directorate  
**JAJ**—Judiciary Directorate  
**JAJA**—Appellate Defense Division  
**JAJD**—Trial Defense Division  
**JAJG**—Government Trial and Appellate Counsel Division  
**JAJM**—Military Justice Division  
**JAJR**—Clemency, Corrections and Officer Review Division  
**JAT**—Air Force Trial Judiciary  
**LIO**—Lesser Included Offense  
**LOC**—Letter of Counseling  
**LOR**—Letter of Reprimand  
**LRO**—Local Responsible Official  
**MAJCOM**—Major Command  
**MCM**—Manual for Courts-Martial  
**MEJA**—Military Extraterritorial Jurisdiction Act  
**MEO**—Military Equal Opportunity  
**MPO**—Military Protective Order  
**M.R.E.**—Military Rule of Evidence  
**NAF**—Numbered Air Force  
**NCIC**—National Crime Information Center  
**NCO**—Non-commissioned Officer  
**NICS**—National Instant Background Check System  
**OSR**—Officer Selection Record  
**PCRO**—Pretrial Confinement Review Officer  
**PHO**—Preliminary Hearing Officer  
**PII**—Personally Identifiable Information  
**R.C.M.**—Rule for Courts-Martial  
**ROI**—Report of Investigation  
**ROT**—Record of Trial  
**ROTC**—Reserve Officers’ Training Corps  
**SAPR**—Sexual Assault Prevention and Response

**SARC**—Sexual Assault Response Coordinator  
**SCM**—Summary Court-Martial  
**SJA**—Staff Judge Advocate  
**SOD**—Status of Discipline  
**SORN**—System of Records Notice  
**SPCM**—Special Court-Martial  
**SPCMCA**—Special Court-Martial Convening Authority  
**SSN**—Social Security Number  
**SVC**—Special Victims Counsel  
**SVIP**—Special Victims Investigation and Prosecution Capability  
**TAFMSD**—Total Active Federal Military Service Date  
**TJAG**—The Judge Advocate General  
**UCMJ**—Uniform Code of Military Justice  
**UIF**—Unfavorable Information Act  
**USAFA**—United States Air Force Academy  
**USACIL**—United States Army Criminal Investigations Laboratory  
**U.S.C.**—United States Code  
**VA**—Victim Advocate  
**VC**—Victim’s Counsel  
**VWAP**—Victim and Witness Assistance Program  
**WASP**—Web-Based Administrative Separation Program

### *Terms*

**Adjudged Forfeitures**—Forfeitures of pay and/or allowances announced as part of a sentence in a court-martial. See Article 57, UCMJ.

**Central Repository**—A central organization for confinee information, charged with establishing procedures to ensure victims are notified of changes in confinee status, if they so elect.

**Component Responsible Official**—The Air Force official responsible for coordinating, implementing and managing the Air Force VWAP. TJAG is the Air Force component responsible official.

**Court-Martial Convening Authority**—A commander or equivalent person that exercises court-martial convening authority powers as set out in the UCMJ and MCM. In this regulation, the term Court-Martial Convening Authority may be used to refer to an individual authorized to convene courts-martial or to the authority to convene courts-martial.

**Crime of Domestic Violence**—An offense that has as its factual basis one of the following: (1) the use or attempted use of physical force, or (2) the threatened use of a deadly weapon. The

alleged offender must be (1) a current or former spouse; (2) parent or guardian of the victim; (3) a person with whom the victim shares a child in common; (4) a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or, (5) a person similarly situated to a spouse, parent or guardian of the victim. See DoDI 6400.06; 18 U.S.C. § 922.

**Child Victim**—The definition of child victim varies based on the offense. Practitioners must consult the MCM to determine which definition of child victim applies.

**Contingent Confinement**—Confinement authorized by a court-martial in the form of a fine-enforcement provision.

**Defense Sexual Assault Incident Database**—The DSAID is a centralized, case-level DoD database for the uniform collection of data regarding sexual assaults involving persons covered by DoDD 6495.01, Sexual Assault Prevention and Response Program, and DoDI 6495.02.

**Deferment of Forfeitures**—Delaying the effective date of the beginning of forfeitures of pay and/or allowances. See Article 57, UCMJ.

**Dependent**—Generally, the spouse, unmarried child, parent of the member, or person in the member's legal custody, if those persons meet certain criteria. For further information, see 37 U.S.C. § 401.

**DuBay Hearing**—A post-trial hearing ordered by an appellate court or convening authority for the limited purpose of obtaining further evidence on a matter under consideration by the court. *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967)

**Entry of Judgment**—Document which reflects the results of the court-martial after all post-trial actions, rulings or orders. See R.C.M. 1111 and Article 60c, UCMJ.

**Expurgated**—A document that has been redacted of certain information.

**Extrajudicial statement**—Extrajudicial statements are oral or written statements made outside of a criminal proceeding that a reasonable person would expect to be disseminated by means of public communication.

**General Court-Martial Convening Authority**—Convening authority authorized to convene general courts-martial. See Article 22, UCMJ.

**Local responsible Official**—The individual responsible for identifying victims and witnesses of crimes and providing the services required by VWAP. Each installation commander or SPCMCA, as appropriate, is the LRO.

**Mandatory Forfeitures**—Forfeitures that apply under operation of law. See Article 58b, UCMJ.

**Mandatory Minimum Sentence**—A portion of a sentence (e.g., confinement, punitive discharge) which is prescribed by law as the lowest possible sentence that can be adjudged if an individual is found guilty of an offense. See Fiscal Year 14 National Defense Authorization Act § 1702(b)(4)(B).

**Metrics**—Standards of measurement by which certain requirements can be assessed.

**Milestone**—Time-based goals to assist in expediting the administration of justice.

**Military Protective Order**—Formal protective orders issued by commanders on DD Form 2873. Such orders are used to limit communications; prohibit an accused from being within a certain

physical distance of a victim or victim's household, residence and workplace; mandate counseling; require disposal of firearms located on the installation; and take other such measures necessary to ensure adequate protection of the victim.

**No-Contact Order**—Order given by a military member to have no-contact with another person for a period of time.

**Offense**—Crime punishable under the UCMJ that is committed by a person subject to the UCMJ.

**Original Court-Martial Convening Authority**—Court-martial convening authority that convened the court-martial at issue.

**Remand**—Return a case to a lower court for reconsideration.

**Special Court-Martial Convening Authority**—Convening authority authorized to convene special courts-martial. See Article 23, UCMJ.

**Special Interest Report**—Reports generated by base legal offices in certain cases that generate interest within Headquarters Air Force.

**Special Victim Investigation and Prosecution Capability**—Team of specially trained prosecutors, paralegals, and victim witness assistance personnel who work with specially trained investigators, often from investigative agencies such as AFOSI, to provide advice, guidance, and support during the investigative and military justice process.

**Statement of Trial Results**—Document which is prepared after the announcement of sentence or acquittal and is inserted into the Record of Trial. See R.C.M. 1101 for further information.

**Straddling Cases**—Refers to a single court-martial that alleges offenses occurring both before 1 January 2019 and on or after 1 January 2019.

**Summarized Transcript**—A transcript which involves a summary of the proceedings and is not verbatim. See AFMAN 51-203 for additional information.

**Unexpurgated**—A document which has not been redacted.

**Verbatim Transcript**—A transcript of a proceeding which includes word-for-word reduction of audio to writing. See AFMAN 51-203 for additional information.

**Victim**—The definition of victim varies throughout the military justice process. The definition governs what rights are afforded the victims, as defined. Practitioners must consult the MCM to determine which definition of victim applies at each stage to determine which definition applies.

**Virtual Military Justice Deskbook**—Knowledge management website with military justice resources available to Air Force judge advocates.

**Victim and Witness Assistance Program Coordinator**—The individual selected by the SJA to implement and manage VWAP.

**Victim Liaison**—An individual appointed by the LRO or delegate to assist a victim during the military justice process.

**Waiver of Forfeitures**—Act of a convening authority to direct forfeitures not be collected but that they be directed to the accused's dependents, for use of the accused's dependents, for no more than six months. See Article 58b, UCMJ.

**Wet Signing**—Signing in ink, rather than signing with a digital signature.

**Witness**—A person who has information or evidence of a crime and provides that information or evidence to an Air Force official.

## Attachment 2

**TEMPLATES, SAMPLES, AND AUTHORITIES FOR PREFERRAL, INITIAL DISPOSITION, AND RELATED MATTERS****Figure A2.1. Template Victim Notification of Opportunity to Express Views on Jurisdiction for Cases in Which Offenses Occur Within the United States**

(Date)

MEMORANDUM FOR (Rank and Name of Victim)  
(Victim's Mailing Address)

FROM: (Rank and Name of Base-Level Staff Judge Advocate)  
(Staff Judge Advocate's Office Mailing Address)

SUBJECT: Notice of Opportunity to Express Views as to Jurisdiction

1. I am writing to notify you of the opportunity to express your views whether the alleged offense in which you were a victim should be prosecuted by the Air Force in a court-martial or by civilian authorities in a civilian criminal court with jurisdiction over the offense.
2. If you choose to express your views, you may do so through counsel, including victim's counsel if you have one. Your views are not binding but will be considered by the Air Force convening authority when determining whether to refer the charge for trial by court-martial. If you express a preference for prosecution by civilian authorities, the civilian authority with jurisdiction over the offense will be notified of your preference. If the Air Force learns of a decision by the civilian authority whether or not to prosecute the offense in a civilian court, you will be notified.
3. Expressing your views on jurisdiction is separate from your right to express your preference as to disposition of the case, such as any criminal prosecution by any authority with jurisdiction. At any time until disposition of the case, you may express your views on disposition, including whether you are willing to participate in investigative and legal proceedings and testify in person, under oath, at a court-martial.
4. In order to facilitate timely processing of the case, I ask that you respond to this notice by (date). You may decline to express any views by so indicating and signing the 1st Indorsement below and returning a copy of this document. You may express any views by so indicating and signing below, attaching your views, and returning a copy of this document. You may direct any questions or concerns and your response to my point of contact, (POC Rank and Name, email address, phone number, office mailing address).

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

1st Ind, (Rank and Name of Victim)

(Date)

MEMORANDUM FOR (Office Symbol/Rank and Name of Base-Level Staff Judge Advocate)

1. I have received and understand this notice of the opportunity to express my views whether the alleged offense in which I was a victim should be prosecuted by the Air Force in a court-martial or by civilian authorities in a civilian criminal court with jurisdiction over the offense. I also understand I may express my preference through counsel if I have one. I have initialed below and (am) (am not) submitting additional matters for consideration.

\_\_ I prefer the Air Force exercise jurisdiction over the offense, including potential prosecution of the offense in a court-martial.

\_\_ I prefer (office of civilian authority with jurisdiction) exercise jurisdiction over the offense, including potential prosecution of the offense in a civilian court. I understand the Air Force will notify this office of my preference and the Air Force will notify me if the Air Force learns of a decision by this office whether or not to prosecute.

\_\_ I have no preference or choose not to express a preference on military or civilian jurisdiction.

2. I understand my preference, if any, is not binding but will be considered by the Air Force convening authority when determining whether to refer any charge for trial by court-martial.

(Signature Block of Victim or Victim's Counsel)

**Figure A2.2. Staff Judge Advocate Notification to Civilian Authority Regarding Victim Jurisdiction and Venue Preference for Cases in Which Offenses Occur Within the United States**

(Date)

MEMORANDUM FOR (Name of Prosecutor for Civilian Jurisdiction with Jurisdiction over Applicable Offense(s))

FROM: (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

SUBJECT: Notice of Victim Preference of Jurisdiction and Venue in the Matter Against (Name of Accused)

1. [Rank and Name of Accused] is alleged to have committed [list offenses] against [Insert Initials of Victim(s)]. Section 534 of the National Defense Authorization Act for Fiscal Year 2015, P.L. 113-291, requires the Air Force to notify you of the victim's preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

2. (Initials of Victim(s)) has expressed the preference that your jurisdiction have primary jurisdiction of the offense(s).

[3. *(Include if there is another victim in the case who has expressed the preference for the military to retain jurisdiction)* Please note that (Initials of Victim(s)) is also the victim of an alleged sex-related offense committed by (Rank and Name of Accused) and that (Initials of Victim(s)) has expressed a preference that the Air Force retain primary jurisdiction over the offense(s) and prosecute the offense(s) in a court-martial.]

4. Section 534 also requires the Air Force to notify the victim if you make a decision to prosecute or not prosecute the alleged sex-related offense(s) committed by (Rank and Name of the Accused). Please notify (Name of judge advocate POC) when you make that decision.

---

(Judge Advocate Office Rank, Name of Base level Staff Judge Advocate)

**Figure A2.3. Notification to Victim of Civilian Authority’s Response to Victim’s Jurisdiction and Venue Preference for Cases in Which Offenses Occur Within the United States**

(Date)

MEMORANDUM FOR (Rank (if applicable) and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

SUBJECT: Notice of Civilian Authority’s Response to Victim Preference of Jurisdiction and Venue in the Matter Against (Name of Accused)

1. After notifying [insert name of civilian authority] of your prosecution preference on [INSERT DATE], we received the following response: ([insert name of civilian authority] decided to retain jurisdiction)( [insert name of civilian authority] decided to defer jurisdiction to the military for handling under the UCMJ).
2. Please do not hesitate to contact us if you have any further questions.

---

[NAME and Rank of Staff Judge Advocate]

cc:  
Rank (if applicable) and Name of Victim  
Rank and Name of Special Victims’ Counsel (if applicable)  
Name of Civilian Victims’ Counsel (if applicable)

**Figure A2.4. Template Certification of Victim’s Opportunity to Express Views on Disposition**

(Date)

MEMORANDUM FOR (Rank and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

SUBJECT: Notice of Opportunity to Submit Views on Disposition – (Rank and Name of Accused)

1. [Now that the investigation in the case of (Rank and Name of Accused) is complete, (Rank and Name of Special Court-Martial Convening Authority with initial disposition authority) will consider how to dispose of the allegations. There may be no action; administrative action; initiation of nonjudicial punishment proceedings; preferral of charges for trial by court-martial.] [Now that the Article 32 hearing in the case of (Rank and Name of Accused) has taken place, the PHO who presided at the Article 32 hearing will make a recommendation to (Rank and Name of Special Court-Martial Convening Authority) on disposition of the allegations against (Rank and Name of Accused). The charges could be forwarded or referred to a court-martial; result in nonjudicial punishment under Article 15, UCMJ; result in administrative action (*e.g.*, Letter of Reprimand, Letter of Admonishment, or Letter of Counseling); or be dismissed.]
2. (Rank and Name of Special Court-Martial Convening Authority) would also like to hear your views on disposition of the allegations against (Rank and Name of Accused). You may submit a statement in writing to me, (Rank Name of Special Court-Martial Convening Authority’s Staff Judge Advocate), which I will provide to (Rank and Name of Special Court-Martial Convening Authority) for [his][her] consideration. As part of your submission, please include whether you are willing to testify in person, under oath, at a court-martial. If you would like to submit a statement, please provide it to me no later than (time/date) at the following office or email address: (office address)(email address). [*Note: The victim should be given a reasonable amount of time to prepare comments, but no less than 5 days*]. If you [or your Special Victims’ Counsel] would like to speak with (Rank and Name of Special Court-Martial Convening Authority) directly by telephone, video teleconference, or in person, please contact (rank and name of Victim Witness Assistance Program point of contact or Trial Counsel) at (phone number)(email address) to arrange a meeting.
3. (*If eligible. See AFI 51-304 for legal assistance eligibility and Special Victim Counsel Rules of Practice and Procedure for Special Victim Counsel eligibility. Note that AFI 51-304 permits Staff Judge Advocates to authorize legal assistance to persons not specifically identified as eligible beneficiaries when it benefits the command. Requests for exceptions to Special Victim Counsel eligibility rules should be submitted to Air Force Legal Operations Agency/Special Victims’ Counsel Division*) You may also consult with a [legal assistance attorney] or [Special Victims’ Counsel] on whether to submit a statement for (Rank and Name of Special Court-Martial Convening Authority)’s consideration.

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

1st Ind, ((Rank and] Name of Victim)

(Date)

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

I understand that I may provide a statement to, or request an opportunity to discuss disposition of the charge(s) with the convening authority.

(Signature Block of Victim)

2d Ind, ((Rank and] Name of Victim)

(Date)

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

\_\_\_\_\_ I am submitting the attached statement.

\_\_\_\_\_ I am requesting an opportunity to discuss disposition of the charge(s) with the convening authority.

\_\_\_\_\_ I do not intend to submit a statement or request a meeting with the convening authority.

(Signature Block of Victim)

3d Ind, (Judge Advocate Office and Rank and Name of Base Level Staff Judge Advocate)

(Date)

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

*(Note: Statement is provided as part of the case file under Sec. 1744(e)(4) of the Fiscal Year 2014 National Defense Authorization Act. If meeting with the convening authority occurred in person, the victim's views should be summarized.)* ((Rank and Name of Victim) provided a statement). (Rank and Name of Victim) did not provide a statement.) ((Rank and Name of Victim) requested an opportunity to discuss disposition of the charge(s) with the convening authority.) (This opportunity to discuss disposition of the charge(s) occurred on (date). The request for an opportunity to discuss disposition of the charge(s) was declined.))

(NAME), (Rank), USAF

### Figure A2.5. Template Commander's Recommendation on Initial Disposition of Sexual Assault Allegations

(Date)

MEMORANDUM FOR (Initial Disposition Authority)

FROM: (Squadron Commander)

SUBJECT: Sex Offense Allegation Subject to Secretary of Defense Withhold Policy

1. On \_\_\_\_\_, [Victim] reported to [(Air Force Office of Special Investigations) (\_\_\_\_)] that [Subject] had sexually assaulted (him) (her) on \_\_\_\_\_. The allegation qualifies as (an attempt to commit a) (rape) ((aggravated) sexual assault) (forcible sodomy) in violation of (Article 80) (Article 120) (Article 125), UCMJ. As such, this case, along with all other alleged offenses arising from or relating to the same incident, is subject to the Secretary of Defense Initial Disposition Withholding policy effective 28 June 2012.

2. I have reviewed the attached case file, including a Personal Data Sheet and the [(Security Forces report) (Air Force Office of Special Investigations report of investigation) (and) (*describe other evidence*)]. Based upon my review of this case [*Commanders should consider factors listed in the Discussion to R.C.M. 306(b)*], I recommend initial disposition for the [Subject] [Victim] as follows: (no action) (administrative action in the form of \_\_\_\_\_) (initiating nonjudicial punishment proceedings for an alleged violation of Article(s), \_\_\_\_\_, UCMJ) (trial by court-martial).

3. Court-martial charges have (not) been preferred against [Subject]. I recommend referral to trial by (summary) (special) (general) court-martial for an alleged violation of Article(s), \_\_\_\_\_, UCMJ]. [The charge(s), consisting of \_\_\_\_\_, (was)(were) preferred by [Accuser] on \_\_\_\_\_, and the accused was informed of (it)(them) on \_\_\_\_\_.] [*If charges have been preferred and the immediate commander recommends that they be dismissed: I recommend that the charges against the accused be dismissed.*] [*If charges have been preferred and the immediate commander recommends a court-martial, the commander attaches the DD Form 458, along with the first indorsement: I recommend the attached charges be referred to trial by (summary) (special) (general) court-martial.*]

4. *Briefly describe the Victim's background if recommending disposition for victim misconduct.*

5. In accordance with the Secretary of Defense policy, I am transmitting the case file, along with my recommendations, to you for your consideration and initial disposition pursuant to R.C.M. 306.

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

[5] Attachments:

- [1. DD Form 458]
- [2. First Indorsement to the Charge Sheet]
- [3. Personal Data Sheet]
- [4. Report of Investigation]
- [5. *List other documents as appropriate*]

### Figure A2.6. Template Initial Disposition Authority's Decision for Sexual Assault Allegations

(Date)

MEMORANDUM FOR: (Subordinate Commander)

FROM: (Initial Disposition Authority)

SUBJECT: Initial Disposition of Sex Offense Allegation

Pursuant to the Secretary of Defense Initial Disposition Withholding policy effective 28 June 2012, I have reviewed the case file (and your recommendation(s)) pertaining to the alleged (attempt to commit) (rape) ((aggravated) sexual assault) (forcible sodomy) in violation of (Article 80) (Article 120) (Article 125), UCMJ, by [Subject] against [Victim] on \_\_\_\_\_ [along with other allegations of misconduct arising from or relating to the same incident]. I have consulted with a judge advocate. [I have determined that court-martial for the (Subject) (and) (or) (Victim) is not appropriate (and have dismissed charge(s)).] [In accordance with R.C.M. 306(c)(5), I have elected to forward the matter to you for further disposition. You are not bound by your previous recommendation(s) to me and you may dispose of the case in any manner authorized by the UCMJ, R.C.M., or other regulation.]

(NAME), (Rank), USAF  
(Initial Disposition Authority Duty Title)

Attachment:  
Case File

**Figure A2.7. Template Notice to General Court-Martial Convening Authority of Initial Disposition Authority's Decision for Sexual Assault Allegations**

(Date)

MEMORANDUM FOR [General Court-Martial Convening Authority]

FROM: [Special Court-Martial Convening Authority]

SUBJECT: Written Notice of Initial Disposition Action for Covered Sexual Assault Allegation  
– [Name of Accused]

1. On [date], [Victim] reported to [(Air Force Office of Special Investigations) (\_\_\_\_)] that [Subject] had sexually assaulted (him) (her) on [date]. The allegation qualifies as (an attempt to commit a) (rape) (sexual assault) (forcible sodomy) in violation of (Article 80) (Article 120) (Article 125), UCMJ. As such, this case is subject to the Under Secretary of the Air Force's 27 June 2013 memorandum, which requires that I notify you of my initial disposition action within 30 days of my initial disposition decision.

2. *Briefly describe the Victim's background if recommending disposition for victim misconduct.*

3. Based upon my review of this case (to include [*evidence considered by Special Court-Martial Convening Authority*]), I [describe initial disposition action taken, to include no action].

(NAME), (Rank), USAF  
(Initial Disposition Authority Duty Title)

Attachments:

[*List other documents as appropriate*]

**Figure A2.8. Template General Court-Martial Convening Authority's Review of Initial Disposition Authority's Decision for Sexual Assault Allegations**

(Date)

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

FROM: [General Court-Martial Convening Authority]

SUBJECT: Report of Disposition for Covered Sexual Assault Allegation – [Name of Accused]

On [date], the allegation(s) of [describe the allegations] against [Accused] resulted in [describe the action (court-martial, nonjudicial punishment, administrative discharge, Letter of Reprimand, etc.) and the result of the action (findings and sentence at court-martial, nonjudicial Punishment result, type of admin discharge, etc.)] I have reviewed this disposition pursuant to the Under Secretary of the Air Force's policy memorandum, effective 27 June 2013, requiring General Court-Martial Convening Authority Review of Certain Sexual Assault Cases.

(NAME), (Rank), USAF  
(General Court-Martial Convening Authority)

Attachment:

Case File

**Figure A2.9. Sample Statement of Understanding Regarding Recoupment of Education Assistance, Special Pay, or Bonuses**

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

I understand that the Air Force may be entitled to recoup a portion of education assistance, special pay, or bonus money which I received, if any, if I separate before completing the period of active duty I agreed to serve. I understand this recoupment applies regardless of whether I voluntarily separate or I am involuntarily discharged. I further understand: (1) the recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to me, as the unserved

portion of active duty bears to the total period of active duty I agreed to serve; and (2) that if I dispute that I am indebted for educational assistance, a board or other authority will make findings and recommendations concerning the validity of the indebtedness.

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

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

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

### Figure A2.10. Template Commander's 1st Indorsement to Charge Sheet

1st Indorsement, DD Form 458, *Charge Sheet*, dated \_\_\_\_\_, (Rank), (Name), (Unit), (Base), (State Abbreviation)

FROM: (Squadron Commander)

MEMORANDUM FOR: (Special Court-Martial Convening Authority)

I recommend the charges be referred to trial by (summary) (special) (general) court-martial. The [(security forces' report) (Air Force Office of Special Investigations report of investigation) (other evidence)] is attached and supports the charge(s). [*If applicable, insert:* (The accused was offered and declined nonjudicial punishment.) (The victim(s) and witness(es) have been informed of the preferral of charges.)] Due to the (severity) (nature) of the charges, I (do) (do not) believe retention on active duty is appropriate if (he) (she) is convicted. [*If applicable:* The accused is a citizen of \_\_\_\_\_ and not a national or citizen of the United States. AF/JAO has been informed of this action.]

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

\_\_\_\_ Attachments:

1. Personal Data Sheet
2. (Report of Investigation)
3. (*List any other documents*)

### Figure A2.11. Template Personal Data Sheet

#### PERSONAL DATA SHEET

DATE PREPARED:

NAME OF ACCUSED:

ORGANIZATION:

RANK:

SOCIAL SECURITY NUMBER:	DATE OF RANK:
PAY GRADE:	DATE OF BIRTH:
TOTAL ACTIVE FEDERAL MILITARY SERVICE DATE:	LENGTH OF SERVICE: <i>(See Note 1)</i>
AIR FORCE SPECIALTY CODE:	MILITARY TEST SCORES:
BASIC PAY:	HARDSHIP DUTY PAY: <i>(See Note 6)</i>
INITIAL DATE OF CURRENT SERVICE:	HOSTILE FIRE PAY: <i>(See Note 6)</i>
TERM OF CURRENT SERVICE:	IMMINENT DANGER PAY: <i>(See Note 6)</i>
PRIOR SERVICE: <i>(See Note 2)</i>	SPECIAL PAY AND BONUSES:
OVERSEAS SERVICE (OCONUS): <i>(See Note 3)</i>	
COMBAT SERVICE: <i>(See Note 4)</i>	
NATURE OF PRETRIAL RESTRAINT: <i>(See Note 5)</i>	
MARITAL STATUS:	NUMBER OF DEPENDENTS:
NUMBER OF PREVIOUS COURT-MARTIAL CONVICTIONS:	
NUMBER OF PREVIOUS ARTICLE 15 ACTIONS:	
AWARDS AND DECORATIONS:	

**Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)**

NOTES:

1. List in years and months (*e.g.* 2 years, 3 months. Lost time: 8 days). Exclude and identify lost time as calculated by personnel records (*i.e.*, prior adjudged confinement, absent without leave or periods of desertion, etc.) Lost time includes pre-trial confinement. See AFI 36-2134, *Air Force Duty Status Program*, Chapter 3.
2. Include any prior enlistment, or periods of service, when there was a break in enlistment, reserve or service with another branch of service.

3. Identify service for which credit for overseas service was awarded per AFI 36-2110, *Assignments*. Include dates and locations.
4. Identify service for which the member was awarded “special pay for duty subject to hostile fire or imminent danger” per DoD 7000.14-R, *Department of Defense Financial Management Regulation*, Volume 7A, Chapter 10. Include dates and locations.
5. Include type of restraint (see R.C.M. 304(a)), date imposed, location, and number of days. Include restraint by civil authorities at the behest of the Air Force.
6. This should reflect pay the member is currently receiving.

**Figure A2.12. Template Civilian Defense Counsel Agreement Not to Release Information Protected by the Privacy Act**

**Agreement Not to Release Privacy Act Information**

As part of the discovery process, I am in receipt of material covered under the Privacy Act of 1974, under 5 U.S.C. § 552a. I hereby agree that I will not release Privacy Act material to anyone outside of defense personnel working on the case of *United States v.* \_\_\_\_\_.

\_\_\_\_\_  
Civilian Defense Counsel

\_\_\_\_\_  
Date



Figure A3.2. Warrant Application Template

[Redacted]

In the matter of the search of: [Redacted] ) Case identifier: [Redacted]  
 )  
 )  
 )  
 )

**APPLICATION FOR 18 U.S.C. §2703 WARRANT**

I, a federal law enforcement officer or authorized counsel for the Government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following property *(identify the electronic communications system or remote computing service or describe the property to be searched and give its location)*:  
 [Redacted]

there is now concealed within the jurisdiction of a court of competent jurisdiction pursuant to 18 U.S.C. §2711(3)(C) and 10 U.S.C. 846(d)(3), *(identify the property or data to be seized)*:  
 [Redacted]

The basis for the search is evidence of a crime.

The search is related to a violation of: *(Insert code or UCMJ section)* [Redacted]      Offense description: *(Title of the offense)* [Redacted]

The application is based on these facts *(list the pertinent facts here or refer to an attachment)*:  
 [Redacted]

Continued on the attached sheet      [Redacted]  
 Applicant's printed name and title

Non-disclosure Order Requested      [Redacted]  
 Applicant's signature

Sworn to before me and signed in my presence

Date: [Redacted]      [Redacted]  
 Military judge's printed name and title

Military installation or location: [Redacted]      [Redacted]  
 Military judge's signature

Figure A3.3. Warrant.

[Redacted]

IN RE SEARCH OF  
*(Briefly describe the property to be searched):*

[Redacted]

Case Identifier: [Redacted]

**18 U.S.C. §2703 WARRANT**

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following property located at *(Identify the person or describe the property to be searched and give its location):*

[Redacted]

I find that the affidavit(s) and/or sworn testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(Identify the person or describe the property to be seized):*

[Redacted]

YOU ARE COMMANDED to execute this warrant on or before [Redacted]  
*(not to exceed 14 days)*

The officer executing this warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to [Redacted]  
*(name and rank of military judge)*

Date and time issued: [Redacted] [Redacted] hours

Military Judge's printed name and title  
[Redacted]

Military Installation and State: [Redacted]

Military Judge's signature  
[Redacted]

Return		
Case Identifier:	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of:		
Inventory of the property taken and name of any person(s) seized:		
Certification		
I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.		
Date:		
		Executing officer's signature
		
		Printed name and title

**Figure A3.4. Sample Language Requesting Order for Non-Disclosure of Existence of Warrant or Order**

The United States requests that pursuant to the preclusion of notice provisions of 18 U.S.C. § 2703(b), [EMAIL PROVIDER] be ordered not to notify any person (including the subscriber or customer to which the materials relate) of the existence of this warrant for such period as the Court deems appropriate. The United States submits that such an order is justified because notification of the existence of this warrant would seriously jeopardize the ongoing investigation. Such a disclosure would give the subscriber an opportunity to destroy evidence, change patterns of behavior, notify confederates, or flee or continue his flight from prosecution.

## Attachment 4

## TEMPLATES AND SAMPLES FOR COURTS OF INQUIRY

## Figure A4.1. Sample Convening Order for Court of Inquiry

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

SPECIAL ORDER AA-1

15 April 20XX

A court of inquiry is hereby convened. It will proceed at 0730 hrs on 20 April 2011 in the Tyndall Air Force Base courtroom. The court will be constituted as follows:

## MEMBERS

COLONEL ALLEN L. GARRET, PRES	325 MDSS	AETC	THIS STATION
COLONEL GERALD F. SMITH	325 LSS	AETC	THIS STATION
COLONEL JEFFREY A. SINGLETON	325 SFS	AETC	THIS STATION

## COUNSEL FOR COURT

LT COL JOHN F. MILLER	325 FW	AETC	THIS STATION
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## COUNSEL FOR KNOWN PARTY

MAJ HELEN M. GREGORY	USAF JUDICIARY	AFLOA	THIS STATION
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## KNOWN PARTY

LT COL EDWARD J. SCHMIDT	325 CES	AETC	THIS STATION
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The court of inquiry is appointed to review the facts and circumstances (*describe the matter to be investigated*). (*The court may name other parties in addition to the named party.*) Further, the court is to (*make findings of fact, express opinions and submit recommendations*) (*include only a factual summary of the matter being investigated.*) AUTHORITY: AFI 51-201.

ALLEN S. CURTIS  
 Brigadier General, USAF  
 Commander

FOR THE COMMANDER

ROBIN B. DUFFY, Colonel, USAF  
 Staff Judge Advocate

DISTRIBUTION  
 - 1 Each Individual  
 - 1 Each Orgn  
 - 1- 325 FW/JA

## Attachment 5

**TEMPLATES AND SAMPLES FOR FORWARDING AND REFERRAL OF CHARGES  
AND RELATED MATTERS**

**Figure A5.1. GCM Pretrial Advice Pursuant to Article 34, UCMJ, and R.C.M. 406 and  
Convening Authority Selection of Court-Martial Members**

(Date)

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

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

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

1. The accused is charged with three specifications of making 19 worthless checks with the intent to defraud, in violation of Article 123a, UCMJ. The charge was preferred on 29 December 2018; a preliminary hearing was conducted under Article 32, UCMJ, on 12 January 2019; and the preliminary hearing officer forwarded [his/her] report on 17 January 2019 with a recommendation for referral to trial by [general court-martial] [special court-martial].) *OR* (The charge was preferred on 29 December 2019. On 5 January 2019, the accused submitted a waiver to his/her right to a preliminary hearing under Article 32, UCMJ.) [The (Special Court-Martial Convening Authority) forwarded the charge on 9 January 2019 with a recommendation for trial by general court-martial.]

2. Pursuant to R.C.M. 406 and Article 34, UCMJ, I provide you the following advice:

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

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

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

c. There is probable cause to believe the accused committed the offenses charged. [There is probable cause to believe the accused committed the following charged offenses:]

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

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

4. If you determine referral to trial by [general court-martial] [special court-martial] is appropriate, I recommend you do so by selecting at least \_\_\_\_ court-martial members on the proposed 1st Indorsement (Attachment 1). **Note:** *the convening authority must detail at least four members to a special court-martial, and at least eight members to a general court-martial.* Your selection of members is not limited to these individuals, and you may nominate any eligible member in your command or in another command with concurrence of the commander concerned. You may also require additional nominees be submitted for your consideration. Pursuant to R.C.M. 912A, you may also authorize the military judge to impanel alternate members.

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

[8] Attachments:

1. GCMCA First Indorsement
2. SPCMCA Recommendation, dated \_\_\_\_\_
3. Court Member Data Sheets
4. Charge Sheet, dated \_\_\_\_\_
5. Immediate Commander's First Indorsement, dated \_\_\_\_\_
6. Personal Data Sheet, dated \_\_\_\_\_
7. Preliminary Hearing Officer's Report, dated \_\_\_\_\_
8. Defense Objections (*if applicable*)

1st Indorsement, 18 AF/CC, Pretrial Advice, *United States v.* \_\_\_\_\_

Date:

1. I reviewed the charge sheet, evidence, and considered the advice of my Staff Judge Advocate in the above-named case. I direct the charges and specifications be referred to trial by general court-martial.

2. By reason of their age, education, training, experience, length of service, and judicial temperament under Article 25, UCMJ, I nominate the following individuals to serve as members in the court-martial of *United States v.* \_\_\_\_\_.

_____	*COL MICHAEL J. DUNBAR	12 AF	ACC	DAVIS-MONTHAN AFB
_____	LT COL NATALIE L. POPE	355 MXG	ACC	DAVIS-MONTHAN AFB
_____	LT COL BARRY D. DALE	355 FW	ACC	DAVIS-MONTHAN AFB
_____	*LT COL MAGGIE L. SMITH	25 OWS	ACC	DAVIS-MONTHAN AFB
_____	MAJ LEE M. MAJORS	355 TRS	ACC	DAVIS-MONTHAN AFB
_____	MAJ MEGAN P. GORE	355 AMXS	ACC	DAVIS-MONTHAN AFB
_____	MAJ KEVIN A. AYERS	355 CMS	ACC	DAVIS-MONTHAN AFB
_____	CAPT LANCE V. GREY	355 FW	ACC	DAVIS-MONTHAN AFB

_____ AFB	*CAPT HARRY T. TATE	612 AOC	ACC	DAVIS-MONTHAN
_____ AFB	1ST LT SALLY N. HILL	358 FS	ACC	DAVIS-MONTHAN AFB
_____ AFB	1ST LT GERALD D. DICKS	355 OG	ACC	DAVIS-MONTHAN
_____ AFB	2ND LT MARK P. WOLLUM	355 DS	ACC	DAVIS-MONTHAN
_____ AFB	CMSGT EMILY S. DARROW	563 OSS	ACC	DAVIS-MONTHAN AFB
_____ AFB	SMSGT ADAM P. MOORE	25 OWS	ACC	DAVIS-MONTHAN AFB
_____ AFB	MSGT LARRY F. WILLS	355 FSS	ACC	DAVIS-MONTHAN
_____ AFB	MSGT PERRY M. MARR	355 CS	ACC	DAVIS-MONTHAN
_____ AFB	TSGT JASON M. ARGO	355 CS	ACC	DAVIS-MONTHAN AFB
_____ AFB	SSGT MARY F. MCGILL	355 CONS	ACC	DAVIS-MONTHAN
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

\* With concurrence of commander concerned.

3. In accordance with R.C.M. 912A:

\_\_\_\_\_ I authorize the military judge to impanel \_\_\_\_\_ (insert specific number) of alternates.

\_\_\_\_\_ I authorize the military judge to impanel alternate members only if, after the exercise of challenges, excess members remain.

\_\_\_\_\_ Alternate members are not authorized.

HARRY P. TUBBS

Major General, USAF  
Commander

**Figure A5.2. Template General Court-Martial Convening Authority Decision Not to Refer Sex Offense Charge**

(Date)

MEMORANDUM FOR (Rank and Name of Superior General Court-Martial Convening Authority or Secretary of the Air Force)

FROM: (Rank and Name of General Court-Martial Convening Authority who Declined to Refer Charges)

SUBJECT: Reasons for Decision Not to [Refer Charges] to Trial by Court-Martial – (Rank and Name of Accused, Unit, and Base)

1. After reviewing the Article 32, UCMJ, Report of Preliminary Hearing, Pretrial Advice of my Staff Judge Advocate pursuant to Article 34, UCMJ, the statement(s) of the victim(s) provided during the course of the criminal investigation against (Rank and Name of Accused), [the statement submitted by the victim(s) in this case][considering to the view(s) of the victim(s) in this case], I have decided not to refer [any charges] [any charges alleging a sexual offense] against (Rank and Name of Accused) to trial by court-martial.

2. I have decided not to refer [any charges] [any charges alleging a sexual offense] against (Rank and Name of Accused) to trial by court-martial because (*Note: select as many reasons as applicable*) [the Article 32, UCMJ, Preliminary Hearing Officer recommended not referring [any charges] [any charges alleging a sexual offense] to court-martial] [the Pretrial Advice of my Staff Judge Advocate did not recommend referring [any charges] [any charges alleging a sexual offense] to court-martial] [there is not probable cause to support any alleged offense] [the victim has indicated (she)(he) does not wish to testify at a court-martial and there is not probable cause to support any alleged offense without (his)(her) testimony] [the victim has died and there is not probable cause to support any alleged offense without (his)(her) testimony and no admissible alternatives to live testimony exist] [the accused has died] [the statute of limitations has run on all alleged offenses] [I have determined that the alternative disposition of \_\_\_\_\_ is legally authorized and appropriate]. [I (have returned) (intend to return) the charges to (Rank and Name of Subordinate Commander) for alternative disposition.] [I have served (Rank and Name of Accused) with (nonjudicial punishment for (state charges and specifications) and imposed punishment of (state nonjudicial Punishment punishment))]. I have finalized a (Letter of Reprimand)(Letter of Admonishment)(Letter of Counseling) on (Rank and Name Accused) which was filed in an (select all that apply (Officer Selection Record), (Senior Noncommissioned Officer Selection Record), (Unfavorable Information File) (Personnel Information File) (and I have placed Rank and Name of Member on the Control Roster).

(NAME), (Rank), USAF  
(General Court-Martial Convening Authority Duty Title)

**Figure A5.3. Template Superior General Court-Martial Convening Authority Review Under Fiscal Year 14 National Defense Authorization Act, Section 1744(d)**

(Date)

MEMORANDUM FOR (Rank and Name of General Court-Martial Convening Authority Who Declined Referral)

FROM: (Name of Superior General Court-Martial Convening Authority Conducting Review)

SUBJECT: Review of Convening Authority Decision Not to Refer Charges

1. Sexual assault allegations against (Rank/Name of Accused) have been forwarded to me for review pursuant to Section 1744(d) of the Fiscal Year 2014 National Defense Authorization Act.

- a. I have reviewed the case file, which includes the following (*list documents included in the case file pursuant to Section 1744(e) and any other documents included for review*):
- b. (DD Form 458, Charge Sheet)
- c. (*All reports of preliminary hearing regarding such charges, including the Air Force Office of Special Investigations report of investigation, if any, and Article 32, UCMJ, Preliminary Hearing Officer report*)
- d. (*A certification that the victim was notified of the opportunity to express views on disposition for consideration by the convening authority – see Figure A2.4.* )
- e. (*All statements from the victim provided to Air Force Office of Special Investigations and to the victim's chain of command relating to the alleged sexual assault offense*)
- f. (*Any statement from the victim to the convening authority expressing the victim's view on disposition*)
- g. (*Article 34, UCMJ, Pretrial Advice*)
- h. (*A written statement explaining the reasons for the convening authority's decision not to refer any charges for trial by court-martial – see Figure A5.2.* )
- i. (*A certification that the victim of the alleged sexual assault offense was informed of the convening authority's forwarding of the case for review – see Figure A5.6.* )
- j. (*Any other documentation forwarded for review*)

2. I find that in making the decision not to refer charges to trial by court-martial, (Rank and Name of Subordinate Convening Authority) [considered the statement(s) provided by the victim(s) during the course of the criminal investigation against (Rank and Name of Accused)] [did not consider the statement(s) provided by the victim(s) during the course of the criminal investigation against (Rank and Name of Accused)] and that (Rank and Name of Subordinate Convening Authority) [considered the views expressed by the victim(s) as to disposition of the alleged sexual assault offense(s)] [did not consider the view(s) expressed by the victim(s) as to disposition of the alleged sexual assault offense(s)] [proper notification was made to the victim(s) of the opportunity to submit (his)(her) views as to disposition of the alleged sexual assault offense(s), but the victim(s) declined to express (his)(her) views].

(NAME), (Rank), USAF

**Figure A5.4. Template Secretary of the Air Force Review Pursuant to Fiscal Year 14 National Defense Authorization Act, Section 1744(c)**

(Date)

MEMORANDUM FOR (Rank and Name of General Court-Martial Convening Authority Who Declined Referral)

FROM: (Secretary of the Air Force)

SUBJECT: Review of Convening Authority Decision Not to Refer Charges

1. Sexual assault allegations against (Rank/Name of Accused) have been forwarded to me for review pursuant to Section 1744(c) of the Fiscal Year 2014 National Defense Authorization Act.

2. I have reviewed the case file, which includes the following (*list documents included in the case file pursuant to Section 1744(e) and any other documents included for review*):

- a. (DD Form 458, Charge Sheet)
- b. (*All reports of preliminary hearings regarding such charges, including the Air Force Office of Special Investigations report of investigation, if any, and Article 32, UCMJ, Preliminary Hearing Officer report*)
- c. (*A certification that the victim was notified of the opportunity to express views on disposition for consideration by the convening authority – see Figure A2.4.* )
- d. (*All statements from the victim provided to Air Force Office of Special Investigations and to the victim's chain of command relating to the alleged sexual assault offense*)
- e. (*Any statement from the victim to the convening authority expressing the victim's view on disposition*)
- f. (*Article 34, UCMJ, Pretrial Advice*)
- g. (*A written statement explaining the reasons for the convening authority's decision not to refer any charges for trial by court-martial – see Figure A5.2.* )
- h. (*A certification that the victim of the alleged sexual assault offense was informed of the convening authority's forwarding of the case for review – see Figure A5.5.* )
- i. (*Any other documentation forwarded for review*)

3. I find that in making the decision not to refer charges to trial by court-martial, (Rank and Name of Subordinate Convening Authority) [considered the statement(s) provided by the victim(s) during the course of the criminal investigation against (Rank and Name of Accused)] [did not consider the statement(s) provided by the victim(s) during the course of the criminal investigation against (Rank and Name of Accused)] and that (Rank and Name of Subordinate Convening Authority) [considered the views expressed by the victim(s) as to disposition of the alleged sexual assault offense(s)] [did not consider the view(s) expressed by the victim(s) as to disposition of the alleged sexual assault offense(s)] [proper notification was made to the victim(s) of the opportunity to submit (his)(her) views as to disposition of the alleged sexual assault offense(s), but the victim(s) declined to express (his)(her) views].

(Secretary of the Air Force Signature Block)

**Figure A5.5. Template Certification of Victim Notification of Review by Secretary of the Air Force**

(Date)

MEMORANDUM FOR (Rank and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

SUBJECT: Notification of (Rank and Name of Convening Authority)'s Decision to Forward the Case of (Rank and Name of Accused) to the Secretary of the Air Force for Review

1. *(For cases forwarded to the Secretary of the Air Force, through command channels, pursuant to Section 1744(c) of the Fiscal Year 2014, National Defense Authorization Act. **Note:** Forwarding to the Secretary of the Air Force is required if the General Court-Martial Convening Authority decides not to refer any specification listed in paragraphs 5.7.1.1. through 5.7.1.3. and the General Court-Martial Convening Authority's Staff Judge Advocate recommended that the specification be referred to trial)* (Rank and Name of signer of Article 34, UCMJ, Pretrial Advice) recommended that the (state the charges and specifications recommended for referral) against (Name of Accused) be referred to trial by court-martial. (Rank and Name of General Court-Martial Convening Authority) has decided not to refer [any charges] [any charges alleging a sex offense] to a court-martial. (Rank and Name of General Court-Martial Convening Authority) is forwarding the case to the Secretary of the Air Force, through command channels, for a review as required by the 2014 National Defense Authorization Act, Section 1744(c).

2. If you have questions about this process, you may contact (rank and name of victim liaison or Trial Counsel) at (phone number). *(If eligible)* You may also consult with a [legal assistance attorney] or [Special Victims' Counsel].

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

1st Ind, ([Rank and] Name of Victim)

(Date)

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

I understand that (Name of General Court-Martial Convening Authority) has decided not to refer any charges against (Name of Accused) to trial by court-martial. I understand that the allegations against (Name of Accused) are being forwarded to the Secretary of the Air Force for review.

[Signature Block of Victim]

2nd Ind, (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)  
(Date)

MEMORANDUM FOR THE SECRETARY OF THE AIR FORCE

I hereby certify that (Rank and Name of Victim) has been informed of (Name of General Court-Martial Convening Authority)'s decision to forward the allegations against (Name of Accused) for further review in accordance with Section 1744 of the Fiscal Year 2014 National Defense Authorization Act.

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

**Figure A5.6. Template Certification of Victim Notification of Superior General Court-Martial Convening Authority Review**

(Date)

MEMORANDUM FOR (Rank and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

SUBJECT: Notification of (Rank and Name of Convening Authority)'s Decision to Forward the Case of (Rank and Name of Accused) to [Superior General Court-Martial Convening Authority] for Review

1. *(For cases forwarded to the superior General Court-Martial Convening Authority pursuant to Section 1744(d) Note: Forwarding to the superior General Court-Martial Convening Authority is required if the General Court-Martial Convening Authority decides not to refer any specification listed in paragraphs 5.7.1.1. through 5.7.1.3.)* (Rank and Name of signer of Article 34, UCMJ, Pretrial Advice) has recommended that [all charges and specifications] [all charges alleging a sex offense] against (Name of Accused) should not be referred for trial by court-martial. (Rank and Name of General Court-Martial Convening Authority) has decided not to refer [any charges] [any charge alleging a sex offense] to a court-martial. (Rank and Name of General Court-Martial Convening Authority) is forwarding the case to (Rank and Name of Superior General Court-Martial Convening Authority), for the review required by the Fiscal Year 2014 National Defense Authorization Act, Section 1744(d).

2. If you have questions about this process, you may contact (name of victim liaison or Trial Counsel) at (phone number). *(If eligible)* You may also consult with a [legal assistance attorney] or [Special Victims' Counsel].

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

1st Ind, ([Rank and] Name of Victim)

(Date)

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)

I understand that (Name of General Court-Martial Convening Authority) has decided not to refer any charges against (Name of Accused) to trial by court-martial. I understand that the allegations against (Name of Accused) are being forwarded to (Rank and Name of Superior General Court-Martial Convening Authority) for review.

[Signature Block of Victim]

2nd Ind, (Judge Advocate Office and Rank and Name of Base-Level Staff Judge Advocate)  
(Date)

MEMORANDUM FOR THE SECRETARY OF THE AIR FORCE

I hereby certify that (Rank and Name of Victim) has been informed of (Name of General Court-Martial Convening Authority)'s decision to forward the allegations against (Name of Accused) for further review in accordance with Section 1744 of the Fiscal Year 2014 National Defense Authorization Act.

(NAME), (Rank), USAF

Staff Judge Advocate

## Attachment 6

**TEMPLATES FOR REFERRAL OF CHARGES AND SPECIFICATIONS TO SPECIAL COURT-MARTIAL BY MILITARY JUDGE ALONE**

**Figure A6.1. Convening Authority Notification to Accused of Intent to Refer All Charges to Special Court-Martial by Military Judge Alone**

MEMORANDUM FOR <<Accused's Grade, Name, SSN>>

FROM: <<SPCMCA>>

SUBJECT: Notice of Opportunity to Object to Referral

1. In accordance with Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ), I intend to refer the charges discussed below to a special court-martial by military judge alone. Pursuant to Rule for Courts-Martial (R.C.M.) 201(f)(2)(B)(ii), if found guilty, the maximum punishment that may be adjudged is six months confinement and six months forfeiture of pay, not exceeding two-thirds pay per month. You may not be adjudged a punitive discharge in this forum.

2. My initials in the block below constitute notification of your ability to object to the forum and timelines for doing so.

\_\_\_ You have been charged with the following offenses \_\_\_\_\_

\_\_\_\_\_ ,  
which are identified under AFI 51-201, Administration of Military Justice, paragraph 9.12.5. You have three duty days to object to my referral of the above listed charges to this forum. Failure to object within three duty days indicates acceptance of referral to the forum of special court-martial by military judge alone. This means your case will not be heard before a panel of members. Your objection must be delivered to me, through trial counsel, by the time and date listed in the first indorsement, which is three duty days after your receipt of this document.

<<NAME, Rank>>, USAF  
<<Position of Person Issuing Letter>>

[IF OFFENSE(S) IDENTIFIED UNDER PARAGRAPH 9.12.5 ONLY, USE THIS FIRST AND SECOND INDORSEMENT]

1st Ind, <<Member's Rank, Name, SSN>>

Date: \_\_\_\_\_

MEMORANDUM FOR <<Issuer's Office Symbol>>

Time: \_\_\_\_\_

I acknowledge receipt and understanding of this notification. I understand that I have until \_\_\_\_\_(date) at \_\_\_\_\_(time), which is three (3) duty days from the date I received this notification, to provide an objection.

<<MEMBER’S NAME, Rank>>, USAF

[IF MEMBER OBJECTS OR AFFIRMATIVELY DOES NOT OBJECT FOR ALL CHARGES BEING REFERRED TO THE FORUM, USE THIS INDORSEMENT]

2nd Ind, <<Member’s Rank, Name, SSN>> Date: \_\_\_\_\_

MEMORANDUM FOR <<Issuer’s Office Symbol>> Time: \_\_\_\_\_

I have reviewed the charges against me and [object] [do not object] to the charges being referred to a special court-martial by military judge alone.

<<MEMBER’S NAME, Rank>>, USAF

[IF MEMBER OBJECTS TO SOME BUT NOT ALL CHARGES BEING REFERRED TO THE FORUM, USE THIS INDORSEMENT]

2nd Ind, <<Member’s Rank, Name, SSN>> Date: \_\_\_\_\_

MEMORANDUM FOR <<Issuer’s Office Symbol>> Time: \_\_\_\_\_

I have reviewed the charges against me and [object] [do not object] to the following charges being referred to a special court-martial by military judge alone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

<<MEMBER’S NAME, Rank>>, USAF

**Figure A6.2. Convening Authority Notification to Accused of Intent to Refer Some Charges to Special Court-Martial by Military Judge Alone**

MEMORANDUM FOR <<Accused’s Grade, Name, SSN>>

FROM: <<SPCMCA>>

SUBJECT: Notice of Opportunity to Object to Referral

1. In accordance with Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ), I intend to refer the charges discussed below to a special court-martial by military judge alone. Pursuant to Rule for Courts-Martial (R.C.M.) 201(f)(2)(B)(ii), if found guilty, the maximum punishment that may be adjudged is six months confinement and six months forfeiture of pay. You may not be adjudged a punitive discharge in this forum.

2. My initials in the block(s) below constitute notification of your ability to object to the forum and timelines for doing so.

\_\_\_ You have been charged with the following offenses \_\_\_\_\_

\_\_\_\_\_,  
which are identified under AFI 51-201, Administration of Military Justice, paragraph 9.12.3. See R.C.M. 201(E)(i). You may object to my referral of the above listed charges to this forum at any point prior to arraignment. Failure to object indicates acceptance of referral to the forum of special court-martial by military judge alone. This means your case will not be heard before a panel of members. You may object at any time prior to arraignment. That objection, if prior to any court session for the purpose of arraignment, should be provided to me through trial counsel.

\_\_\_ You have been charged with the following offenses \_\_\_\_\_

\_\_\_\_\_,  
which are identified under AFI 51-201, Administration of Military Justice, paragraph 9.12.4. See R.C.M. 201(E)(i). You may object to my referral of the above listed charges to this forum at any point prior to arraignment. Failure to object indicates acceptance of referral to the forum of special court-martial by military judge alone. This means your case will not be heard before a panel of members. You may object at any time prior to arraignment. That objection, if prior to any court session for the purpose of arraignment, should be provided to me through trial counsel.

*(Note: If all offenses carry a maximum sentence greater than two years, excluding wrongful use or possession under Article 112(a)(b) and/or require sex offender notification, you may exclude the next paragraph or elect to include it and have the convening authority NOT initial the first block. )*

\_\_\_ You have been charged with the following offenses \_\_\_\_\_

\_\_\_\_\_,  
which are identified under AFI 51-201, Administration of Military Justice, paragraph 9.12.5. You have three duty days to object to my referral of the above listed charges to this forum. Failure to object within three duty days indicates acceptance of referral to the forum of special court-martial by military judge alone. This means your case will not be heard before a panel of members. Your objection must be delivered to me, through trial counsel, by the time and date listed in the first indorsement, which is three duty days after your receipt of the charges and this document.

4. You will acknowledge receipt of this notification immediately by signing the first indorsement below. Your signature on the first indorsement only documents your receipt of this notification.

<<NAME, Rank>>, USAF  
<<Position of Person Issuing Letter>>

[IF OFFENSE(S) IDENTIFIED UNDER PARAGRAPH 9.12.5, USE THIS FIRST AND SECOND INDORSEMENT]

1st Ind, <<Member's Rank, Name, SSN>> Date: \_\_\_\_\_

MEMORANDUM FOR <<Issuer's Office Symbol>> Time: \_\_\_\_\_

I acknowledge receipt and understanding of this notification. I understand that I have until \_\_\_\_\_(date) at \_\_\_\_\_(time), which is three (3) duty days from the date I received the charges and this notification, to provide an objection.

<<MEMBER'S NAME, Rank>>, USAF

2nd Ind, <<Member's Rank, Name, SSN>> Date: \_\_\_\_\_

MEMORANDUM FOR <<Issuer's Office Symbol>> Time: \_\_\_\_\_

I have reviewed the charges against me and [object] [do not object] to the charges being referred to a special court-martial by military judge alone.

<<MEMBER'S NAME, Rank>>, USAF

[IF OFFENSE IDENTIFIED(S) UNDER PARAGRAPHS 9.12.3. OR 9.12.4., USE THIS FIRST INDORSEMENT. SECOND INDORSEMENT IS OPTIONAL.]

1st Ind, <<Member's Rank, Name, SSN>> Date: \_\_\_\_\_

MEMORANDUM FOR <<Issuer's Office Symbol>> Time: \_\_\_\_\_

I acknowledge receipt and understanding of this notification. I understand that I have until arraignment to provide an objection to referral of charges to this forum.

<<MEMBER'S NAME, Rank>>, USAF

[IF OFFENSES IDENTIFIED UNDER PARAGRAPHS 9.12.3. OR 9.12.4. AND 9.12.5, USE THIS FIRST INDORSEMENT AND APPLICABLE SECOND INDORSEMENT.]

1st Ind, <<Member's Rank, Name, SSN>> Date: \_\_\_\_\_

MEMORANDUM FOR <<Issuer's Office Symbol>> Time: \_\_\_\_\_

I acknowledge receipt and understanding of this notification. I understand that I have until arraignment to provide an objection to the referral of the charges of \_\_\_\_\_

\_\_\_\_\_ to a special court martial by military judge alone.

I further understand that I have until \_\_\_\_\_(date) at \_\_\_\_\_(time), which is three (3) duty days from the date I received the charges and this notification, to provide an objection to the referral of the charges of \_\_\_\_\_

\_\_\_\_\_ to a special court-martial by military judge alone.

<<MEMBER'S NAME, Rank>>, USAF

2nd Ind, <<Member's Rank, Name, SSN>> Date: \_\_\_\_\_

MEMORANDUM FOR <<Issuer's Office Symbol>> Time: \_\_\_\_\_

\_\_\_\_\_

I have reviewed the charges against me and [object] [do not object] to the following charges being referred to a special court-martial by military judge alone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

<<MEMBER'S NAME, Rank>>, USAF

## Attachment 7

## TEMPLATES AND SAMPLES FOR CONVENING COURTS-MARTIAL

## Figure A7.1. Sample Convening Authority Selection of Court-Martial Members

**Note:** For General Courts-Martial, see the First Indorsement at Figure A5.1.  
For Special Courts-Martial, follow template below.

MEMORANDUM FOR 355 FW/CC

FROM: 355 FW/JA

SUBJECT: Nomination of Court Members, *United States v. Airman Casey G. Story*

1. Should you refer charges in the case of *United States v. Airman Casey G. Story*, you must nominate court members. In accordance with Article 25, UCMJ, members detailed to a court-martial shall be those persons who in the opinion of the convening authority are best qualified for the duty by reason of their age, education, training, experience, length of service, and judicial temperament.
2. The members identified below have been identified as potential court members. Your selection of members is not limited to these individuals and you may nominate additional members.
3. Please annotate which members you intend to nominate by initialing next to those members you desire to nominate. You may nominate any eligible member in your command or in another command with concurrence of the commander concerned. You may also require additional nominees be considered for your consideration.
4. Pursuant to Rule for Courts-Martial 912A, you may also authorize the military judge to impanel alternate members. You may either designate a specific number of alternate members the military judge may impanel or specify that alternate members may only be appointed if excess members remain after impanelment of the required number of members. Please indicate whether you authorize the military judge to specify alternate members, and if so, whether you designate a specific number be impaneled.

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

1st Indorsement, 355 FW/CC, Nomination of Court Members, *United States v. Airman Casey G. Story*

Date:

1. I have reviewed the charge sheet, evidence, and considered the advice of the Staff Judge Advocate in the above-named case. I direct that the charges and specifications be referred to trial before a special court-martial.

2. By reason of their age, education, training, experience, length of service, and judicial temperament, under Article 25, UCMJ, I nominate the following individuals to serve as court members in the court-martial of *United States v. Airman Casey G. Story*.

_____	*COL MICHAEL J. DUNBAR	12 AF	ACC	DAVIS-MONTHAN AFB
_____	LT COL NATALIE L. POPE	355 MXG	ACC	DAVIS-MONTHAN AFB
_____	LT COL BARRY D. DALE	355 FW	ACC	DAVIS-MONTHAN AFB
_____	*LT COL MAGGIE L. SMITH	25 OWS	ACC	DAVIS-MONTHAN AFB
_____	MAJ LEE M. MAJORS	355 TRS	ACC	DAVIS-MONTHAN AFB
_____	MAJ P. GORE	355 AMXS	ACC	DAVIS-MONTHAN AFB
_____	MAJ KEVIN A. AYERS	355 CMS	ACC	DAVIS-MONTHAN AFB
_____	CAPT LANCE V. GREY	355 FW	ACC	DAVIS-MONTHAN AFB
_____	CAPT HARRY T. TATE	612 AOC	ACC	DAVIS-MONTHAN AFB
_____	1ST LT SALLY N. NORTON	358 FS	ACC	DAVIS-MONTHAN AFB
_____	1ST LT GERALD D. DICKS	355 OG	ACC	DAVIS-MONTHAN AFB
_____	2ND LT MARK P. WOLLUM	355 DS	ACC	DAVIS-MONTHAN AFB
_____	CMSGT EMILY S. DARROW	563 OSS	ACC	DAVIS-MONTHAN AFB
_____	SMSGT ADAM P. MOORE	25 OWS	ACC	DAVIS-MONTHAN AFB
_____	MSGT LARRY F. WILLS	355 FSS	ACC	DAVIS-MONTHAN AFB
_____	MSGT PERRY M. MARR	355 CS	ACC	DAVIS-MONTHAN AFB
_____	TSGT JASON M. ARGO	355 CS	ACC	DAVIS-MONTHAN AFB
_____	SSGT MARY F. MCGILL	355 CONS	ACC	DAVIS-MONTHAN AFB

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\* With concurrence of commander concerned.

3. In accordance with Rule for Court-Martial 912A:

\_\_\_\_ I authorize the military judge to impanel \_\_\_\_ (insert specific number) of alternates.

\_\_\_\_ I authorize the military judge to impanel alternate members only if, after the exercise of challenges, excess members remain.

\_\_\_Alternate members are not authorized.

HARRY P. TUBBS  
Colonel USAF  
Commander

**Figure A7.2. Sample Convening Order**

(Special Order A-1 dated 28 September 2014, was the last Special Order of this headquarters published in Fiscal Year 15) OR (There were no Special Orders published in Fiscal Year 15.)

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, 14TH AIR FORCE (AIR FORCE SPACE COMMAND)  
VANDENBERG AIR FORCE BASE, CALIFORNIA 93437-6285**

SPECIAL ORDER  
A-1

3 Nov 2015

Pursuant to authority contained in Special Order G-15-001, Department of the Air Force, dated 24 March 2015, a general court-martial is hereby convened. It may proceed at Vandenberg Air Force Base, California, to try such persons as may be properly brought before it. The court will be constituted as follows:

MEMBERS

COLONEL ALONZO PETIT	14 AF	AFSPC	THIS STATION
LIEUTENANT COLONEL JANE DOE	30 MXS	AFSPC	THIS STATION
LIEUTENANT COLONEL JOHN SMITH	30 CES	AFSPC	THIS STATION
**MAJOR DON F. WARREN	DET 9 SMC	AFSPC	THIS STATION
MAJOR ALEX SIMS	30 AMDS	AFSPC	THIS STATION
FIRST LIEUTENANT SID J. PORTER	30 MDF	AFSPC	THIS STATION
SECOND LIEUTENANT RODNEY JAMES	30 IS	AFSPC	THIS STATION
SECOND LIEUTENANT WILLIAM RHODES	30 OSS	AFSPC	THIS STATION

\*\*With concurrence of the commander concerned.

The military judge is [not authorized to impanel alternate members.] [authorized to impanel \_\_\_\_\_ alternate members.] [authorized to impanel alternate members only if, after the exercise of challenges, excess members remain.]

RICHARD T. EARLY  
Major General, USAF  
Commander

FOR THE COMMANDER

CHARLES W. THOMAS, Colonel, USAF  
Staff Judge Advocate

DISTRIBUTION  
- 1 – Each Individual  
- 1 – Each Organization  
- 1 – 14 AF/JA  
- 1 – ANGRG/JA (Air National Guard cases only)

Figure A7.3. Sample Amendment to Convening Order

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, 14TH AIR FORCE (AIR FORCE SPACE COMMAND)  
VANDENBERG AIR FORCE BASE, CALIFORNIA 93437-6285**

SPECIAL ORDER  
A-3

17 Dec 2015

The following members are detailed to the general court-martial convened by Special Order A-1, this headquarters, dated 3 November 2015, vice MAJOR DON F. WARREN, and SECOND LIEUTENANT WILLIAM RHODES, relieved.

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

RICHARD T. EARLY  
Major General, USAF  
Commander

FOR THE COMMANDER

CHARLES W. THOMAS, Colonel, USAF  
Staff Judge Advocate

DISTRIBUTION  
- 1 – Each Individual  
- 1 – Each Organization  
- 1 – 14 AF/JA  
- 1 – ANGRC/JA (Air National Guard cases  
only)

Figure A7.4. Sample Special Court-Martial Convening Order with a Savings Clause

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, 30TH SPACE WING (AIR FORCE SPACE COMMAND)  
VANDENBERG AIR FORCE BASE, CALIFORNIA 93437-6261**

SPECIAL ORDER  
AB-6

20 Apr 2015

Pursuant to authority contained in Special Order G-15-001, Department of the Air Force, dated 24 March 2015, a special court-martial is hereby convened. It may proceed at Vandenberg Air Force Base, California, to try such persons as may be properly brought before it. The court will be constituted as follows:

**MEMBERS**

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

\*\*With concurrence of commander concerned.

The military judge is [not authorized to impanel alternate members.] [authorized to impanel \_\_\_\_\_ alternate members.] [authorized to impanel alternate members only if, after the exercise of challenges, excess members remain.]

All cases referred to the special court-martial convened by Special Order AB-2, this headquarters, dated 2 February 2015, as amended by Special Order AB-3, this headquarters, dated 13 February 2015, and Special Order AB-5, dated 15 April 2015, in which the court has not yet been assembled, will be brought to trial before the court hereby convened.

JOSEPH A. HART, Colonel, USAF  
Commander

FOR THE COMMANDER

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

DISTRIBUTION  
- 1 – Each Individual  
- 1 – Each Organization  
- 1 – 30 SW/JA  
- 1 – ANGRC/JA (Air National Guard cases only)

**Figure A7.5. Sample Summary Court-Martial Convening Order**

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, 30TH SPACE WING (AIR FORCE SPACE COMMAND)  
VANDENBERG AIR FORCE BASE, CALIFORNIA 93437-6261**

SPECIAL ORDER  
AC-3

15 Jan 2016

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

I. EMMA COMMANDER, Colonel, USAF  
Commander

DISTRIBUTION

1 – Summary Court-Martial Officer

1 – 30 SW/JA

1 – ANGRG/JA (Air National Guard cases  
only)

**Figure A7.6. Sample Special Court-Martial by Military Judge Alone Convening Order**

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, 30TH SPACE WING (AIR FORCE SPACE COMMAND)  
VANDENBERG AIR FORCE BASE, CALIFORNIA 93437-6261**

SPECIAL ORDER  
AD-3

15 Jan 2019

Pursuant to authority contained in Special Order G-15-001, Department of the Air Force, dated 24 March 2015, a special court-martial by military judge, pursuant to Article 16(c)(2)(a), Uniform Code of Military Justice, is hereby convened. I have reviewed the charge sheet and evidence in the case of *United States v. A1C John H. Doe*. It may proceed at Vandenberg Air Force Base, California, to try such persons as may be properly brought before it.

FOR THE COMMANDER

**CHARLES W. THOMAS, Colonel, USAF**  
Staff Judge Advocate

**DISTRIBUTION**

- 1 – Each Individual
- 1 – Each Organization
- 1 – 14 AF/JA
- 1 – ANGRC/JA (Air National Guard cases only)

## Attachment 8

## TEMPLATES AND SAMPLES FOR WITNESSES AND IMMUNITY

## Figure A8.1. Template Grant of Immunity and Order to Testify

(Date)

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

FROM: (General Court-Martial Convening Authority Unit and Address or Special Court-Martial Convening Authority Unit and Address, if authority is delegated)

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

1. SCOPE OF IMMUNITY: An investigation revealed you have knowledge of [an] offense[s] allegedly committed by (rank, name, unit, and station of accused). The offense[s] in question involve (describe the specific nature of offenses and the persons involved pertaining to the witness' knowledge). [*Note: Be careful to use precise language as this language creates the scope of the immunity—what “matters” will be covered by immunity under Rule for Courts-Martial 704*]

2. [*For witness subject to UCMJ where Department of Justice authorization was not required*] By authority vested in me in my capacity as a [general court-martial convening authority] [special court-martial convening authority who has been delegated the authority to grant immunity by the general court-martial convening authority], under Rule for Courts-Martial 704, Manual for Courts-Martial, United States,

2. [*For witness subject to UCMJ where Department of Justice authorization was required*] By authority vested in me in my capacity as a [general court-martial convening authority] [special court-martial convening authority who has been delegated the authority to grant immunity by the general court-martial convening authority], by Rule for Courts-Martial 704(c)(1), Manual for Courts-Martial, United States, and by the Attorney General of the United States pursuant to 18 U.S.C. § 6004,

2. [*For witness not subject to UCMJ*] By authority vested in me in my capacity as a [general court-martial convening authority] [special court-martial convening authority who has been delegated the authority to grant immunity by the general court-martial convening authority], by Rule for Courts-Martial 704, Manual for Courts-Martial, and by the Attorney General of the United States pursuant to 18 U.S.C. § 6004,

[*Continuation of paragraph 2*] I hereby grant you [(testimonial) or (transactional)] immunity concerning the matters and military member[s] identified in Paragraph 1, and order you to answer questions posed to you by investigators and counsel pertaining to, to provide physical evidence to investigators and counsel, and to testify at any proceeding held pursuant to the UCMJ (10 U.S.C. § 801 et seq.), concerning the matters and military member[s] identified in

Paragraph 1. This grant of immunity takes effect on the day you receive a copy of it. You will acknowledge receipt of this grant of immunity by signing the endorsement below.

3. [*For testimonial immunity (preferred)*] Under this immunity, your answers, disclosed physical evidence, and testimony regarding the matters and military member[s] identified in Paragraph 1, as well as information directly or indirectly derived there from, may not be used against you in a later [(trial by court-martial) *or* (criminal proceeding conducted by any federal, state, or military authority)]. However, this immunity does not bar the use of your testimony, your disclosed physical evidence, your answers to questions, or information derived from them, in prosecuting you for perjury, giving a false statement, crimes disclosed or discovered outside the scope of this immunity, future crimes, or otherwise failing to comply with this order to testify.

3. [*For transactional immunity*] Under this immunity, you may not be prosecuted for offenses to which your testimony relates. Specifically, [(you may not be tried by court-martial for offenses under Articles \_\_\_ and \_\_\_ of the UCMJ.) *or* (you may not be tried by any federal, state, or military authority for criminal violations of {*list criminal offenses and statutory citation, if applicable*})]. However, this immunity does not bar the use of your testimony, your disclosed physical evidence, your statements or information derived from them, in prosecuting you for perjury, giving a false statement, crimes disclosed or discovered outside the scope of this immunity, future crimes, or otherwise failing to comply with this order to testify.

(NAME), (Rank), USAF  
Commander

1st Ind, (Rank and Name of Witness)

(Date)

MEMORANDUM FOR (Convening Authority)

I acknowledge receipt of this grant of immunity (time) on (date).

(NAME), (Rank), USAF

**Attachment 9****POST-SENTENCING TEMPLATES FOR CASES REFERRED TO TRIAL ON OR  
AFTER 1 JANUARY 2019****Figure A9.1. Statement of Trial Results and Entry of Judgment – Military Judge  
Sentencing Applying Military Justice Act of 2016 Sentencing Rules**

**Note:** This form only applies to special and general courts-martial where the military judge adjudged the sentence and where either 1) all charged offenses occurred on/after 1 January 2019, or 2) offenses occurred before 1 January 2019 and on/after 1 January 2019 and the Accused opted-in to the Military Justice Act sentencing rules. For all other cases referred on/after 1 January 2019, use Figure A9.2.

**Note:** See Virtual Military Justice Deskbook for fillable copy of this form.

**STATEMENT OF TRIAL RESULTS  
IN THE CASE OF  
*United States v. TSgt John J. Smith***

Date: \_\_\_\_\_ Sentence/Acquittal Date: \_\_\_\_\_  
 Name of Accused: \_\_\_\_\_ Grade: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Organization: \_\_\_\_\_  
 Type of Court-Martial: \_\_\_\_\_  
 Findings Forum: \_\_\_\_\_ Sentencing Forum: Military Judge Enlisted Members: \_\_\_\_\_

If charged offenses occurred both before and after 1 January 2019, did the Accused opt-in to the sentencing rules in effect on 1 January 2019? Yes \_\_\_ No \_\_\_ N/A \_\_\_

Summary of charge(s), specification(s), pleas, and findings:

Charge(s)	Arraigned Offenses	P	F	Confinement			Fine
				Term	Concurrent with	Consecutive with	

Total Adjudged Confinement: \_\_\_\_\_ Total Fine: \_\_\_\_\_  
 Days of Pretrial Confinement Credit: \_\_\_\_\_ Days of Judicially Ordered Credit: \_\_\_\_\_  
 Remaining Portions of Adjudged Sentence: \_\_\_\_\_  
 Punitive Discharge: \_\_\_\_\_  
 Forfeitures of Pay and/or Allowances: \_\_\_\_\_  
 Reduction in Pay Grade: \_\_\_\_\_ Reprimand: \_\_\_\_\_  
 Hard Labor without Confinement: \_\_\_\_\_ Restriction: \_\_\_\_\_  
 Plea Agreement Involved: \_\_\_\_\_ Plea Agreement Limitations on Punishment: \_\_\_\_\_  
 \_\_\_\_\_  
 Suspension Recommendation: \_\_\_\_\_

JANE DOE, Colonel, USAF  
Military Judge

## STATEMENT OF TRIAL RESULTS IN THE CASE OF UNITED STATES V. \_\_\_\_\_

## INSTRUCTIONS – STATEMENT OF TRIAL RESULTS (SEGMENTED SENTENCING)

1. This Statement of Trial Results is to be used in general and special courts-martial with segmented sentencing. Segmented sentencing applies in cases referred on or after 1 January 2019 where the sentence is determined by a military judge, and where: (1) all charged offenses occurred on or after 1 January 2019, or (2) offenses occurred both before 1 January 2019 and on or after 1 January 2019 and the accused opted in to the Military Justice Act sentencing rules. For all other cases referred on/after 1 January 2019, use the version of this form at Figure A9.2.
2. This form must be completed as follows:
  - a. Date: Enter date the military judge signed the form. For corrections, enter date corrected form is signed, not date original form was signed.
  - b. Sentence/Acquittal Date: Enter date of announcement of sentence or acquittal.
  - c. Name of accused: Enter the First, Middle Initial and Last Name of the accused.
  - d. Grade: Enter the accused's grade at the time sentence is announced (not the reduced grade).
  - e. SSN: Enter the SSN of the accused.
  - f. Organization: Enter the unit of assignment (including MAJCOM).
  - g. Type of Court-Martial: Enter the forum to which the case was referred (e.g., general courts-martial, special courts-martial, special courts-martial by military judge alone). NOTE: If this is a rehearing, annotate that it is a rehearing in this block.
  - h. Findings Forum: Indicate whether the findings were made by a military judge or members.
  - i. Sentencing Forum: If you are using this version of the form, the sentence was adjudged by a military judge.
  - j. Enlisted Members: Indicate (yes/no) whether there were enlisted members on the panel.
  - k. If the charged offenses occurred both before and after 1 January 2019, indicate whether or not the accused opted in to the Military Justice Act sentencing rules in effect on 1 January 2019 by marking "Yes," "No," or "N/A." N/A should be marked if all charged offenses occurred on or after 1 January 2019.
  - l. Summary of charge(s), specification(s), plea, and findings: In the Charge(s) block, include the charge and specification number (e.g., Charge 1, Specification 2) and the DIBRS code for each offense arraigned. In the Arraigned Offenses block, list the offense, as annotated on the charge sheet, on which the accused was arraigned (e.g., Did, at or near Dover AFB, DE, on or about 1 January 2019, wrongfully use phencyclidine, a Schedule II controlled substance). In the Pleas block ("P"), indicate whether the accused pled guilty (G) or not guilty (NG). In the Findings block ("F"), indicate whether the accused was found guilty (G), not guilty (NG), not guilty, but guilty of a lesser included offense (NG, but guilty of the LIO of Art. X), or guilty by exceptions and substitutions (G, by exceptions and substitutions, then indicate the language excepted and substituted). In the Confinement block, enter length of adjudged confinement in the Term column. If there is no confinement for a specification with a conviction, indicate "none" instead of "N/A." For specifications resulting in not guilty findings, mark "N/A" for confinement. If there are multiple specifications, list the specifications with which the term of confinement is to run concurrently and consecutively as announced by the judge. List the fine announced for each specification of which the accused was found guilty in the Fine column.
  - m. Total Adjudged Confinement: Enter the total amount of confinement to be served, accounting for concurrent and consecutive sentences.
  - n. Confinement Credit: Annotate any pretrial confinement credit and/or judicially ordered confinement credit.
  - o. Total Fine: Enter the total amount of fines, if any. If contingent confinement is adjudged, annotate that here (e.g., A fine of \$XX of, if the fine is not paid, XX months additional confinement).
  - p. Remaining Portions of Adjudged Sentence: List any remaining portions of the adjudged sentence in these blocks. If a reprimand is adjudged, simply annotate "Yes." The covering authority will order the reprimand language.
  - q. Plea Agreement Involved: Indicate whether there is a plea agreement in this case.
  - r. Plea Agreement Limitations on Persistence: List any limitations on the persistence as set forth in the plea agreement.
  - s. Suspension Recommendation: If the military judge makes a recommendation for suspension of the sentence, the military judge includes the recommended suspension in this block. The military judge must state the minimum duration of the suspension and must provide facts supporting the recommendation. The supporting facts may be included in this block or may be attached to the Statement of Trial Results. If attached, the military judge indicates that there is an attachment in this block.
3. If any blocks are not applicable, indicate so with "N/A."
4. The military judge then signs the Statement of Trial Results and forwards it to the SJA in accordance with AFI 51-201.
5. The SJA then completes the required 1st indorsement (see next page) and distributes the Statement of Trial Results to all necessary parties in accordance with AFI 51-201, paragraph 13.4.

Personal Data – Privacy Act of 1974 (5 U.S.C. 552a)

## ENTRY OF JUDGMENT IN THE CASE OF UNITED STATES V. \_\_\_\_\_

## INSTRUCTIONS – ENTRY OF JUDGMENT (SEGMENTED SENTENCING)

1. This *Entry of Judgment* form is intended for use in special and general courts-martial with segmented sentencing. Segmented sentencing applies in cases referred on or after 1 January 2019 where the sentence is determined by a military judge alone, and where either 1) all charged offenses occurred on or after 1 January 2019, or 2) offenses occurred both before 1 January 2019 and on/after 1 January 2019 and the accused opted-in to the Military Justice Act sentencing rules. For all other cases referred on or after 1 January 2019 use the version of this form at Figure A9.2.
2. Following receipt of the Convening Authority's Decision on action memorandums, complete the *Entry of Judgment* as follows:
  - a. In the *Convening Authority Decision on Action* block annotate action taken by the convening authority, if any. If the convening authority took no action, then annotate "The convening authority took no action in this case." At a minimum, this block should express any action taken by the convening authority on the findings or sentence; annotate whether the convening authority intends to grant, or previously granted, any deferments or waivers of forfeitures, the effective/expiration dates for any such deferments or waivers, and identify the dependent(s) who will receive waived forfeitures; and identify whether the member will be placed on excess leave pending appellate review. If a reprimand was adjudged and approved by the convening authority, then the reprimand must also be annotated in this block.
  - b. In the *Charge(s)* block, include the charge and specification number (e.g., Charge 1, Specification 2) and the DIBRS code for each offense referred to trial by court-martial. **█**
  - c. In the *Arrested Offenses* block, list the offense, as annotated on the charge sheet, on which the accused was arraigned (e.g., Did, at or near Dover AFB, DE, on or about 1 January 2019, wrongfully use 7 phencyclidine, a Schedule II controlled substance).
  - d. In the *Plea* block, enter the plea as annotated on the *Statement of Trial Results*.
  - e. In the *Findings* block, indicate any modifications made to the findings by the convening authority. For example, if the convening authority set aside a guilty finding, annotate "G, but set aside;" or changed a guilty finding to a lesser included offense, annotate "G, but reduced to LSO of \_\_\_\_\_."
  - f. In the *Confinement and Fine* columns, the sentence to confinement and the fine, if any, for each specification should be enumerated. If the convening authority modified any portion of confinement or a fine for any specification, the change is reflected in this block (e.g. if a sentence of confinement for one month is corrected by the convening authority for a particular specification, then the amount of confinement listed for that specification in the term column is "none").
  - g. *Total Confinement*: Enter the total amount of confinement to be served, accounting for 1) any modifications made by the convening authority and 2) concurrent and consecutive sentences. *Total Fine*: Enter the total fine accounting for modifications made by the convening authority. If contingent confinement was adjudged, annotate that here (e.g., A fine of \$XX of, if the fine is not paid, XX months additional confinement).
  - h. *Confinement Credit*: Enter pretrial or judicially ordered confinement credit as annotated on the *Statement of Trial Results*.
  - i. *Remaining Portions of Sentence*: Annotate all remaining portions of the sentence. If the convening authority modified any portion of the sentence, then annotate that portion of the sentence as modified in the corresponding block. This section must show the complete final sentence as modified by the convening authority. If any block is inapplicable (i.e. that portion of the sentence was not adjudged), annotate "N/A" in that block. Annotate the date the military judge signed the *Entry of Judgment*.
3. The military judge then dates and signs the *Entry of Judgment* and forwards it to the SJA in accordance with AFI 51-201.
4. The SJA completes the required 1st indorsement (see next page) and then distributes the *Entry of Judgment* to all necessary parties in accordance with AFI 51-201, paragraph 13.39.

ENTRY OF JUDGMENT IN THE CASE OF UNITED STATES V. \_\_\_\_\_

1st Ind., Entry of Judgment, Name and Rank of Accused, dated \_\_\_\_\_.

FROM: <<Staff Judge Advocate>>, <<Unit/Installation>>

MEMORANDUM FOR: ALL REVIEWING AUTHORITIES

The following criminal indexing is required, following Entry of Judgment, according to the references listed:

DNA Processing Required Under 10 U.S.C. § 1565 and DoDI 5505.14: \_\_\_\_\_

Firearm Prohibition Triggered Under 18 U.S.C. § 922: \_\_\_\_\_

Domestic Violence Conviction Under 18 U.S.C. § 922(g)(9): \_\_\_\_\_

Sex Offender Notification in accordance with DoDI 1325.07: \_\_\_\_\_

Fingerprint Card and Final Disposition in accordance with DoDI 5505.11: \_\_\_\_\_

LAWYER PERSON, Colonel, USAF  
Staff Judge Advocate

Distribution:

1 – List All Required Parties

|

**STATEMENT OF TRIAL RESULTS  
IN THE CASE OF  
*United States v. TSgt John J. Smith***

Date: \_\_\_\_\_ Sentence/Acquittal Date: \_\_\_\_\_

Name of Accused: \_\_\_\_\_ Grade: \_\_\_\_\_ SSN: \_\_\_\_\_

Organization: \_\_\_\_\_

Type of Court-Martial: \_\_\_\_\_

Findings Forum: \_\_\_\_\_ Sentencing Forum: \_\_\_\_\_ Enlisted Members: \_\_\_\_\_

If charged offenses occurred both before and after 1 January 2019, did the Accused opt-in to the sentencing rules in effect on 1 January 2019? Yes \_\_\_ No \_\_\_ N/A \_\_\_

**Summary of charge(s), specification(s), pleas, and findings:**

Charge(s)	Arraigned Offenses	Pleas	Findings

Adjudged Confinement: \_\_\_\_\_ Fine: \_\_\_\_\_

Days of Pretrial Confinement Credit: \_\_\_\_\_ Days of Judicially Ordered Credit: \_\_\_\_\_

Remaining Portions of Adjudged Sentence: \_\_\_\_\_

Punitive Discharge: \_\_\_\_\_

Forfeitures of Pay and/or Allowances: \_\_\_\_\_

Reduction in Pay Grade: \_\_\_\_\_ Reprimand: \_\_\_\_\_

Hard Labor without Confinement: \_\_\_\_\_ Restriction: \_\_\_\_\_

Plea Agreement Involved: \_\_\_\_\_ Plea Agreement Limitations on Punishment: \_\_\_\_\_

Suspension Recommendation: \_\_\_\_\_

JANE DOE, Colonel, USAF  
Military Judge

## STATEMENT OF TRIAL RESULTS IN THE CASE OF UNITED STATES V. \_\_\_\_\_

## INSTRUCTIONS – STATEMENT OF TRIAL RESULTS (UNITARY SENTENCING)

1. This Statement of Trial Results is to be used in general and special courts-martial with unitary sentencing. That is, cases referred on or after 1 January 2019 where the sentence is adjudged by members or where the sentence is adjudged by a military judge and (1) all charged offenses occurred prior to 1 January 2019 or; (2) charged offenses occurred both before 1 January 2019 and on or after 1 January 2019 and the accused did not opt in to the Military Justice Act sentencing rules.
2. This form should be completed as follows:
  - a. Date: Enter date the military judge signed the form. For corrections, enter date corrected form is signed, not date original form was signed.
  - b. Sentence/Acquittal Date: Enter date of announcement of sentence or acquittal.
  - c. Name of accused: Enter the First, Middle Initial and Last Name of the accused.
  - d. Grade: Enter the accused's grade at the time sentence is announced (not the reduced grade).
  - e. SSN: Enter the SSN of the accused.
  - f. Organization: Enter the Unit of Assignment (including MAJCOM).
  - g. Type of Court-Martial: Enter the Forum to Which the Case was Referred (e.g., general courts-martial, special courts-martial, special courts-martial by military judge alone). NOTE: If this is a rehearing, annotate that it is a rehearing in this block.
  - h. Findings Forum: Indicate whether the findings were made by a military judge or members.
  - i. Sentencing Forum: Indicate whether the sentence was adjudged by a military judge or members.
  - j. Excluded Members: Indicate (yes/no) whether there were excluded members on the panel.
  - k. If the charged offenses occurred both before and after 1 January 2019, indicate whether or not the accused opted in to the Military Justice Act sentencing rules in effect on 1 January 2019 by marking "Yes," "No," or "N/A." N/A should be marked if all charged offenses occurred on or after 1 January 2019.
  - l. Summary of charge(s), specification(s), plea, and findings. In the Charge(s) block, include the charge and specification number (e.g., Charge 1, Specification 2) and the DCBRN code for each offense arraigned. In the Arraigned Offenses block, list the offense, as annotated on the charge sheet, on which the accused was arraigned (e.g., Did, at or near Dover AFB, DE, on or about 1 January 2019, wrongfully use phencyclidine, a Schedule II controlled substance). In the Plea block, indicate whether the accused pled guilty (G) or not guilty (NG). In the Findings block, indicate whether the accused was found guilty (G), not guilty (NG), not guilty, but guilty of a lesser included offense (NG, but guilty of the LIO of Article X), or guilty by exceptions and substitutions (G, by exceptions and substitutions, then clearly indicate the language excepted and substituted).
  - m. Adjudged Confinement: Enter the amount of confinement adjudged.
  - n. Confinement Credit: Annotate any pretrial confinement credit and/or judicially ordered confinement credit.
  - o. Fine: Enter the fine, if any. If contingent confinement is adjudged, annotate that here (e.g., A fine of \$XX or, if the fine is not paid, XX months additional confinement).
  - p. Remaining Portions of Adjudged Sentence: List any remaining portions of the adjudged sentence in these blocks. If a reprimand is adjudged, simply annotate "Yes." The convening authority will order the reprimand language.
  - q. Plea Agreement Involved: Indicate whether there is a plea agreement in this case.
  - r. Plea Agreement Limitations on Punishment: List any limitations on the punishment as set forth in the plea agreement.
  - s. Suspension Recommendation: If the military judge makes a recommendation for suspension of the sentence, the military judge includes the recommended suspension in this block. The military judge must state the minimum duration of the suspension and must provide facts supporting the recommendation. The supporting facts may be included in this block or may be attached to the Statement of Trial Results. If attached, the military judge indicates that there is an attachment in this block.
3. If any blocks are not applicable, indicate so with "N/A."
4. The military judge then signs the Statement of Trial Results and forwards it to the SJA in accordance with AFI 51-201.
5. The SJA then completes the required 1st indorsement (see next page) and distributes the Statement of Trial Results to all necessary parties in accordance with AFI 51-201, paragraph 13.4.

**Figure A9.2. Statement of Trial Results and Entry of Judgment – Member Sentencing (All Cases) or Military Judge Sentencing Applying pre-Military Justice Act of 2016 Sentencing Rules**

**Note:** This form applies to all general and special courts-martial with member sentencing. This form also applies to military judge sentencing only for cases using pre-Military Justice Act of 2016 sentencing rules. For military judge sentencing cases applying Military Justice Act of 2016 sentencing rules (i.e., segmented sentencing), use Figure A9.1.

**Note:** See Virtual Military Justice Deskbook for fillable copy of this form.

ENTRY OF JUDGMENT IN THE CASE OF UNITED STATES V. \_\_\_\_\_

1st Ind., Entry of Judgment, dated \_\_\_\_\_.

FROM: <<Staff Judge Advocate>>, <<Unit/Installation>>

MEMORANDUM FOR: ALL REVIEWING AUTHORITIES

The following criminal indexing is required, following Entry of Judgment, according to the references listed:

DNA Processing Required Under 10 U.S.C. § 1565 and DoDI 5505.14: \_\_\_\_\_

Firearm Prohibition Triggered Under 18 U.S.C. § 922: \_\_\_\_\_

Domestic Violence Conviction Under 18 U.S.C. § 922(g)(9): \_\_\_\_\_

Sex Offender Notification in accordance with DoDI 1325.07: \_\_\_\_\_

Fingerprint Card and Final Disposition in accordance with DoDI 5505.11: \_\_\_\_\_

LAWYER PERSON, Colonel, USAF  
Staff Judge Advocate

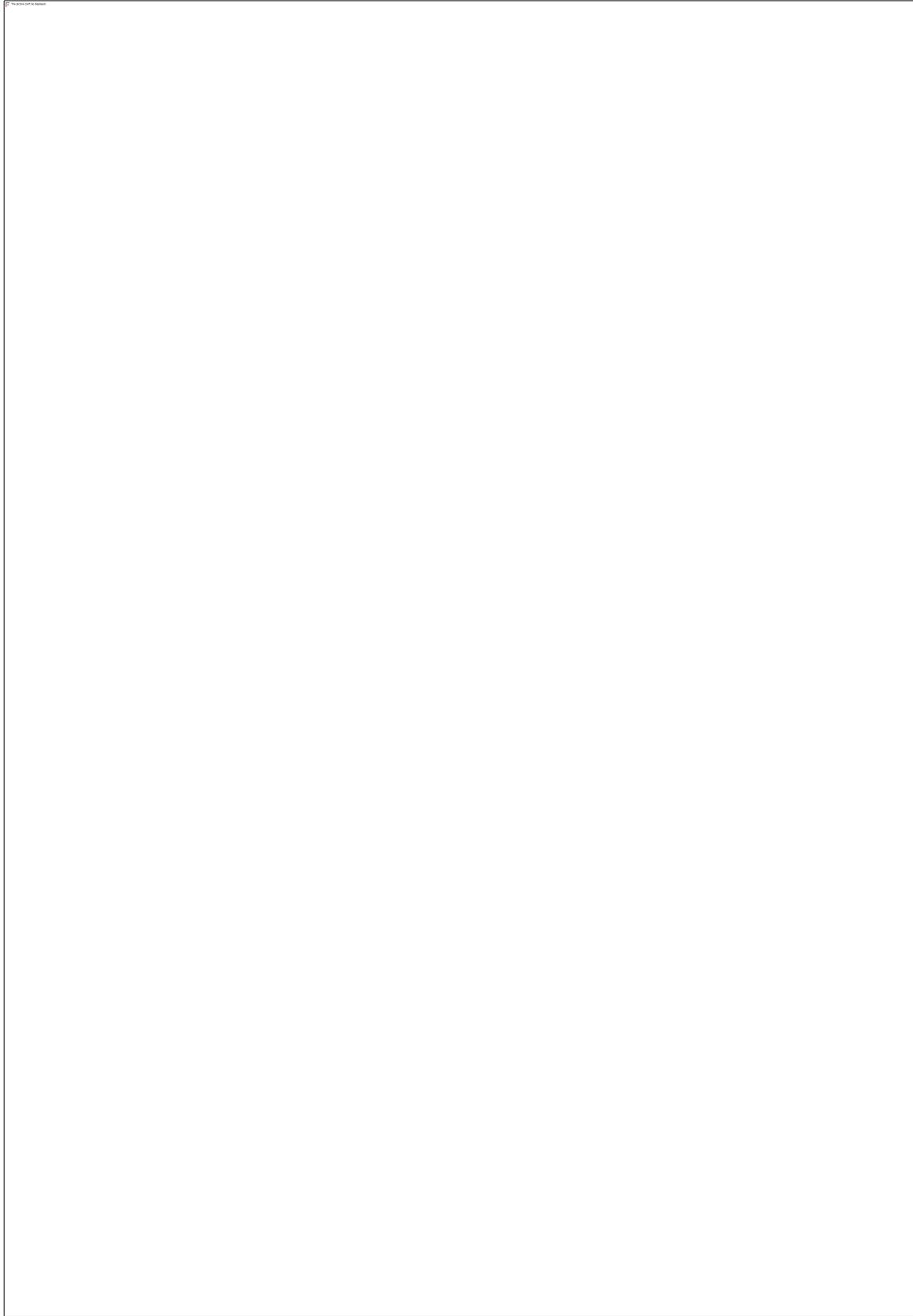
Distribution:

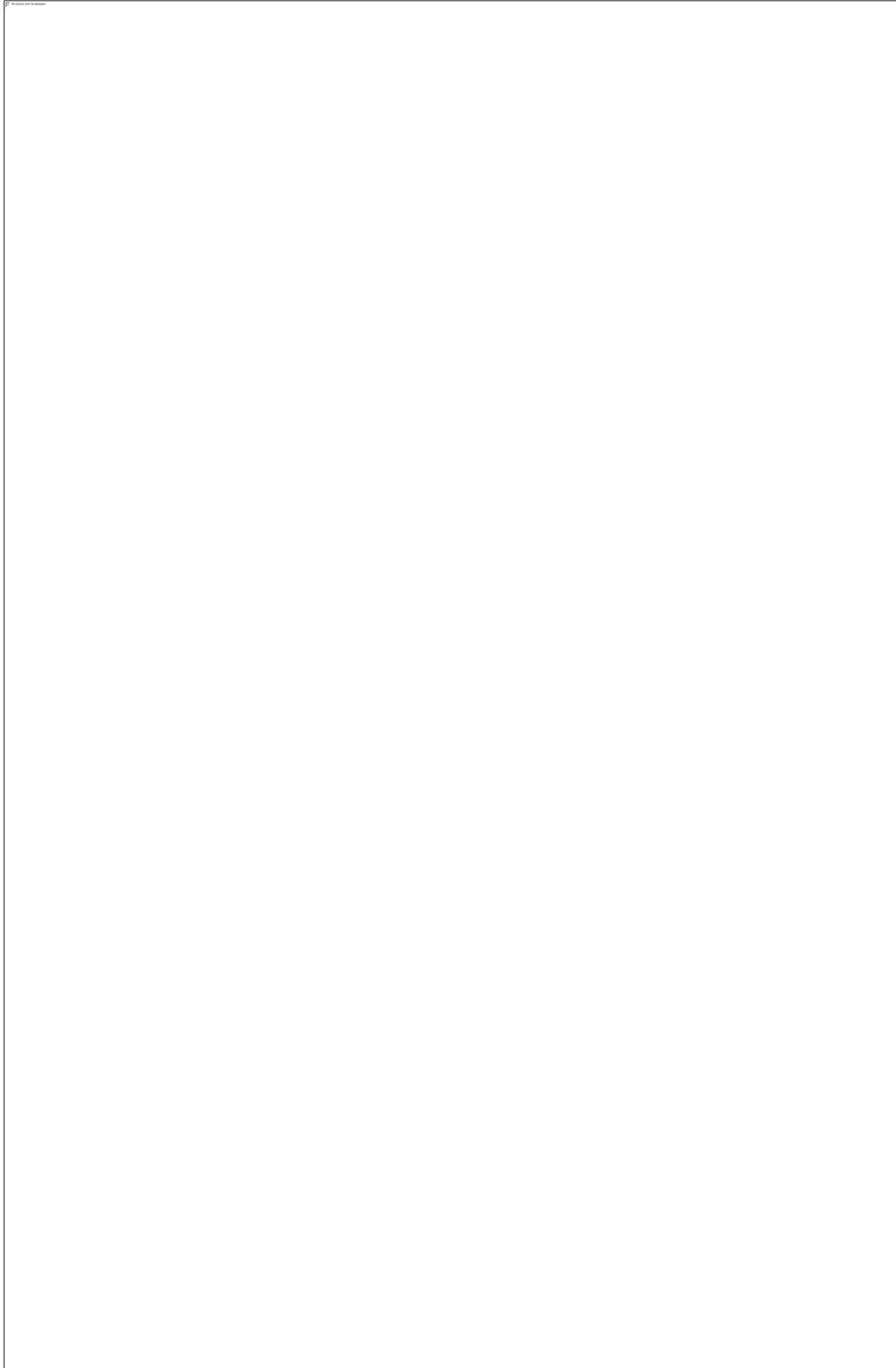
1 – See Distro List

VICTIM ELECTION FOR RECEIPT OF RECORDING UNITED STATES v. _____				
<b>Privacy Act Statement</b>				
<p><b>AUTHORITY:</b> 10 U.S.C. 806b (Article 6b, UCMJ), Rights of a Victim of an Offense; 10 U.S.C. 860a (Article 60a, UCMJ), Limited Authority to Act on Sentence in Specified Post-Trial Circumstances; R.C.M. 1106A, Matters Submitted by Victim</p> <p><b>PURPOSE:</b> Information is collected to document your preferences with regards to receiving a copy of open sessions of a court-martial in which you were the victim of an offense of which the accused was found guilty, provided the convening authority may take action on the offense.</p> <p><b>ROUTINE USE:</b> Information may be disclosed for any of the DoD Blanket Routine Uses.</p> <p><b>DISCLOSURES:</b> Voluntary; however, failure to provide the information may result in our inability to provide you with a copy of the record of trial or representation during appellate review.</p>				
<b>VICTIM INFORMATION</b>				
<b>NAME</b>		<b>TELEPHONE NUMBER (Optional)</b>		
Last	First	MI	Suffix	
<b>MAILING ADDRESS</b>				
Street			State	ZIP
<b>RECEIPT OF RECORDING</b>				
<p><i>In accordance with 10 U.S.C. 860a and R.C.M. 1106A, you are entitled to receive a copy of the recording of open sessions in the above-captioned court-martial. After carefully reviewing the options below, please annotate your elections by marking the appropriate boxes.</i></p> <p><input type="checkbox"/> <b>I request a copy of the recording of open sessions in the above captioned court-martial.</b></p> <p>By checking this box, I certify the following:</p> <p>I understand that, if represented by counsel, the recording will be provided to my counsel.</p> <p>The recording is provided to me for the purpose of submitting matters to the convening authority for consideration in the exercise of the convening authority's power to grant relief to the accused on findings and/or sentencing.</p> <p>Acceptance of the recording begins my time period for submission of the matters discussed above. In a general or special court-martial, I understand that I have ten days after the sentence is announced to submit matters. In a summary court-martial, I understand that I have seven days after the sentence is announced to submit matters. This period may only be extended for good cause shown and, in no case, will that extension exceed twenty days.</p> <p><input type="checkbox"/> <b>I do not request a copy of the recording in this case</b></p>				
<p><b><i>I certify that the information annotated above is correct to the best of knowledge, and I consent to the official release of this information to the extent such release is necessary to satisfy my elections.</i></b></p>				
<b>SIGNATURE</b>			<b>DATE</b>	

<p><b>VICTIM ELECTION FOR REPRESENTATION DURING APPELLATE REVIEW</b></p> <p>UNITED STATES v. _____</p>				
<p><b>Privacy Act Statement</b></p>				
<p><b>AUTHORITY:</b> 10 U.S.C. 806b (Article 6b, UCMJ), Rights of a Victim of an Offense; 10 U.S.C. 1044e, Special Victims' Counsel for Victims of Sex-Related Offenses</p> <p><b>PURPOSE:</b> Information is collected to document your preferences with regard to being represented by Special Victims' Counsel during the appellate review process.</p> <p><b>ROUTINE USE:</b> Information may be disclosed for any of the DoD Blanket Routine Uses.</p> <p><b>DISCLOSURES:</b> Voluntary; however, failure to provide the information may result in our inability to provide you with a copy of the record of trial or representation during appellate review.</p>				
<p><b>VICTIM INFORMATION</b></p>				
NAME				TELEPHONE NUMBER (Optional)
Last	First	Middle	Suffix	
MAILING ADDRESS				
Street			State	ZIP
<p><b>REPRESENTATION DURING APPELLATE REVIEW</b></p>				
<p><i>In accordance with 10 U.S.C. 1044e, you are entitled to legal representation by a Special Victims' Counsel in matters related to the above-captioned court-martial, including (if desired) representation during the appellate review process. After carefully reviewing the options below, please annotate your elections by marking the appropriate box.</i></p> <p><input type="checkbox"/> I request Special Victims' Counsel representation during the appellate review process and request that the Air Force Special Victims' Counsel Division (AFLOA/CLSV) be informed of any appellate proceedings or hearings in this case.</p> <p><input type="checkbox"/> I do not request Special Victims' Counsel representation during the appellate review process at this time.</p>				
<p><i>I certify that the information annotated above is correct to the best of knowledge, and I consent to the official release of this information to the extent such release is necessary to satisfy my elections.</i></p>				
SIGNATURE				DATE

VICTIM ELECTION FOR RECORD OF TRIAL			
UNITED STATES v. _____			
<b>Privacy Act Statement</b>			
<p><b>AUTHORITY:</b> 10 U.S.C. 806b (Article 6b, UCMJ), Rights of a Victim of an Offense; 10 U.S.C. 854 (Article 54, UCMJ), Record of Trial; R.C.M. 1112, Certification of Record of Trial; General and Special Courts-Martial</p> <p><b>PURPOSE:</b> Information is collected to document your preferences with regards to receiving a copy of the Record of Trial in the court-martial named above, in which you were named as a victim in a specification of which the accused was charged.</p> <p><b>ROUTINE USE:</b> Information may be disclosed for any of the DoD Blanket Routine Uses.</p> <p><b>DISCLOSURES:</b> Voluntary; however, failure to provide the information may result in our inability to provide you with a copy of the record of trial or representation during appellate review.</p>			
<b>VICTIM INFORMATION</b>			
<b>NAME</b>			<b>TELEPHONE NUMBER (Optional)</b>
<small>Last</small>	<small>First</small>	<small>M</small>	<small>Suffix</small>
<b>MAILING ADDRESS</b>			<b>State</b>
<small>Street</small>			<b>ZIP</b>
<b>RECEIPT OF RECORD OF TRIAL</b>			
<p><i>In accordance with 10 U.S.C. 854 and R.C.M. 1112, you are entitled to receive a copy of the Record of Trial in the above-captioned court-martial. After carefully reviewing the options below, please annotate your elections by marking the appropriate boxes.</i></p> <p><input type="checkbox"/> I request a copy of the Record of Trial in this case. I desire that the record be provided to the mailing address annotated above in the following format (choose one):</p> <p style="padding-left: 40px;"><input type="checkbox"/> Hard copy    <input type="checkbox"/> Electronic</p> <p><input type="checkbox"/> I do not request a copy of the Record of Trial in this case.</p>			
<p><i>I certify that the information annotated above is correct to the best of knowledge, and I consent to the official release of this information to the extent such release is necessary to satisfy my elections.</i></p>			
<b>SIGNATURE</b>			<b>DATE</b>





**Figure A9.3. Notification to Accused of Opportunity to Submit Matters**

(Date)

MEMORANDUM FOR (Rank and Name of Accused)

FROM: (Judge Advocate Office)

SUBJECT: Submission of Matters to the Convening Authority – *United States. v. (Rank and Name of Accused)*

1. Since you have been convicted and sentenced by court-martial, you have the right to submit matters for consideration by the convening authority of your court-martial before the convening authority decides what, if any, action the convening authority will take on your case. The matters you submit may include any matters that might affect the convening authority's decision to approve or disapprove findings of guilt or part of the sentence in your case as permitted by law. You should not include matters that relate to the character of a crime victim unless such matters were admitted as evidence at trial. If you do include such matters, the convening authority shall not consider them.
2. You should consult with your defense counsel to decide whether to submit such matters. The convening authority will consider all timely written matters you submit before taking action in your case. Failure to submit matters within the time provided in paragraph 4 constitutes a waiver of your right to do so.
3. If you decide not to submit matters for the convening authority's consideration, you may waive, in writing, the right to submit such matters. Such a waiver may expedite the post-trial processing and review of your case, if that is what you desire. You should consult your defense counsel before waiving your rights to submit matters. Once you make such a written waiver, it may not be withdrawn or revoked. You may indicate any waiver of your rights to submit matters on the indorsement to this letter or by submitting a separate written waiver. Once you waive your right to submit matters, such waiver cannot be revoked.
4. [*For a General Court-Martial or Special Court-Martial, insert:*] You have 10 days to submit matters for consideration by the convening authority from the date you receive this letter. Any submissions you wish to submit are due at \_\_\_\_ (date)(time) \_\_\_\_.  
If you are unable to submit your matters within this period, you may, for good reason, apply to the convening authority, through the convening authority's staff judge advocate for an extension of the period. You may be granted an extension of no more than 20 days.  
  
[*For a Summary Court-Martial, insert the following as paragraph 4:*] You have 7 days from the date your sentence was announced to submit your matters for the convening authority's consideration. Your matters must be submitted by \_\_\_\_ (date)(time) \_\_\_\_\_. If you are unable to submit your matters within this period, you may, for good cause, apply to the convening authority, through the convening authority's staff judge advocate, for an extension of the period. You may be granted an extension of no more than 20 days.

5. In addition to the submissions described above, you may submit an application to the convening authority, through the servicing Staff Judge Advocate, to defer any forfeitures of pay or allowances, reduction in grade, or service of a sentence to confinement. If you have dependents, you may also submit an application to the convening authority, through the servicing Staff Judge Advocate, to waive any automatic forfeitures of pay and allowances under Article 58b, UCMJ, with the amount waived paid to your dependents. Applications for deferral and/or waiver may be submitted immediately. In order for the convening authority to give such requests proper consideration, they should normally be submitted no later than the time provided in paragraph 4 above.

6. You are entitled to a copy of the recording of the proceeding and access to the exhibits to assist in preparation of your submission. If you wish to receive a copy of the recording, you must promptly notify my staff judge advocate so that one can be provided to you within the allotted response period. Likewise, if you wish to have access to the exhibits to assist in preparation of your submission, you must promptly notify my staff judge advocate.

7. [If there are victims in the case, insert the following as paragraph 7:] The victim(s) in your case are also being afforded a chance to submit written matters to the convening authority for consideration in deciding what, if any, action to take in your case. Any matters submitted by a victim will be forwarded to you so that you may rebut them, if you so choose.

(NAME), (Rank), USAF  
(Duty Title)

cc: Defense Counsel

1st Indorsment, (Rank and Name of Accused)

(Date)

MEMORANDUM FOR (Judge Advocate Office)

Receipt acknowledged at (time) on (date).

I have consulted with my defense counsel concerning my rights to submit matters for the convening authority's consideration before the convening authority takes action in my case. After considering the advice of my defense counsel, I (waive)(do not waive) my right to submit such matters. I (will)(will not) submit any matters for the convening authority's consideration.

(NAME), (Rank), USAF  
Accused

**Figure A9.4. Notification to Victim of Opportunity to Submit Victim Impact Statement**  
[Letterhead]

(Date)

MEMORANDUM FOR (Rank and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

SUBJECT: Submission of matters, United States v. (Rank and Name of accused)

1. On (Date of conviction), (Current grade and name of the accused) was convicted by (Type of Court-Martial) of (Insert charges and specifications). For these crimes, (he/she) was sentenced to (Sentence). The next step in the process is for the convening authority, (grade and name of convening authority), to review the findings and sentence. In certain cases, the convening authority has discretion to disapprove all or any portion of the findings and sentence. In other cases, the discretion of the convening authority is limited by law. I am writing to let you know how you can provide input to (me) (the Convening Authority's Staff Judge Advocate) for the convening authority's consideration.

2. Before the Convening Authority decides what, if any action, to take on the findings and sentence in this case, you may submit a statement in writing to me for consideration by the convening authority. The choice is entirely yours. This statement could describe the impact (Current grade and name of the accused)'s crime had on your life. [You may also discuss whether you believe the Convening Authority should disapprove the (findings and sentence/sentence) or grant some form of relief, if authorized by law]. However, your statement should not reference any crimes for which (Current grade and name of the accused) was not convicted by the court-martial, nor discuss any matters that relate to the character of (Current grade and name of the accused) unless those matters were admitted as evidence in the trial. Your statement also should not discuss any matters that relate to your character (or the character of any any other victim), unless such matters were admitted as evidence in the trial. If you do include such matters, the convening authority shall not consider them.

3. To help you prepare a written statement, you may request a copy of the recording of the court-martial. You may also request access to, or copies of, the exhibits admitted during the court-martial.

4. You have [10 days][7 days] to submit matters for consideration by the convening authority from the date the sentence was announced. If you want to submit a statement, please provide it to the following office or email address: (office address) (e-mail address). Your signature is required on any statement submitted. [I will then provide your letter to the Convening Authority's Staff Judge Advocate.] If you submit a statement, we will provide it, along with all of the relevant trial related documents, to (Current grade and name of the Accused) and (his/her) attorney. (Current grade and name of the accused) and (his/her) attorney will then have an opportunity to comment on your statement, if submitted, and to provide our office with matters they want the Convening Authority to consider [when making (his/her) decision on whether to approve the (findings and sentence/sentence)].

5. You may ask for additional time to submit your statement. I will provide your request to the Convening Authority who may grant up to an additional 20 days. However, you only have one opportunity to provide a statement for the convening authority's consideration as to whether to disapprove all or any portion of the findings or grant any relief on the sentence. If you elect not to submit matters, this waiver may not be revoked.

6. (*If eligible*) You may also consult with (a legal assistance attorney) or (Special Victims' Counsel) on whether to submit a victim impact statement and the contents of such a statement.

\_\_\_\_\_  
 (NAME), (Rank), USAF  
 Staff Judge Advocate/Trial Counsel

1st Indorsement, (Rank and Name of Victim)

Date:

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

I acknowledge receipt of this notification.

(Rank and Name of Victim)

2nd Indorsement, (Rank and Name of Victim)

Date:

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

I understand that I may provide a statement to (you/the Convening Authority's Staff Judge Advocate) for consideration of the Convening Authority [on whether to approve all or any portion of the (findings and sentence/sentence)].

\_\_\_\_\_ I am submitting the attached statement

\_\_\_\_\_ I do not intend to submit a statement.

(Rank and Name of Victim)

3d Indorsement, (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

Date:

MEMORANDUM FOR (Rank and Name of Victim)

((Rank and Name of Victim) provided a statement) ((Rank and Name of Victim) did not provide a statement)

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

**Figure A9.5. Template Convening Authority Decision on Action**

MEMORANDUM FOR (Military Judge)

FROM: (Convening Authority)

SUBJECT: Convening Authority Decision on Action – United States v. (*Case Name*)

1. [I hereby take no action in the case of *United States v. (Case Name)*.] [I hereby take the following action on the findings in the case of *United States v. Case Name*: (insert action language here. Sample action language can be found at Figure A9.8)] [I hereby take the following action on the sentence in the case of *United States v. Case Name*: (insert action language here. Sample action language can be found at Figure A9.8) (annotate whether the convening authority intends to grant or previously granted any deferments or waivers of forfeitures, the effective dates for any such deferments or waivers, and the expiration dates. Identify the dependent(s) who will receive waived forfeitures)]. **Note:** *If a punitive discharge was adjudged, then the member must be placed on excess leave pending appellate review (see AFI 51-201, Section 13K and Figure A9.8).*

[If a reprimand was adjudged and approved, include the reprimand here].

**Note:** *Insert this first paragraph in the “Convening Authority Decision on Action Block” on the Entry of Judgment.*

2. Provide rationale for any relief granted by the convening authority. In addition, discuss what action the convening authority took, if any, on a military judge suspension recommendation.
3. Prior to coming to this decision, I consulted with my Staff Judge Advocate.
4. A copy of this memorandum documenting my decision will be forwarded to the accused and all named victim(s).

(NAME)  
(Rank), USAF  
Commander

cc:

[Accused’s Rank, Name]

[Victim’s Name]

1st Ind., (Accused)

(Date)

MEMORANDUM FOR: (JA Office)

I acknowledge receipt of the Convening Authority's decision on \_\_\_\_\_ (date).

(NAME), (Grade), USAF

2nd Ind., (Victim)

(Date)

MEMORANDUM FOR: (JA Office)

I acknowledge receipt of the Convening Authority's decision on \_\_\_\_\_ (date).

(NAME), (Grade), USAF

**Figure A9.6. Notice of Accused's Opportunity for Rebuttal**

(Date)

MEMORANDUM FOR (Accused)

FROM: (Convening Authority)

SUBJECT: Additional Time for Accused to Submit Matters After Convening Authority  
Consideration of Matters Not Part of the Record: *United States v. (Rank and Name of Accused)*

1. Pursuant to Article 60a, UCMJ, and R.C.M. 1106A, \_\_\_\_\_ has submitted the attached matters (Atch 1) [which contain matters relevant to the character of the accused which were not submitted as evidence at trial]. Therefore, you may submit any matters in response or rebuttal to the attached.
2. Any submissions should be provided to my Staff Judge Advocate. You have 10 days to submit a response or waive your right to submit a response. You may request an extension for good cause of up to 20 days to prepare your response. Failure to submit a response or request an extension within 10 days constitutes waiver.
3. You have the right to consult counsel in determining what, if any, response to provide to these matters.

(NAME), (Rank), USAF  
Convening Authority

Attachment:  
Victim's Ltr, dtd \_\_\_\_\_

cc: Defense Counsel

1st Indorsment, (Rank and Name of Accused)

(Date)

MEMORANDUM FOR (Judge Advocate Office)

Receipt acknowledged at (time) on (date).

I have consulted with my defense counsel concerning my rights to submit matters for the convening authority's consideration before the convening authority takes action in my case. After considering the advice of my defense counsel, I (waive)(do not waive) my right to submit such matters. I (will)(will not) submit any matters for the convening authority's consideration.

(NAME), (Rank), USAF  
Accused

**Figure A9.7. Notification of Adjudged Sentence or Entry of Judgment**

(Date)

MEMORANDUM FOR HQ AFPC/DP1SSP (enlisted only)  
AFSFC/SFC  
DFAS-IN/FLTBA  
(Local Servicing Finance Office)

FROM: (Judge Advocate Office)

SUBJECT: (Adjudged Sentence)(Entry of Judgment) (SPCM or General Court-Martial) –  
*United States v. (Accused's Rank and Name)*

1. Request you update personnel and pay data as the result of sentence on:
  - a. (Rank)
  - b. (First Name)(Middle Initial)(Last Name)
  - c. (SSN)
  - d. (Unit)
2. On (Date of Sentence)(Entry of Judgment), the following sentence was (adjudged)(approved):
  - a. DISCHARGE: (Dismissal)(DD)(bad conduct discharge)(N/A)
  - b. CONFINEMENT: \_\_\_\_\_ (years)(months)(N/A)

- c. FORFEITURE: (Total)(\$\_\_\_\_pay per month for \_\_\_\_ months)(N/A)
- d. FINE: (\$\_\_\_\_)(N/A)
- e. REDUCTION TO: (Grade)(N/A)
- f. DATE ADJUDGED: (Date)

*Use the following paragraph with the 14 day message:*

3. [(Adjudged forfeitures)(Reduction in grade)(Automatic forfeitures of (2/3)(total) pay and allowances)(took effect)(will take effect) on (date) (were deferred until action).] (and/or) [Automatic forfeitures in the amount of (total)(\$\_\_\_\_ per month) pay and allowances were waived from (date) until (date).]

*Use the following paragraphs in the message after Entry of Judgment is complete:*

3. Entire sentence was ordered executed (except discharge/dismissal)(except discharge and the following portions, which were suspended: \_\_\_\_)(except \_\_\_\_). Automatic forfeitures of (total)(\$\_\_\_\_ per month) pay and allowances (took effect on (date)) (were deferred)(were waived) (from (date) until (date)).

4. Entry of Judgment was completed on \_\_\_\_\_.

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

### **Figure A9.8. Sample Action Language for Cases Referred on/after 1 Jan 19 Action on Findings**

#### **Set Aside Findings**

The findings for (all charges and specifications) (Specification \_\_\_ of Charge \_\_\_) are set aside and (dismissed) (a rehearing is ordered in accordance with R.C.M. 810).

#### **Change a Finding of Guilty to a Lesser Included Offense**

The finding of guilty for (Specification\_\_\_ of Charge \_\_\_) is modified to a finding of guilty for the lesser included offense of (name the lesser included offense, UCMJ Article).

#### **Action on Sentence**

#### **Confinement**

##### **Deferred Confinement. R.C.M. 1103:**

The service of the sentence to confinement was deferred on \_\_\_\_\_ until \_\_\_\_\_.

##### **Suspended Confinement:**

The part of the sentence extending to [confinement] [confinement in excess of \_\_\_\_\_] is suspended for \_\_\_\_ (months) (years), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action.

## Forfeitures

### Deferral of Adjudged and Automatic Forfeitures:

(All) (\$\_\_\_ pay per month) of the adjudged and automatic forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_ - *insert other date prior to action*]) until ([the date of this action] [the date the entry of judgment is signed by the military judge] [\_\_\_\_ - *specify an earlier date*]).

### Deferral of Adjudged Forfeitures Only:

(All) (\$\_\_\_ pay per month) of the adjudged forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_ - *insert other date prior to action*]) until ([date of this action] [the date the entry of judgment is signed by the military judge] [\_\_\_\_ - *specify an earlier date*]).

### Deferral of Automatic Forfeitures Only:

(All) (\$\_\_\_ pay per month) of the automatic forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_ - *insert other date prior to action*]) until ([date of this action] [the date the entry of judgment is signed by the military judge] [\_\_\_\_ - *specify an earlier date*]).

### Commuting Adjudged Forfeitures:

That portion of the sentence extending to forfeiture of (total pay and allowances) ( [\$\_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is changed to (a reprimand) (hard labor without confinement) (restriction).

### Suspension of Entire Period of Adjudged Forfeitures:

That part of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is suspended for \_\_\_ ([month(s)] [year(s)]) from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action.

### Suspension of Six Months of Adjudged Forfeitures for Six Months:

The first six months of that part of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is suspended for six months from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The collection of the remaining \_\_\_ ([month(s)] [year(s)]) of forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) will begin at the end of the period of suspension, or sooner if the suspension is vacated. [*Note: This language is based on the scenario contemplated in United States v. Emminizer, 56 M.J. 441 (C.A.A.F. 2002). To our knowledge, this specific language has not been tested at the appellate level.*]

### Waived Forfeitures to Begin at 14 Days After Sentence Adjudged or on a Later Date:

(All) (\$\_\_\_ pay per month) of the automatic forfeitures are waived for a period of \_\_\_ months [*Note: no more than 6 months*] or release from confinement (*if applicable*: or expiration of term

of service), whichever is sooner, with the waiver commencing on ([14 days after the sentence was adjudged] [the date of this action] [the date the entry of judgment is signed by the military judge] [\_\_\_\_\_ - *specify an earlier date if the waiver is retroactive*]). The (total pay and allowances) ([\$\_] pay per month) is directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of ([herself] [himself]) and the accused's \_\_\_ dependent children] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_]).

**Waived Forfeitures Granted on an Earlier Date and Memorialized in the Action:**

(All) (\$\_\_\_pay per month) of the automatic forfeitures were waived for a period of \_\_\_ months [*Note: no more than 6 months*] or release from confinement (*if applicable*: or expiration of term of service), whichever is sooner, ([from 14 days after sentence was adjudged] [from \_\_\_\_\_ - *insert other date prior to action*]). The (total pay and allowances) ([\$\_\_\_] pay per month) was directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of ([herself] [himself]) and the accused's \_\_\_ dependent children] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_]).

**General Provisions**

**Suspension**

The part of the sentence extending to [name portion of sentence, in whole or in part] is suspended [for \_\_\_\_\_(months) (years)] [until (state an anticipated future event)], at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action.

**Reduction**

The part of the sentence extending to [name portion of sentence, in whole or in part] is reduced to [name the lower punishment].

**Commutation**

The part of the sentence extending to [name portion of sentence, in whole or in part] is commuted to [name the lesser substituted punishment].

**Disapprove Sentence in Part**

The part of the sentenced extending to [name portion of sentence, in whole or in part] is disapproved.

**Disapprove Sentence in its Entirety**

The sentence is disapproved.

**Directing Excess Leave**

(CONFINEMENT) Include the following in the convening authority's action to place an accused with an approved, unsuspended and unexecuted dismissal, dishonorable discharge or bad conduct discharge on excess leave upon completion of the term of confinement: "Unless competent authority otherwise directs, upon completion of the sentence to confinement, (REDUCED RANK NAME of ACCUSED) will be required, under Article 76a, UCMJ, to take

leave pending completion of appellate review.” See [Section A11K](#) for additional guidance on excess leave.

(CONFINEMENT COMPLETED) Include the following in the convening authority’s action to place an accused with an approved, unsuspended and unexecuted dismissal, dishonorable discharge or bad conduct discharge on excess leave when confinement has been served: “Unless competent authority otherwise directs, (REDUCED RANK, as approved, and NAME of ACCUSED) will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.” See [Section 13K](#) for additional guidance on excess leave.

**Figure A9.9. Sample Contingent Confinement Execution Order**

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS SECOND AIR FORCE (AETC)  
KEESLER AIR FORCE BASE, MS 39534-2804

General Court-Martial Order  
No. 4

10 December 2019

In the general court-martial case of AIRMAN FIRST CLASS JOHN R. SMITH, 555-66-7777, United States Air Force, 81st Communication Squadron, that portion of the sentence promulgated in the Entry of Judgment dated 18 December 2014, providing for an additional 6 month confinement in lieu of the \$10,000 fine will be executed. The sentence was adjudged by military judge on 23 October 2019.

CHRISTOPHER B. JOHNSON  
Major General, USAF  
Commander

DISTRIBUTION:

(NAME), (Rank), USAF  
(Duty Title)

**Figure A9.10. Convening Authority Action Memorandum (Summary Court-Martial)**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Action: *United States v. (Rank and Name of Accused)*

1. On (date), you referred the case of (rank and name of accused), (accused’s organization), to trial by summary court-martial. The court convened on (date). Attached are the Statement of

Trial Results and DD Form 2329, Record of Trial by Summary Court-Martial, . Also attached is a personal data sheet on the accused for your consideration prior to taking action on the sentence. In addition, you may consider the record of trial, personnel records of the accused, and such other matters as you deem appropriate. However, if you consider matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused must be notified and given an opportunity to rebut.

2. Pursuant to Article 60a and R.C.M. 1306, UCMJ, the accused has submitted the attached matters (Atchs 2, 3, 4 and 5) for your consideration prior to taking final action in this case. You must consider all written matters submitted by the defense and may consider any other matters submitted by the defense prior to taking action on the findings and sentence.

**OR**

2. Pursuant to Article 60a and R.C.M. 1306, UCMJ, the accused may submit matters for your consideration prior to taking final action in this case. However, (the accused did not submit clemency matters.)(the accused has chosen to waive his right to submit clemency matters (Atch 2).)(the accused has chosen to waive his right to submit clemency matters and has also waived the remaining portion of his time to submit clemency matters (Atch 2).)

3. Further, pursuant to Article 60a, UCMJ, and R.C.M. 1106A, the victim has submitted the attached matters (Atchs 2, 3, 4 and 5) for your consideration prior to taking final action in this case. You must consider all written matters submitted by the victim and may consider any other matters submitted by the victim prior to taking action on the findings and sentence.

**OR**

3. Pursuant to Article 60a and R.C.M. 1306a, UCMJ, the victim may submit matters for your consideration prior to taking final action in this case. However, (the victim did not submit matters.)(the victim has chosen to waive his right to submit matters (Atch 2)).

4. A proposed Action of the Convening Authority (Atch 1) approving the findings and sentence of the court has been prepared for your signature. Should you desire to take some other action in this case, we will prepare the appropriate document at your direction. If you concur, please sign the Action of the Convening Authority.

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

8 Attachments:

1. (Proposed Action of the Convening Authority)( DD FormDD Form 2329 with Proposed Action)
2. Defense Counsel Ltr, dtd \_\_\_\_
3. Accused's Ltr, dtd \_\_\_\_

4. Mr. \_\_\_\_ Ltr, dtd \_\_
5. Air Force Good Conduct Medal Citation, dtd \_\_\_\_
6. Report of Result of Trial memorandum
7. Personal Data Sheet
8. Record of Trial (2 volumes)

**OR**

5 Attachments:

1. (Proposed Action of the Convening Authority)(DD FormDD Form 2329 with Proposed Action)
2. Waiver of Clemency Matters, dtd \_\_\_\_ (if used)
3. Report of Result of Trial memorandum
4. Personal Data Sheet
5. Record of Trial (2 volumes)

1st Ind, (Convening Authority)

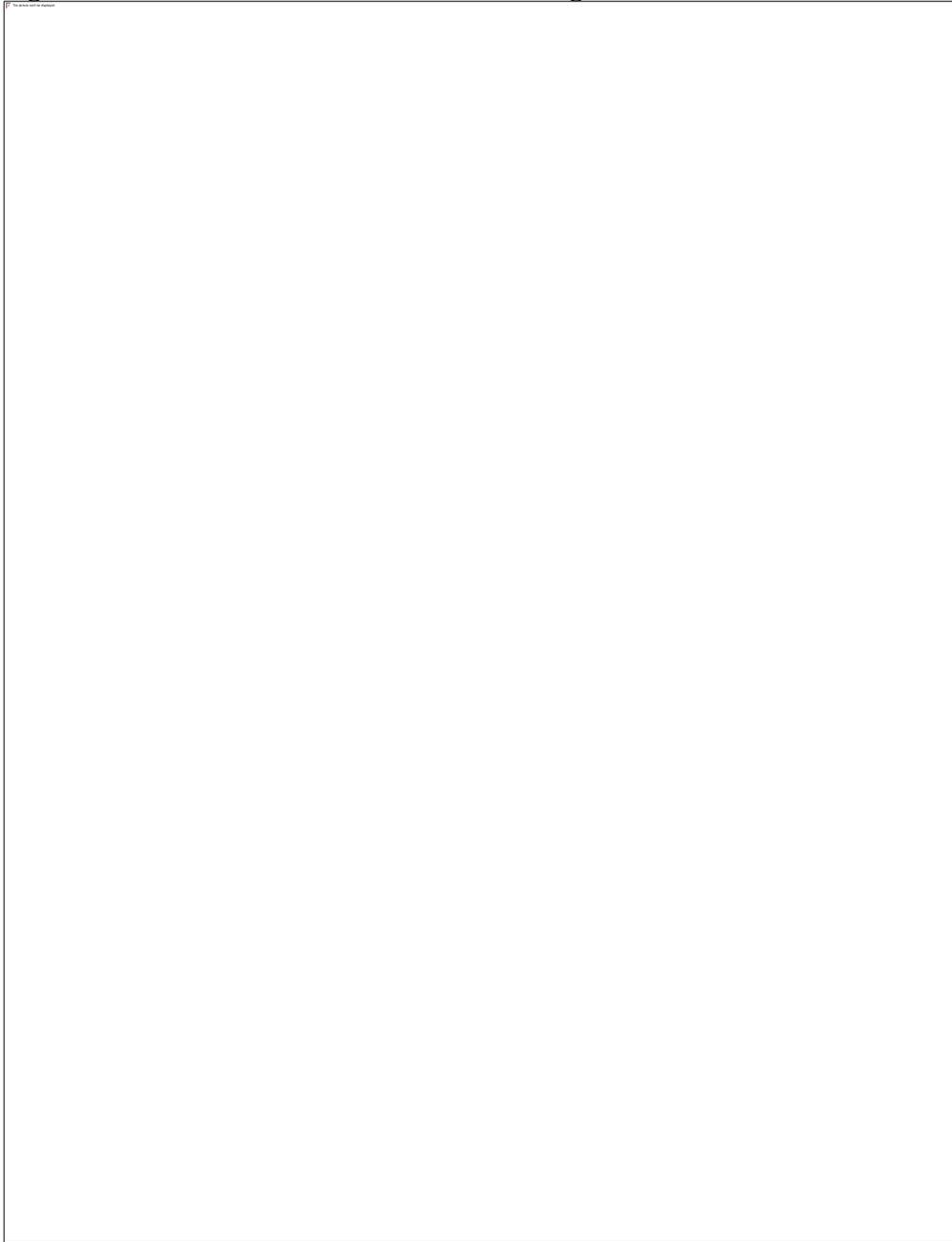
(Date)

MEMORANDUM FOR (Judge Advocate Office)

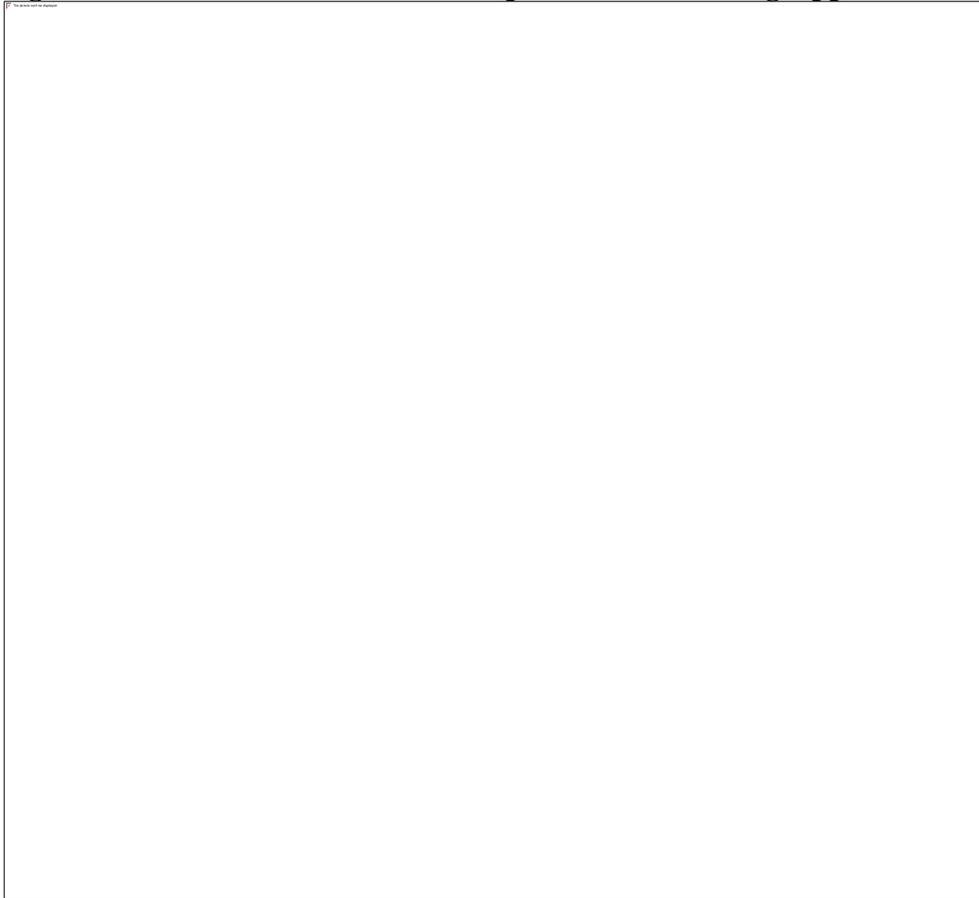
I considered the attachments before taking action on this case.

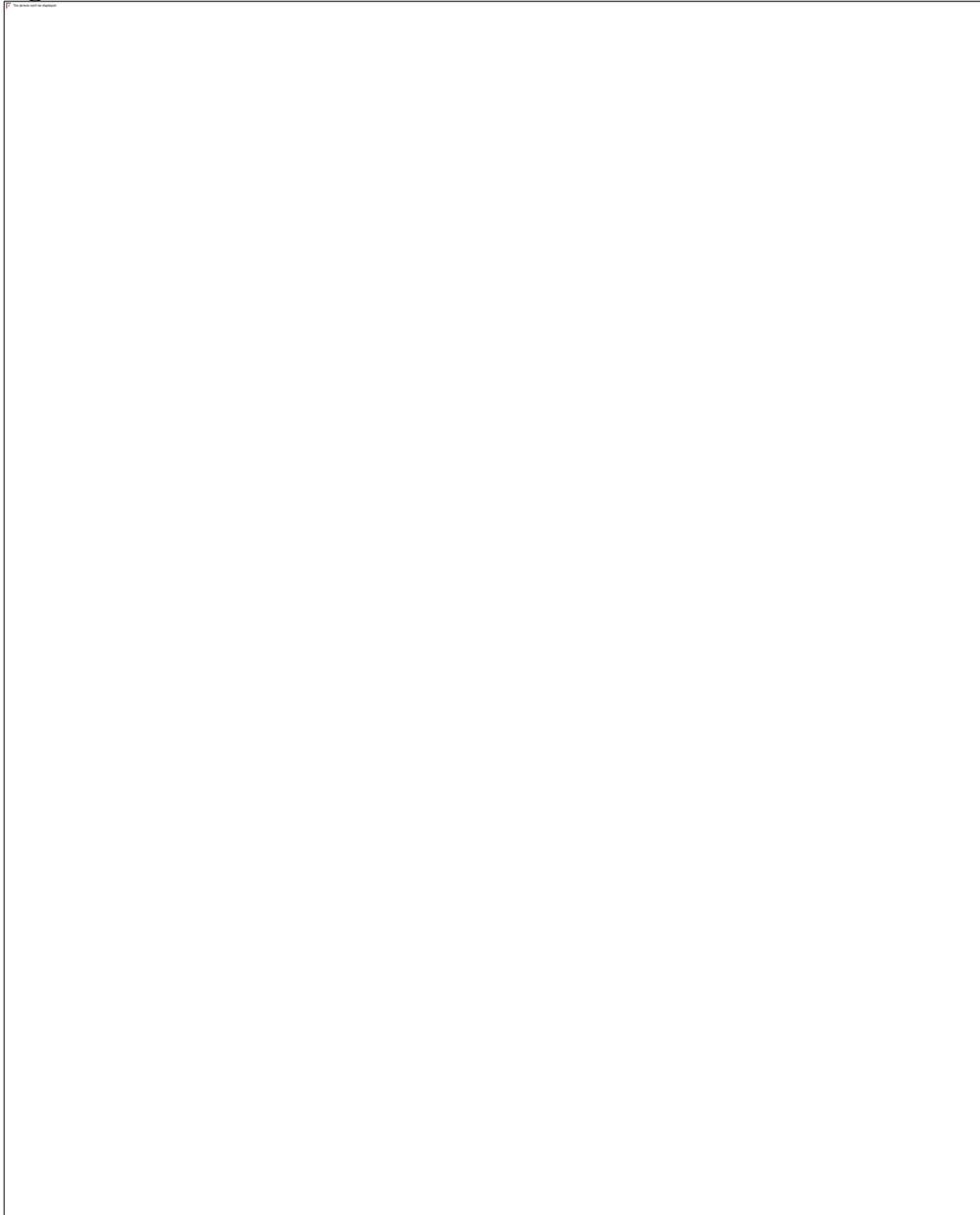
(NAME), (Rank), USAF  
Commander

**Figure A9.11. Victim Election for Recording**



**Figure A9.12. Victim Election for Representation During Appellate Review**



**Figure A9.13. Victim Election for Record of Trial****Figure A9.14. Notification of Required Excess Leave and Indorsements**

MEMORANDUM FOR (Rank, Name, SSN, Losing Unit of Accused)

FROM: (Convening Authority or Staff Judge Advocate if excess leave is directed in action)

SUBJECT: Required Excess Leave / Appellate Review Leave

1. On (date of sentence), you were sentenced by (general/special) court-martial. Your sentence, as approved by the court-martial convening authority, included (final action: type of discharge, confinement sentence, grade reduction). You are hereby required, under Article 76a, UCMJ (UCMJ), to take leave pending completion of appellate review of your conviction by court-martial.

The effective date of your appellate review leave will be determined administratively, and you will receive an Air Force Form 899, *Request and Authorization for Permanent Change Of Station Military*, and Air Force Form 988, *Leave Request/Authorization*, through your Force Support Squadron and approved by HQ AFSFC indicating your departure date and your appellate review leave start date.

2. If you have accrued ordinary leave, you can elect to:

a. Receive pay and allowances during the period of accrued leave, then continue on unpaid required excess leave; or

b. Receive a lump sum payment for the accrued leave, as of the day before the required excess leave begins, and serve the entire period of required leave on unpaid excess leave. If you elect this option, you are only entitled to base pay. This entitlement does not extend to allowances or special pay.

3. If you have no accrued leave, the entire period of appellate review leave will be unpaid excess leave.

4. While on required appellate review leave, you remain a member of the United States Air Force, on active duty and subject to UCMJ, to lawful orders and regulations and to recall from required appellate review leave as provided in paragraph 5. While on appellate leave you and your dependents will be entitled to medical care, use of military exchange facilities, commissaries, and other military welfare benefits. These entitlements may be curtailed or terminated for cause; therefore, you and your dependents must follow all applicable rules and maintain proper conduct. In order to make use of these benefits, you and your dependents will be issued appropriate identification cards of limited duration.

5. You are required to provide a correct leave address and report any changes to your address to (Base Military Justice Section) and **HQ AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236**. Failure to provide a correct address may result in loss of valuable opportunities to recoup any pay and allowances, which you may be entitled to if your sentence is disapproved or set aside. It may also prevent you from receiving important instructions regarding your case while undergoing appellate review. You are also subject to recall from appellate leave. Failure to return promptly to your unit (if directed by order delivered or mailed to your leave address) could result in placement in absent without leave or desertion status and could result in disciplinary action.

6. You will be informed of any significant action or decisions with regard to the appellate review of your conviction. This information and instructions will be sent to you at your leave address. If you have any questions concerning your status or your court-martial, contact the Appellate Defense Division, AFLOA/JAJA, 1500 West Perimeter Road, Suite 1100, Joint Base Andrews Naval Air Facility Washington, Maryland, 20762 (Phone: (240) 612-4770 or toll free 1-800-414-8847). You may also contact your defense counsel, or any defense counsel or staff judge advocate office at any Air Force base.

7. You are required to complete the 1st Indorsement to this memorandum. This includes providing an appellate leave address, making your elections regarding accrued leave and

acknowledging that you cannot depart on excess leave without out processing through Force Support Squadron Separations office and without orders from AFSFC/FC.

8. (Base Force Support Squadron, SEPARATIONS POC information) will brief you regarding your status, obligations and entitlements while on excess leave and complete all personnel actions in regards to out processing; they will also allow you to ask any questions you may have in this regard.

(Name, Rank, USAF)  
(Commander)(Staff Judge Advocate)

1st Ind, (Rank , Name, SSN, Losing Unit of Accused)

MEMORANDUM FOR (Losing Commander)

1. On \_\_\_\_\_, I received a copy of this document regarding required excess leave. In accordance with paragraph 7 of this memorandum, I provide the following appellate review leave address and contact information:

(Street Address) \_\_\_\_\_

(City, State) \_\_\_\_\_

(Zip code) \_\_\_\_\_

(Phone number) \_\_\_\_\_

(E-mail address) \_\_\_\_\_

In regards to my accrued leave, I elect as follows:

\_\_\_\_ Receive pay and allowances during the period of accrued leave then continue on unpaid required excess leave.

\_\_\_\_ Receive a lump sum payment for the accrued leave, as of the day before the required excess leave begins, and serve the entire period of required leave on unpaid excess leave. I will only be entitled to base pay. This entitlement does not extend to allowances or special pay.

\_\_\_\_ I do not have accrued leave, the entire period of appellate leave will be unpaid excess leave.

I acknowledge that I cannot depart on excess leave without out processing through (Force Support Squadron).

Accused

(Name, Rank, USAF)

2nd Ind (Losing Commander)

MEMORANDUM FOR (Rank, Name, SSN, Losing Unit of Accused)

1. The (general/special) court-martial convening authority, (through (his/her) staff judge advocate), has directed that you be placed on required excess leave pending completion of appellate review of your recent court-martial conviction. During the period of excess leave, you will be administratively assigned to **AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236**. Upon completion of out-processing, you shall immediately proceed to the leave address you provided where your accrued leave, if elected, and your required excess leave will commence.
2. You are required to complete all base out processing and personnel actions through the local Force Support Squadron; upon approval of appellate leave package by AFSFC/FCI you will receive an Air Force Form 899 Request and Authorization for Permanent Change of Station and Air Force Form 988 Leave Request Authorization indicating your departure date and your appellate review leave start date.
3. You are required to complete the 3d Indorsement below, which includes providing both your current leave address and telephone number. You are also required to promptly report any change in that address by first class mail. You must make arrangements for receiving all mail that is addressed to the leave address you provide. Send any change of address to **AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236**.
4. (Insert name and designation of briefer) briefed you on (Insert date of briefing) regarding your status, obligations, and entitlements while on required leave and on the appeal of your case, and permitted you to ask any questions you had in this regard.

(Name, Rank, USAF)  
(Commander)(Title of Representative)

3d Ind (Rank, Name, SSN, Losing Unit of Accused)

MEMORANDUM FOR (Losing Commander)

On this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, I received a copy of the convening authority's letter placing me on excess leave. I have been briefed as noted in paragraph 3 of my current commander's indorsement. I understand that I must provide information as to any change of address without delay and am responsible for receiving mail addressed to me at the address last provided by me. My initial leave address and telephone number, for use until I provide a change as required by paragraph 2 of the 2nd Indorsement, is as follows:

(Street Address) \_\_\_\_\_

(City, State) \_\_\_\_\_  
 (Zip code) \_\_\_\_\_  
 (Phone number) \_\_\_\_\_  
 (E-mail address) \_\_\_\_\_

I also understand that my appellate defense counsel also requests that I provide a long term alternative address and phone number of a relative or other person to contact if I cannot be reached at the above address. That address, the provision of which is optional, is:

(Street Address) \_\_\_\_\_  
 (City, State) \_\_\_\_\_  
 (Zip code) \_\_\_\_\_  
 (Phone number) \_\_\_\_\_  
 (E-mail address) \_\_\_\_\_

Finally, I understand it is critical that I keep my appellate defense counsel informed of my current address.

(Name, Rank, USAF)  
 Accused

cc:

AFLOA/JAJM  
 AFLOA/JAJA  
 HQ AFSFC/FC  
 Losing Unit/CC  
 Losing FSS/CC  
 Losing Unit /JA  
 Gaining Unit/CC  
 Gaining FSS/CC  
 Gaining Unit/JA

**Figure A9.15. Sample Final Order**

DEPARTMENT OF THE AIR FORCE  
 HEADQUARTERS NINTH AIR FORCE (ACC)  
 SHAW AFB SC 29152

Special Court-Martial Order  
 No. 7

2 December 2019

In the special court-martial case of SENIOR AIRMAN WALTER F. DUNE, 111-22-3333, United States Air Force, 18th Maintenance Squadron, the sentence to bad conduct discharge, confinement for 3 months, forfeiture of \$250.00 per month for 8 months, and reduction to airman

basic, as memorialized in the Entry of Judgment, dated 5 November 2019, has been finally affirmed. Rule for Courts-Martial 1102 having been complied with, the bad conduct discharge will be executed. The unexecuted portion of the sentence to confinement was remitted by the convening authority on 22 September 2019. The sentence was adjudged by military judge on 12 September 2019 (ACM S32561).

(signature)

W. E. SMITH

Lieutenant General, USAF

Commander

DISTRIBUTION:

Attachment 10

TEMPLATES AND MATTERS RELATED TO VICTIM AND WITNESS ASSISTANCE PROGRAM

Figure A10.1. VWAP Responsibilities

Responsibility.....	Responsible Agencies
...	
Component Responsible Official, USAF.....	The Judge Advocate General
Local Responsible Official.....	Installation Commander or Special Court-Martial Convening Authority; (may delegate responsibilities to Staff Judge Advocate or VWAP Coordinator)
Develop training syllabus.....	Judge Advocate, Security Forces, Air Force Office of Special Investigations, SG, Sexual Assault Response Coordinator, FAP
Accomplish training.....	Judge Advocate, Security Forces, Air Force Office of Special Investigations, SG, Airman and Family Readiness Center, Installation Chaplain, Sexual Assault Response Coordinator, FAP
Prepare notice forms.....	Judge Advocate
Identify victims.....	Security Forces, Air Force Office of Special Investigations, Judge Advocate, Commanders, Sexual Assault Response Coordinator, FAP, First Sergeants, Airman and Family Readiness Center, SG, Installation Chaplain

Notify victims of rights/services.....	Security Forces, Air Force Office of Special Investigations, Judge Advocate, Sexual Assault Response Coordinator, FAP, SG, Airman and Family Readiness Center
Notify victims of state crime victims' funds.....	Judge Advocate
Coordinate/deliver services.....	Airman and Family Readiness Center, SG, Sexual Assault Response Coordinator, FAP, other base agencies
Pretrial arrangements/dispositions, decisions, victim consultation ( <i>e.g.</i> , plea agreements)..... ....	Judge Advocate
Care of evidentiary property.....	Security Forces, Air Force Office of Special Investigations
Protection from offender.....	Security Forces, Air Force Office of Special Investigations, civilian authorities
Separate waiting area.....	Judge Advocate
Preferral of charges, pleas or dismissal.....	Judge Advocate
Schedule judicial proceedings.....	Judge Advocate
Notify victim of release/transfer/detention status of suspect	Judge Advocate, Security Forces
Notice of trial results.....	Judge Advocate
Notice of victim's post-trial rights.....	Judge Advocate
Central Repository of information of prisoner status.....	AFSFC/FC

**Figure A10.2. Template Notice of Proceedings**

(Date)

MEMORANDUM FOR (Rank and Name of SVC or Victim's Counsel)

FROM: (Judge Advocate Office and Rank and Name of Legal Office Member sending Notification)

SUBJECT: Notice of Proceeding – (Rank and Name of Accused)

1. We have received notice that you represent (Rank and Name of Victim), the alleged victim in case of United States v. (Rank and Name of Accused).
2. Please be advised a (Seven Day Hearing) (Article 32 Preliminary Hearing) (Court-Martial) (A proceeding of the Air Force clemency. ) has been scheduled for [INSERT DATE AND TIME OF HEARING] at the following location: [INSERT DATE AND TIME OF HEARING]. Please contact AFLOA/JAJR at (240) 612-4840 regarding receiving notices for any proceedings related to the accused's parole board relating to the offense(s).
3. If you have any questions please contact [INSERT NAME AND CONTACT INFORMATION OF POC].

(NAME), (Rank), USAF

(Duty Title of Judge Advocate Representative)

## Attachment 11

**INSTRUCTIONS AND TEMPLATES FOR POST-TRIAL PROCEDURE FOR CASES REFERRED TO TRIAL PRIOR TO 1 JANUARY 2019****Figure A11.1. Former Chapter 8 of AFI 51-201: Post-Trial Procedure for Cases Referred Before 1 January 2019**

*Section A11A—Post-Trial Processing and Report of Result of Trial for Trials Using the Pre-1 January 2019 Military Justice Act of 2016 Sentencing Procedures (R.C.M. 1101, 1305 (MCM, 2016 ed.).*

**A11.1. Effective Dates and References.** Post-sentencing processing under the Military Justice Act of 2016 differs substantially from post-trial processing using the pre-Military Justice Act of 2016 procedures. Military Justice Act of 2016 procedures apply to all cases referred to a court-martial on or after 1 January 2019; however, the Article 60, UCMJ, that applies is the one that was in effect at the time of the earliest offense for which the accused was found guilty. In all cases referred prior to 1 January 2019, pre-Military Justice Act of 2016 post-trial procedures apply. References to the MCM, including any R.C.M. or M.R.E., or UCMJ contained within Chapter 8 refer to the MCM (2016 ed.) unless otherwise noted. Post-trial processing pursuant to the Military Justice Act of 2016 is addressed in Chapter 13 of AFI 51-201.

**A11.2. Post-Trial Processing.**

A11.2.1. An accused has a right to timely review during the post-trial process. Notwithstanding any established metrics and milestones, a presumption of unreasonable delay attaches to any case completed after 11 June 2006 that did not have initial action taken within 120 days of the date the sentence was adjudged. See *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006).

A11.2.2. If more than 120 days has elapsed between sentence and convening authority action, the trial legal office prepares a chronology or similar documentation explaining any delays. (T-1) The SJA ensure this documentation is included in the ROT.

**A11.3. Report of Result of Trial.** The Report of Result of Trial is the primary source of findings and sentence information.

A11.3.1. Publication of Report of Result of Trial. After final adjournment of the court-martial in every case, trial counsel promptly signs and publishes the Report of Result of Trial memorandum. (T-1) The SJA ensures copies of the Report of Result of Trial memorandum are distributed to the accused's immediate commander; the GCMCA, SPCMA and their SJAs; the commanders of the local Security Forces and AFOSI detachment, AFLOA/JAJM, AF/JAT, and, if the accused is in confinement, the commanding officer responsible for the confinement facility and the confinement officer or noncommissioned officer. (T-1) In the case of an Air National Guard member, the SJA also provides a copy of the Report of Result of Trial memorandum to 201 MSS/CC. (T-1) Refer to the Report of Result of Trial Memo Checklist on the Virtual Military Justice Deskbook for the most updated distribution list. The Report of Result of Trial memorandum is formatted and distributed as follows:

A11.3.1.1. Format. Use AMJAMS to produce the initial draft of the Report of Result of Trial memorandum. The date on the Report of Result of Trial memorandum is the date it is published. Pleas and findings are entered for both the charges and the specifications. Figure A11.2 is a sample Report of Result of Trial memorandum.

A11.3.1.2. Corrected Copies. If a published Report of Result of Trial memorandum contains errors, the SJA or designee ensures a corrected copy is published and included in the ROT.

A11.3.1.2.1. If the correction involves deletion of text, the deleted matter is included with a line through it; the deleted text should still be legible (e.g., ~~Technical~~). If the correction involves the addition of text, the added matters are underscored (e.g., Technical). If the correction is a substitution, both the deleted and the added matters are included, with the former lined out and the latter underscored (e.g., ~~Staff~~ Technical Sergeant).

A11.3.1.2.2. The corrected copy is identified in the heading by using “CORRECTED COPY – DESTROY ALL OTHERS.”

A11.3.1.2.3. In cases involving sex offenses or child victims, if the corrected copy is expurgating an erroneously unexpurgated matter, the previously unexpurgated text is not included.

A11.3.1.2.4. The date included on the corrected copy is the date the corrected copy is published, not the date of the original order.

A11.3.1.2.5. If additional corrections are necessary, the heading reflects that the order is the second, third, etc., corrected copy. Changes from a previous corrected copy are incorporated by deleting the language lined through and retaining the added language without the underscore.

A11.3.1.3. Expurgated and Unexpurgated Copies. When the content of a Report of Result of Trial memorandum includes classified or other matters unfit for publication, the SJA or designee prepares an unexpurgated copy and an expurgated copy. (T-1) Both versions are included in the ROT. The SJA or designee adheres to the following guidance in preparing unexpurgated and expurgated copies of the Report of Result of Trial memorandum:

A11.3.1.3.1. Classified material should be replaced with asterisks in the expurgated copy.

A11.3.1.3.2. For cases involving sex offenses, the names of victims are replaced with their initials in the expurgated copy.

A11.3.1.3.3. In cases involving child victims under the age of 16 years at the time of the offense, the names of child victims are replaced with their initials in both the expurgated and unexpurgated copies. If the offense charged is child pornography, the names of child victims under the age of 18 at the time of the offense should be replaced with their initials in both the expurgated and unexpurgated copies.

A11.3.1.3.4. Obscene language is replaced with asterisks in the expurgated copy.

A11.3.1.3.5. Distribution. Distribute unexpurgated versions of the Report of Result of Trial memorandum to AFLOA/JAJM, the commanding officer for the confinement

facility, and the confinement officer or noncommissioned officer in charge, unless it contains classified information. Only distribute unexpurgated Report of Result of Trial memorandum containing classified information to AFLOA/JAJM as part of the original ROT, and properly maintain an unexpurgated version in the legal office's copy of the ROT. Distribute expurgated versions to the remaining parties or entities listed on the distribution list on the Virtual Military Justice Deskbook. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list mark, "\*Recipients of unexpurgated Report of Result of Trial Memorandum."

#### A11.3.1.4. Content.

A11.3.1.4.1. Pleas and Findings. The SJA or designee ensures the Report of Result of Trial memorandum accurately reflects pleas and findings, to include charges and specifications dismissed by the military judge, findings of guilty to lesser included offenses, and pleas or findings with exceptions or substitutions. Specifications that have pleas and findings with exceptions or substitutions are entered verbatim, not simply summarized.

A11.3.1.4.2. Sentence. If applicable, the SJA or designee includes both the sentence as announced as well as any pretrial agreement sentence limitation in the sentence portion of the Report of Result of Trial memorandum.

A11.3.1.4.3. Pretrial Confinement Credit. If applicable, the SJA or designee includes any pretrial confinement credit awarded to the accused on the Report of Result of Trial memorandum, along with the source of each portion of credit and total days of credit awarded (e.g., "310 days of confinement credit based upon 10 days of credit for restriction tantamount to confinement, 100 days of credit for military pretrial confinement, and 200 days of administrative credit for illegal pretrial confinement.").

A11.3.1.4.4. Other Matters. The SJA ensures the Report of Result of Trial memorandum reflects "Sex Offender Notification Required," "DNA Processing Required," "Lautenberg Amendment Offense," or "Firearms Prohibition," as appropriate. More information on the requirements for such cases is provided in AFI 51-201, Chapter 15.

A11.3.1.5. In addition to the Report of Result of Trial memorandum, use the DD Form 2707-1, *Department of Defense Report of Result of Trial*, in conjunction with the DD Form 2707, *Confinement Order*, if the accused is sentenced to confinement. Further guidance on use of the DD Form 2707-1 is available on the Virtual Military Justice Deskbook.

### ***Section A11B—Post-Trial Confinement***

**A11.4.** For rules regarding post-trial confinement, refer to AFI 51-201, Section 13I. This process remains unchanged under the revised rules unless noted below.

*Section A11C—Preparing, Serving, and Forwarding the ROT (R.C.M. 1104)*

**A11.5. Preparing the ROT.** Records of trial are prepared in accordance with R.C.M. 1103, 1305, MCM Appendices 13-15, and AFMAN 51-203, and are authenticated in accordance with R.C.M. 1104(a).

**A11.6. Serving the ROT.**

A11.6.1. The SJA ensures the ROT is served on the accused in accordance with R.C.M. 1104(b) or 1305(d). The SJA also ensures proof of service, or substitute service, is included in the ROT. The defense counsel of record should be notified when service on the accused is completed.

A11.6.2. Victims of a crime punishable under Articles 120, 120b, 120c, 125, UCMJ, or any attempt to commit such offense in violation of Article 80, UCMJ, are entitled to a copy of the record of proceedings without charge as soon as the records are authenticated. See R.C.M. 1103(g)(3); Article 54, UCMJ. The victim's counsel of record should be notified when service of the ROT on the victim is completed.

A11.6.2.1. Conviction. In a case with a conviction, in accordance with R.C.M. 1103(g)(3), trial counsel or a designated representative provides victims with the record of proceedings. The record of proceedings served on the victim includes the following: a copy of the transcript; a copy of the charge sheet; a copy of the convening order and any amending orders; a copy of the request, if any, for trial by military judge alone, or that the membership of the court shall include enlisted persons; a copy of the exhibits that were received in evidence; and, when made available, a copy of the dated, signed action by the convening authority.

A11.6.2.1.1. The convening authority's action is normally prepared after the ROT is authenticated. The victim may request a delay in receiving the ROT until receipt of the convening authority's action. Any request to delay receipt of the ROT until action is coordinated through the victim's counsel, if any, made in writing, and memorialized with documentation. **Note:** A delay in the victim's receipt of the ROT may affect a victim impact statement submitted pursuant to R.C.M. 1105A.

A11.6.2.1.2. Records sealed in accordance with R.C.M. 1103A are not provided to the victim. The SJA ensures all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act. In a case involving multiple victims, it may be necessary to redact the privacy information and content pertaining to one victim (e.g., photographs of a sexual nature, medical information, personal identifying information, etc.) from the copy of the record provided to other victims.

A11.6.2.2. Acquittal. In a case resulting in acquittal, trial counsel or a designated representative furnishes the victim with the same record provided to the accused, including the following: a copy of the convening order (and any amending orders); sufficient information to establish jurisdiction over the accused and the offense; and an abbreviated ROT. R.C.M. 1103(e) and AFMAN 51-203. The SJA, trial counsel, or designee ensures all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act.

**A11.7. Forwarding the ROT.** The servicing SJA or designee forwards the ROT to the convening authority or the convening authority's SJA in accordance with R.C.M. 1104(e). After the convening authority takes action (or in the case of an acquittal, after the promulgating order is signed), the SJA or designee promptly forwards the original ROT and required copies for post-trial review.

A11.7.1. Cases requiring Article 64(a) review are forwarded to the GCMCA's SJA using the most cost-effective method that provides for means of tracking. (T-1)

A11.7.2. All other cases are forwarded to AFLOA/JAJM; this includes cases resulting in an acquittal or terminated without findings (e.g., mistrial or dismissal of all charges) (T-1)

A11.7.3. Incomplete records of trial (e.g., records of trial that are missing documents or have unsigned receipts) should not be forwarded to AFLOA/JAJM, and incomplete records of trial are not considered transferred to AFLOA/JAJM in AMJAMS.

A11.7.4. AFMAN 51-203 provides additional guidance related to the number of required copies that must accompany the original ROT and forwarding instructions.

#### ***Section A11D—Matters Submitted by Victims (R.C.M. 1105A)***

**A11.8. Post-Trial Submission of Victim Impact Statement.** In any case where findings and sentence have been adjudged for an offense that involved a victim, the SJA ensures the victim is provided an opportunity to submit matters for consideration by the convening authority, or by another person authorized to act under Article 60, UCMJ, before the convening authority or such other person takes action. See R.C.M. 1105A.

A11.8.1. In this section, the term "victim" means a person who has suffered a direct physical, emotional, or pecuniary loss as a result of a commission of an offense under the UCMJ of which the accused was found guilty and on which the convening authority is taking action under R.C.M. 1107. See Article 6b(b), UCMJ. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes one of the following (in order of precedence): spouse, legal guardian, parent, child, sibling, or similarly situated family member.

A11.8.2. Immediately following trial, or as soon thereafter as practicable, the SJA or trial counsel creates and signs a letter to each victim, if any, concerning the results of trial. The trial counsel or designee personally serves this letter on the victim or the victim's counsel in conjunction with the DD Form 2704, *Victim/Witness Certification and Election Concerning Prisoner Status*. A template for this letter is provided at Figure A11.3.

A11.8.2.1. This letter invites the victim to provide input, in the form of a written, signed victim impact statement, as to whether or not the convening authority should approve the findings and sentence or grant some form of clemency.

A11.8.2.2. The letter notifies the victim that he or she has ten calendar days after the later of (A) if the victim is entitled to a copy of the record of proceedings, the date on which the victim receives a copy of the record of proceedings or waives the right to receive a copy of the record of proceedings, or (B) the date on which the Staff Judge Advocate's Recommendation (SJAR) is served on the victim. For a SCM, the victim has seven calendar days after the sentence is announced to submit a statement to the SCM officer. If

a victim requests additional time for submission of matters, the convening authority or other person taking action may, for good cause, extend the submission period for up to but not more than an additional 20 calendar days.

A11.8.2.3. The letter states that any statements will be provided to the accused and defense as part of the post-trial process and that the defense will have an opportunity to comment on it as a part of their post-trial submission to the convening authority.

A11.8.3. Eligible victims may consult with a legal assistance attorney or SVC about the results of the court-martial and the post-trial process. The trial counsel or designee may explain the post-trial process to victims in accordance with DD Form 2703, *Post-Trial Information for Victims and Witnesses of Crime*.

A11.8.4. SJAs should not unreasonably delay providing the SJAR and post-trial paperwork to the accused and defense counsel in order to try to locate a victim who is not readily available or who chooses to provide a statement after the time and date set forth in the letter from the SJA to the victim.

A11.8.5. Failure to submit a statement within the time prescribed is deemed a waiver of the right to submit such a statement. The right to submit a statement is not a continuing right beyond the allotted time for submission. A victim may expressly waive, in writing, the right to submit a statement. Once filed, such a waiver may not be revoked.

**A11.9. Service of Victim Impact Statement.** The victim impact statements, if any, are served on the accused and defense counsel. If the victim submits a statement after the SJAR and ROT have been served on the accused and defense counsel, service of the victim impact statement on the accused and defense counsel re-starts the 10-day period for the accused to submit matters for the convening authority's consideration on clemency. If the victim impact statement is served separately from the SJAR or SJAR Addendum, the SJA or designee includes proof of service or substitute service in the ROT.

#### ***Section A11E—Matters Submitted by the Accused and Defense Counsel (R.C.M. 1105)***

**A11.10. Notice Regarding Post-Trial Submissions.** The SJA, trial counsel, or assistant trial counsel provides the accused and defense counsel a memorandum informing the accused of the right to submit matters, including clemency matters, for the convening authority's consideration, and the time period for making such submissions. A template of this letter is provided at Figure A11.4.

A11.10.1. The letter is addressed to the accused and a copy is provided to the defense counsel responsible for post-trial matters. If a SJAR is not required in the case, the letter is provided to the detailed military defense counsel, unless the accused requested otherwise. The SJA or designee ensures a copy of the notification letter is included, with the accused's receipt, in the ROT as specified in AFMAN 51-203.

A11.10.2. Waiver of Accused's Right to Submit Matters. If the accused submits a waiver of the right to submit matters, the SJA or designee ensures the written waiver is included in the ROT. Waiver templates are included at Figure A11.5 and Figure A11.6.

**A11.11. Application to Defer Sentence and Waive Required Forfeitures.** Before action is taken on a case, an accused may submit an application to the convening authority, through the

servicing SJA, to defer any adjudged or mandatory forfeiture of pay or allowances, reduction in grade, or service of a sentence to confinement. See Articles 57(a)(2), 57a(a), and 58b(a)(1), UCMJ. If an accused has dependents, an application may also be submitted to the convening authority, through the servicing SJA, to waive any mandatory forfeiture of pay and allowances under Article 58b(b) for the benefit of the accused's dependents. Applications for deferral or waiver may be submitted through the servicing SJA any time after the sentence is announced and before action. See Section 9H for additional guidance on deferring and waiving forfeitures of pay and allowances.

**A11.12. Matters Submitted by the Accused.** An accused may submit matters, including clemency recommendations, for the convening authority to consider before taking action on the case. Failure to submit matters within the time prescribed is deemed a waiver of the right to submit such matters. Submission of any matters is deemed a waiver of the right to submit additional matters unless the right to submit additional matters within the prescribed time limits is expressly reserved in writing. An accused may also waive, in writing, the right to submit matters; once submitted, such waiver may not be revoked. See R.C.M. 1105(d). R.C.M. 1105 provides further discussion on matters that may be submitted, waivers, and the appropriate time periods for submissions.

**A11.13. Return to Duty.** The return to duty system offers selected enlisted personnel with exceptional potential the opportunity for clemency action concerning the characterization of their discharges and possible return to duty. The applicant, with assistance of defense counsel, submits a letter and attachments to the convening authority or TJAG requesting a recommendation for return to duty. The defense counsel is responsible for ensuring the application, with the requisite recommendation, is forwarded to the Air Force Clemency and Parole Board. AFI 31-105, paragraph 12.9 and Attachment 18, provides additional guidance on applications and requirements for applications for return to duty.

***Section A11F—Staff Judge Advocate's Recommendation and Addendum (R.C.M. 1106)***

**A11.14. Requirement for Staff Judge Advocate's Recommendation.**

A11.14.1. A Staff Judge Advocate's Recommendation is required in cases where the convening authority takes action on a ROT by general court-martial, a ROT by special court-martial that includes a sentence to a bad conduct discharge or confinement for one year, or a ROT by special court-martial in which a victim is entitled to submit a statement pursuant to R.C.M. 1105A.

A11.14.2. In the case where a SJAR is not required, the SJA must provide the convening authority with the following documents: the ROT, the defense submission, a draft acknowledgement that the convening authority considered the defense submissions (to be signed by the convening authority), and a proposed action for the convening authority's signature.

A11.14.2.1. When a SJAR is not required, the action may be forwarded using the sample action memorandum provided in Figure A11.8, to ensure all of the matters the convening authority is required to consider are listed. If this action memorandum is not used, the SJA ensures that whatever form is used reflects that the convening authority considered all the required matters.

A11.14.2.2. Practitioners should be deliberate if raising new matters in the SJAR. The SJA ensures any new matters are served on the accused and accused's counsel and allows ten days from service for the accused to submit comments. R.C.M.1106(f)(7).

**A11.15.** Staff Judge Advocate's Recommendation Contents. A SJAR should be a clear and concise recommendation written in memorandum format containing the information required by R.C.M. 1106(d). The SJA or designee ensures copies of the Report of Result of Trial memorandum and the accused's personal data sheet admitted at trial, or at a post-trial hearing (whichever is current), are attached to the SJAR. The original SJAR with all attachments are included in the ROT.

A11.15.1. When combined with the SJAR and the Report of Result of Trial memorandum, the personal data sheet ensures that required information concerning the accused's service record is provided to the convening authority. The SJA or designee ensure the attachments follow immediately behind the SJAR in the ROT, even if these documents are also included in other parts of the record. A copy of the SJAR and attachments is included in each copy of the ROT.

A11.15.2. The SJA must include in the Recommendation items required by R.C.M. 1106 that are not included on the personal data sheet or the Report of Result of Trial memorandum. This includes any clemency recommendations made by the sentencing authority (made in conjunction with the announced sentence) and any additional credit awarded by the military judge for illegal pretrial confinement. See R.C.M. 1106(d)(3). The SJAR should also attach the victim impact statement (if any), the maximum sentence for the guilty specifications/charges, and a copy or summary of the terms and conditions of any plea agreement, including a statement of any action the convening authority is obligated to take under the agreement or a statement of the reasons why the convening authority is not obligated to take specific action under the agreement.

A11.15.2.1. The SJAR should contain a statement informing the convening authority what is prohibited under Article 60(c), UCMJ, for offenses committed on or after 24 June 2014 per Fiscal Year 2014 National Defense Authorization Act (Fiscal Year 14 National Defense Authorization Act), Section 1702(b). For cases that involve at least one offense committed before 24 June 2014, paragraph 9.24.3. discusses the limits of the convening authority's discretion. Templates are provided at Figure A11.10 and A11.11.

A11.15.2.2. If trial counsel recommends to the convening authority that the accused be recognized for substantial assistance, that memorandum should be included as an attachment to the Staff Judge Advocate's Recommendation. See paragraph 13.22. and Figure A11.9.

A11.15.3. When an allegation of legal error is raised in matters submitted under R.C.M. 1105, or when otherwise deemed appropriate by the SJA, the SJAR states the SJA's opinion as to whether corrective action on the findings or sentence should be taken.

A11.15.4. The SJAR should address any previously approved request from the accused for deferral of confinement, forfeitures of pay, and/or reduction in grade, and any previously approved or pending request from the accused or the accused's dependents for a waiver of mandatory forfeitures under Article 58b, UCMJ. The SJA or designee ensures approved deferrals and waivers are documented in the convening authority's action, and the convening authority must act upon pending requests.

A11.15.4.1. If a convening authority previously disapproved a request for deferral or waiver prior to initial action on the sentence, comment in the SJAR on that request and what action may still be appropriate. For example, a convening authority may disapprove a deferral or waiver request based upon matters adverse to the accused from outside the record. If the convening authority also considers such matters when taking action on the sentence, the accused is entitled to notice and an opportunity to rebut. See R.C.M. 1107(b)(3)(B)(iii). Notice may be satisfied through the SJAR.

A11.15.4.2. Any legal reviews of waivers of forfeitures are included as an attachment to the SJAR if the legal review is accomplished before the SJAR is published. Any legal review that may be prepared after the SJAR should be treated as an addendum to the SJAR and served on the accused for comment. The SJA or designee ensures the legal review is served on the accused before submission to the convening authority and is included in the completed ROT. See paragraph 8.32. for additional discussion.

#### **A11.16. Exceptions to Limitations on Actions by Convening Authority.**

A11.16.1. Trial Counsel Substantial-Assistance Exception. Upon the recommendation of the trial counsel identified in the ROT, in recognition of substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority has the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part even with respect to an offense for which a mandatory minimum sentence exists. See Fiscal Year 14 National Defense Authorization Act § 1702(b)(4)(B); Article 60(c)(4)(B), UCMJ. When substantial assistance is provided, trial counsel may make such a recommendation and attach it to the Staff Judge Advocate's Recommendation or to the Addendum. A template for the assistance memorandum is provided at Figure A11.9. An assistant trial counsel may only sign the trial counsel memorandum if the trial counsel is not reasonably available. If the assistant trial counsel and trial counsel do not agree on whether the accused provided substantial assistance, the opinion of the trial counsel identified in the ROT controls. For purposes of this rule, a STC does not qualify as trial counsel.

A11.16.2. Pretrial or Plea Agreement Exception. If a pretrial or plea agreement has been entered into by the convening authority and the accused as authorized by R.C.M. 705, the convening authority:

A11.16.2.1. Has the authority to approve, disapprove, commute, or suspend a sentence in whole or in part pursuant to the terms of the plea agreement, with the exception of mandatory minimum sentences.

A11.16.2.2. May commute a mandatory sentence of a dishonorable discharge to a bad conduct discharge pursuant to the terms of the plea agreement. The convening authority may not disapprove, commute or suspend any other mandatory minimum sentence.

**A11.17. Preparing and Signing the Staff Judge Advocate Recommendation.** The SJA must clearly indicate in the SJAR that the recommendation is from the SJA. (T-0) An assistant staff judge advocate performing the duties of the SJA may sign as "Acting as the Staff Judge Advocate." An assistant staff judge advocate may prepare the recommendation, but the SJA (or if unavailable, the person "Acting as the Staff Judge Advocate") must review the ROT and sign the Recommendation. No person who participated in the court-martial as a member, a military judge, a trial counsel, a defense counsel, or an investigating officer may draft or sign the SJAR or

addendum, or otherwise act as the SJA or legal advisor to any reviewing or convening authority in that case. See R.C.M. 1106(b).

A11.17.1. If the convening authority does not have a SJA (or “Acting as the Staff Judge Advocate”), or the person serving in that capacity is disqualified, then the convening authority requests the assignment of another SJA to prepare the SJAR or forwards the record to any GCMCA as provided in R.C.M. 1107(a). See R.C.M. 1106(c)(1). If the original SJA did not sign the SJAR, the SJA signing the Recommendation includes an explanation in the allied papers of the ROT. An explanation is not required if the ROT makes clear (e.g., forwarding memorandum, transfer memorandum) the reasons the original SJA did not sign the SJAR.

A11.17.1.1. For a SPCM, if all judge advocates on the SPCMCA’s staff are disqualified from preparing and signing the SJAR, forward the record to the GCMCA’s SJA. That officer may prepare and sign the SJAR or designate another SJA (or the person “Acting as the Staff Judge Advocate”) in the GCMCA’s command to prepare and sign the Recommendation.

A11.18.1.2. For a GCM, if all judge advocates on the GCMCA’s staff are disqualified from preparing and signing the SJAR, forward the record to the MAJCOM SJA. That officer may prepare and sign the SJAR or designate another SJA (or the person “Acting as the Staff Judge Advocate”) in the major command to prepare and sign the SJAR. If all of the SJAs (or the person “Acting as the Staff Judge Advocate”) in the MAJCOM are disqualified from preparing and signing the SJAR, the major command SJA requests AFLOA/JAJM’s assistance in designating a SJA to prepare and sign the Recommendation.

#### **A11.18. Service of the Staff Judge Advocate’s Recommendation.**

A11.18.1. Service on the Accused. The SJA or designee ensures copies of the SJAR, including its attachments, are served on the accused’s counsel and, unless impracticable, on the accused. The SJA or designee obtains receipts for service of the SJAR from both the accused and the accused’s counsel and includes them in the ROT. If service on the accused is impracticable, or if the accused so requests on the record at the court-martial or in writing, the SJA or designee forwards the accused’s copy to the accused’s defense counsel and attaches a statement to the ROT explaining the reasons the accused was not served. See R.C.M. 1106(f)(1).

A11.18.2. Service on Victim. If the accused was found guilty of any offense that resulted in direct physical, emotional, or pecuniary harm to a victim or victims, a separate copy of the recommendation will be served on the victim(s). When a victim is under eighteen years of age, incompetent, incapacitated, deceased, or otherwise unavailable, service shall be made in accordance with the R.C.M. 1106(f)(1).

**A11.19. Defense Response to the Staff Judge Advocate’s Recommendation.** The accused’s counsel may submit objections or rebuttal to any matter in the SJAR and may comment on any other matter. Defense counsel must submit comments within ten days of service of the ROT on the accused (under R.C.M. 1104(b)) or receipt of the SJAR, whichever is later, unless the period is extended. See R.C.M. 1106(f)(4) and (5). If a victim impact statement is accepted by a SJA during the accused’s ten days, the accused’s ten-day clock will restart on the day the accused and defense counsel have been served with the victim’s impact statement.

**A11.20.** Addendum to the Staff Judge Advocate's Recommendation. When the Staff Judge Advocate receives matters submitted by an accused or defense counsel under R.C.M. 1105 or 1106(f)(4) after service of the SJAR on defense, the SJA prepares an Addendum to the SJAR for the convening authority. The SJA must address whether corrective action is required when an allegation of error is raised in matters submitted under R.C.M. 1105. The response may consist of a statement of agreement or disagreement with the matter raised by the accused or counsel. R.C.M. 1106(d)(4). The SJA may address other matters raised by defense submissions in the Addendum. Figure A8.10 is a template addendum to the SJAR when defense matters are submitted. If matters are not submitted, the SJA must still prepare an addendum to the SJAR. See paragraph A11.20.3.

A11.20.1. The SJA ensures the Addendum to the SJAR:

A11.20.1.1. Lists each defense submission as a separate attachment to the addendum;

A11.20.1.2. Advises that, per R.C.M. 1107(b)(3)(A), the convening authority must consider the required matters in R.C.M. 1107(b)(3)(A); and

A11.20.1.3. Advises that the convening authority may consider other matters prior to taking action, such as the ROT, personnel records of the accused, and such other matters as the convening authority deems appropriate. However, if the convening authority considers matters adverse to the accused from outside the record (e.g., additional matters raised by any victim impact statements submitted), the accused is notified and given an opportunity to rebut. See R.C.M. 1107(b)(3)(B).

A11.20.2. New Matters in Addendum. New matters include all references to issues that are not included in the ROT and are not served on defense counsel and the accused with SJAR. New matters ordinarily do not include the SJA's discussion of the correctness of the defense counsel's comments on the recommendation. If the Addendum includes new matters, the SJA or designee serves the accused and defense counsel with the Addendum containing the new matters. The accused and the accused's counsel are allowed ten days from service of the Addendum to submit comments. R.C.M. 1106(f)(7).

A11.20.2.1. When an Addendum containing new matters is served upon the accused and defense counsel for comment, the SJA prepares a second or additional Addendum to address defense comments or the absence of such comments.

A11.20.2.2. The second or additional Addendum lists any additional defense submissions as an attachment, re-advises the convening authority to comply with paragraphs 8.21.1.2. and 8.21.1.3, and may address any matters raised in additional defense submissions. If any Addendum contains new matters, comply with paragraph 8.21.2.

A11.20.3. If the SJA does not receive matters from the accused or defense counsel per R.C.M. 1105 after service of the SJAR per R.C.M. 1106, the SJA must still prepare an Addendum for the convening authority. In this case, the matters addressed in paragraphs A11.21.1.1 are not required, nor would paragraph A11.21.2 apply unless new matters are addressed in the Addendum. Figure A11.13 is a template addendum to the SJAR when defense matters are not submitted.

**A11.21. Staff Summary Sheet.** SJAs should avoid use of a staff summary sheet in conjunction with the SJAR, the Addendum, and convening authority action memorandum. If a staff summary sheet or other document is used to forward documents, the SJA or designee must ensure it is

included in the ROT. The contents of any staff summary sheet should not ordinarily include any information not previously addressed in the SJAR or Addendum as such information may constitute new matters. The SJA or designee ensures any document used by the SJA to supplement the post-trial recommendation is served on the defense counsel if it contains new matters. *United States v. Thompson*, 43 M.J. 703 (A.F.C.C.A. 1995). If the staff summary sheet adds new matters not otherwise addressed in the SJAR or the Addendum, the SJA or designee ensures it is served on the accused and defense counsel for comment. *United States v. Leslie*, 16 M.J. 714 (A.F.C.M.R. 1983).

***Section A11G—Initial Action by the Convening Authority (Article 60, UCMJ; R.C.M. 1107)***

**A11.22. Initial Action.** The convening authority may not take initial action until the time period for the accused to submit matters for consideration under R.C.M. 1105(c) has expired or the accused has waived the right to submit such matters under R.C.M. 1105(d). A copy of the initial action by the convening authority should be served on the appropriate parties in accordance with paragraph 1.7.

A11.22.1. Action While Resignation in Lieu of is Pending. The convening authority must not, under any circumstances, take action on any officer case in which an accused's resignation for the good of the service is pending final Secretary of the Air Force decision.

A11.22.2. Acquittals. There is no convening authority action for cases resulting in acquittal of all charges and specifications, mistrial, or dismissal of all charges, or for cases otherwise terminated without findings. In such cases, the SJA or designee drafts a promulgating order. See paragraphs A12.1 and A12.8.

**A11.23. Convening Authority Discretion.** The convening authority is not required to take any action on the findings, to review the case for legal errors, or to review the case for factual sufficiency. Action taken on the findings and sentence consistent with Article 60(c), UCMJ, is a matter of command prerogative and within the discretion of the convening authority.

A11.23.1. Convening authorities may not substitute an administrative discharge for an adjudged punitive discharge. However, in cases involving relatively minor offenses, an accused with an outstanding combat record, or other exceptional circumstances, and where restoration to duty is inappropriate, convening and reviewing authorities may consider recommending to the Secretary of the Air Force, administrative, rather than punitive, separation under Article 74(b), UCMJ. Where a convening authority is considering making such a recommendation, the convening authority's SJA should contact AFLOA/JAJR, 1500 West Perimeter Road, Ste 1170, Joint Base Andrews Naval Air Facility Washington, Maryland 20762, for assistance and coordination.

A11.23.2. Action on findings where all the convicted offenses were committed on or after 24 June 2014. The convening authority may take action on findings subject to the following limitations:

A11.23.2.1. For offenses charged under Article 120(a) or 120(b), UCMJ; offenses charged under Article 120b, UCMJ; and offenses charged under Article 125, UCMJ:

A11.23.2.1.1. The convening authority is prohibited from the following:

A11.23.2.1.1.1. Setting aside any finding of guilt or dismissing a specification; or

A11.23.2.1.1.2. Changing a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

A11.23.2.1.2. The convening authority may direct a rehearing in accordance with R.C.M. 1107(e).

A11.23.2.2. For offenses other than those listed in paragraph A11.23.2.1 for which the maximum sentence of confinement that may be adjudged does not exceed two years, without regard to the jurisdictional limits of the court; and the sentence adjudged does not include dismissal, a dishonorable discharge, bad conduct discharge, or confinement for more than six months:

A11.23.2.2.1. The convening authority may change a finding of guilty for a charge or specification to a finding of guilty for an offense that is a lesser included offense of the offense stated in the charge or specification; or

A11.23.2.2.2. Set aside any finding of guilty and—

A11.23.2.2.2.1. Dismiss the specification and, if appropriate, the charge, or

A11.23.2.2.2.2. Direct a rehearing in accordance with R.C.M. 1107(e).

A11.23.2.3. If the convening authority acts to dismiss or change any charge or specification for an offense, the convening authority provides, at the same time, a written explanation of the reasons for such action. The SJA or designee ensures the written explanation is made a part of the ROT and action thereon.

A11.23.3. Action on the sentence where all the convicted offenses were committed on or after 24 June 2014.

A11.23.3.1. Unless authorized under paragraph A11.16, the convening authority's ability to affect the sentence is described as follows:

A11.23.3.1.1. The convening authority shall not disapprove, commute, or suspend in whole or in part any portion of an adjudged sentence of confinement for more than six months.

A11.23.3.1.2. The convening authority shall not disapprove, commute, or suspend that portion of an adjudged sentence that includes a dismissal, dishonorable discharge, or bad conduct discharge.

A11.23.3.1.3. The convening authority shall not disapprove, commute or suspend any mandatory minimum sentence. See Article 56, UCMJ.

A11.23.3.1.4. The convening authority may disapprove, commute, or suspend in whole or in part any portion of an adjudged sentence not explicitly prohibited by this rule, to include reduction in pay grade, forfeitures of pay and allowances, fines, reprimands, restrictions, and hard labor without confinement.

A11.23.3.2. If the convening authority acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation is made a part of the ROT and action thereon.

A11.23.4. Action on findings and sentence where at least one of the convicted offenses occurred before 24 June 2014.

A11.23.4.1. The convening authority has the same authority to take action on such findings and sentence as was in effect before 24 June 2014, except with respect to a mandatory minimum sentence required under Article 56(b), UCMJ. A mandatory minimum sentence applies only to those offenses listed in Article 56(b)(2) committed on or after 24 June 2014. See Fiscal Year 14 National Defense Authorization Act, Section 1705.

A11.23.4.1.1. For example, if the accused is convicted of several offenses committed before 24 June 2014, and one specification of sexual assault in violation of Article 120(b), occurring on or after 24 June 2014, then the mandatory minimum applies because the accused was 1) convicted of an offense that qualifies for a mandatory minimum sentence under Art. 56(b)(2) that 2) occurred on or after 24 June 2014.

A11.23.4.1.2. However, if the accused is convicted of offenses listed in Article 56(b)(2) that all occurred before 24 June 2014, then the mandatory minimum sentence does not apply.

A11.23.4.2. If the specification for an offense specifies a date range beginning earlier than 24 June 2014 (e.g., “between on or about 1 June 2014 and on or about 1 July 2014”), the offense is considered to have been committed before 24 June 2014.

**A11.24. Disqualification of Convening Authority.** A convening authority may not conduct the post-trial review of a case if the attendant facts and circumstances would lead a reasonable person to impute a personal interest in the outcome of the case or a personal bias towards the accused. See *United States v. Gudmundson*, 57 M.J. 493 (C.A.A.F. 2002); *United States v. Voorhees*, 50 M.J. 494 (C.A.A.F. 1999); *United States v. Crossley*, 10 M.J. 376 (C.M.A. 1981); *United States v. Gordon*, 1 C.M.A. 255, 2 C.M.R. 161 (C.M.A. 1952).

A11.24.1. If the SPCMCA is unable to take action in a case, SPCMCA’s SJA, or designee, forwards the case to the GCMCA through the GCMCA’s SJA. If the GCMCA is unable to take action, the MAJCOM commander may act personally or may designate another convening authority to do so.

A11.24.2. The SJA of the convening authority taking action will draft, and include in the ROT, allied papers explaining why a different convening authority took action. The memorandum is not required if it is clear from the ROT (e.g., transfer memorandum) why a different convening authority took action on the case.

A11.24.3. Transfer of responsibility for recommendation and action does not transfer authority to order or rescind deferments of sentence under Article 57a. That authority remains with the convening authority granting the deferment or, if the accused is no longer under that command, then with the GCMCA for the command to which the accused is currently assigned.

**A11.25. Format for Initial Action.** The convening authority’s initial action is prepared in accordance with R.C.M. 1107(f) and the guidance in MCM, Appendix 16. Samples of a convening authority’s initial action are at Figure A11.14. If a convening authority or reviewing authority withdraws an action and substitutes a new one, refer to A12.1, paragraph 9.10.2.

A11.25.1. Findings. Findings are addressed in the action only when any findings of guilty are disapproved, in whole or in part.

A11.25.2. Deferred Forfeitures and Reduction in Grade and Waiver of Automatic Forfeitures. See Section 11H for guidance, and Figures A11.15 and A11.16 for sample formats and language for the convening authority's action.

#### **A11.26. Additional Considerations for Initial Action.**

A11.26.1. Limitation on Forfeitures (R.C.M. 1003).

A11.26.1.1. If no confinement is adjudged and a forfeiture exceeding two-thirds pay per month is adjudged, the convening authority reduces the approved forfeiture to not more than two-thirds pay per month to run for a specified period of time or up until the punitive discharge is executed.

A11.26.1.2. Where an accused sentenced to confinement and forfeitures exceeding two-thirds pay per month has served the confinement prior to the convening authority's action, the convening authority will reduce the approved forfeitures to not more than total forfeitures for the period the accused was in confinement and not more than two-thirds pay per month thereafter, to run either for a specified period of time or up until execution of an adjudged punitive discharge. See R.C.M. 1107(d)(2), Discussion; *United States v. Craze*, 56 M.J. 777 (A.F.C.C.A. 2002); *United States v. York*, 53 M.J. 553 (A.F.C.C.A. 2000); and *United States v. Warner*, 25 M.J. 64 (C.M.A. 1987).

A11.26.1.3. Forfeitures of pay per month are stated in whole dollars. See R.C.M. 1003.

A11.26.2. Duration of Forfeitures. When total forfeitures are approved, the duration of forfeitures should not be specified. Where an enlisted member sentenced to a punitive discharge, confinement, and total forfeitures has been restored to duty after release from confinement, the member is entitled to pay and allowances from the date the member is restored to duty, and the forfeitures become inoperative thereafter. See DoD 7000.14-R, *Department of Defense Financial Management Regulation*, Vol. 7A, paragraph 480704.

A11.26.3. Application of Article 58a, UCMJ. The provisions of Article 58a do not apply to the Air Force. All reductions in grade are based upon adjudged and approved sentences.

A11.26.4. Suspension of Sentences and Proceedings to Vacate a Suspended Sentence (R.C.M. 1108 and 1109). In a case where the convening authority suspends all or part of the execution of a sentence, the SJA or designee includes a copy of the suspension terms and the member's receipt in each copy of the ROT with the suspension action. If a suspended sentence is later vacated, the SJA or designee documents the vacation hearing on a DD Form 455, *Report of Proceedings to Vacate Suspension of a General Court-Martial Sentence or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge Under Article 72, UCMJ*, and R.C.M. 1109. If the member waives the vacation hearing, the Form 455 is not required. The SJA or designee sends the completed Form 455 or the member's waiver to AFLOA/JAJM for review and filing with the original ROT. Supplemental court-martial orders announcing the vacation of a suspended sentence should be distributed in accordance with A13.1. Special orders are used to announce sentence vacations in a summary court-martial.

*Section A11—H—Forfeiture of Pay, Deferment, and Waiver (Articles 57(a) and 58b, UCMJ)*

**A11.27. Distinctions between Deferment and Waiver.** Articles 57(a) and 58b are separate and distinct statutory provisions. They serve different purposes.

A11.27.1. Article 57(a) establishes the effective date of any forfeiture of pay and allowances or reduction in grade that is included in the sentence of a court-martial. Adjudged forfeitures and an adjudged reduction in grade take effect upon the date of the convening authority's action or 14 days after the sentence is adjudged, whichever occurs first. Under Article 57(a), any adjudged confinement or punitive discharge has no impact on the effective date of adjudged forfeitures and an adjudged reduction in grade. Therefore, adjudged forfeitures and reductions, unless deferred, should take effect on the date provided for in Article 57(a), UCMJ, even if there is no confinement or punitive discharge in the case.

A11.27.2. Article 58b, UCMJ, requires a convicted member to forfeit pay (and allowances in general courts-martial) during qualified periods of confinement or parole.

A11.27.2.1. Conditions for Mandatory Forfeitures. The mandatory forfeitures (also known as required or automatic forfeitures) under this provision only take effect if the following three conditions exist:

A11.27.2.1.1. The adjudged sentence includes confinement for more than six months or death, or confinement for any period and a dishonorable discharge, bad conduct discharge, or dismissal;

A11.27.2.1.2. The accused is in confinement or on parole; and

A11.27.2.1.3. The accused is otherwise entitled to pay and allowances that are subject to mandatory forfeitures.

A11.27.2.2. Effective Date of Mandatory Forfeitures. As with adjudged forfeitures, mandatory forfeitures take effect the date of action or 14 days after the sentence is adjudged, whichever is sooner.

A11.27.2.3. Amount of Mandatory Forfeitures. The amount of pay and allowances forfeited in a general court-martial is all pay and allowances otherwise due the accused. The amount of pay forfeited in a special court-martial is two-thirds of pay otherwise due the accused. In these cases, forfeitures should be announced in whole dollar amounts. Allowances otherwise due are not subject to mandatory forfeitures in a special court-martial.

**A11.28. Deferral and Waiver Provisions.** Articles 57(a) and 58b, UCMJ, contain provisions that enable a convening authority to permit payments to the accused or the accused's dependents that would otherwise have been forfeited.

A11.28.1. Deferral of Forfeitures under Article 57(a)(2), UCMJ.

A11.28.1.1. The convening authority may defer either adjudged forfeitures or an adjudged reduction in grade, or both, from taking effect until action. The convening authority may also defer mandatory forfeitures. The accused must submit any request to defer adjudged and, if applicable, mandatory forfeitures in writing.

A11.28.1.2. The accused's pay does not stop if the convening authority approves a deferment of both adjudged and mandatory forfeitures, or approves a deferment of only adjudged forfeitures when there are no mandatory forfeitures. Deferred forfeitures are paid to the accused.

A11.28.1.3. The convening authority may rescind a deferment at any time.

#### A11.28.2. Waiver of Mandatory Forfeitures under Article 58b, UCMJ.

A11.28.2.1. Dependency Requirement. A convening authority may waive mandatory forfeitures only in cases where an accused has dependents. Waived forfeitures are paid to the dependents. Paragraph 8.31. discusses dependency determinations.

A11.28.2.2. Maximum Waiver Period. A convening authority may waive mandatory forfeitures for a period not exceeding six months, or the period of confinement if less than six months. Waived forfeitures cannot be applied beyond the member's expiration of term of service because the pay entitlement ceases at that point.

A11.28.2.3. Written Application not Required. The convening authority may waive mandatory forfeitures even if the accused does not apply for such a waiver.

A11.28.2.4. Timing and Effective Date of Waiver. The convening authority may waive mandatory forfeitures either before taking action or when taking action on the case. The waiver can be retroactive, designated to begin on a date 14 days after the sentence is adjudged.

A11.28.2.5. Requirement to Defer, Suspend, Mitigate, or Disapprove Adjudged Forfeitures. The convening authority must defer, suspend, mitigate or disapprove all or part of adjudged total forfeitures in order to waive any amount of mandatory forfeitures. A convening authority may waive mandatory forfeitures for the benefit of the accused's dependents only to the extent adjudged forfeitures are not in effect. See *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002).

A11.28.3. A convening authority may defer mandatory forfeitures (and any adjudged forfeitures) until action and then waive mandatory forfeitures for a period not to exceed six months. A combination of deferral and waiver can maximize the pay and allowances going to the accused and the accused's family.

**A11.29. Mechanics of Deferring and Waiving Forfeiture of Pay.** Figure A8.14 explains the relationship between adjudged and mandatory forfeitures from the date the sentence is adjudged until the end of the forfeiture period. To assist in drafting the convening authority's action on the sentence, refer to Figure A8.12 and Figure A8.13.

A11.29.1. Accused's Deferral Request. If an accused requests a deferral of a reduction in grade or a forfeiture of pay (and allowances) until action is taken, the convening authority may approve the request, in full or in part, or may disapprove the request.

A11.29.1.1. The accused's deferral request should specify whether a request for deferred forfeitures is for adjudged forfeitures, mandatory forfeitures, or both. If it is unclear, the convening authority may treat it as a request for deferral of both.

A11.29.1.2. The convening authority's action on the request should be reflected in a signed and dated document.

A11.29.1.3. The terms of approved deferrals are reported in a 14-day memorandum in accordance with Figure A9.7, and are reported in the action the convening authority ultimately takes on the case.

A11.29.1.4. A deferral of forfeitures may be for adjudged forfeitures, mandatory forfeitures, or both, and for all pay and allowances to which the accused is entitled or a lesser sum.

A11.29.2. Waiver of Mandatory Forfeitures. In cases where mandatory forfeitures are waived, whether prior to or as part of the action, the approved waiver should express the amount approved in dollar amounts per month, unless the waiver is for total pay and allowances in a general court-martial. If forfeiture of two-thirds pay is approved in a special court-martial, the forfeitures should be reflected in whole dollar amounts.

A11.29.2.1. The convening authority must identify the dependents that will receive the waived forfeitures. If payments are made to an ex-spouse, or multiple ex-spouses, or other person on behalf of minor dependents, the SJA or designee obtains confirmation that the designated payee is the appointed guardian or custodian of a minor dependent as required. Legal offices should provide information described in AFMAN 65-116V1, *Defense Joint Military Pay System Active Component Financial Services Office Procedures*, paragraph 67.5.5, to the local finance office when processing waiver requests. This information includes a copy of the waiver request (if submitted), copy of the approved waiver request with amount approved, full name of payees, proof of dependency of payees or certification that the payees are dependents of the member, payment account information, and a statement signed by payee and member agreeing to notify legal and finance if the payee ceases being a dependent during the period payments are made.

A11.29.2.2. If mandatory forfeitures are waived before action, the convening authority must reflect approval in a signed and dated document. Such a waiver of mandatory forfeitures are also reported in the 14-day memorandum and in the convening authority's action on the case.

A11.29.2.3. The local accounting and finance office should be consulted to determine the accused's entitlements and the actual amount of pay and allowances the accused and/or the accused's dependents may be entitled to receive. A number of factors can impact these entitlements:

A11.29.2.3.1. Basic Allowance for Subsistence. In most cases, the accused will lose Basic Allowance for Subsistence upon entering confinement. Therefore, the convening authority cannot give the accused's family any portion of the accused's Basic Allowance for Subsistence.

A11.29.2.3.2. Taxes. Federal and state taxes are withheld from any payments of deferred or waived forfeitures. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the amount of taxes should be factored into the calculation.

A11.29.2.3.3. Grade Reduction. A reduction in grade may significantly lower the amount of the accused's pay that is eligible for waiver. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the effect of a reduction in grade should be taken into consideration.

A11.29.2.3.4. Regular Air Force Spouse. A spouse who is also a Regular Air Force member may receive only waived forfeiture of pay, not pay and allowances.

A11.29.2.3.5. Expiration of Term of Service. There are no forfeitures to waive on any date after the accused's expiration of term of service. Any plea agreement to approve a waiver of any amount of forfeitures when the accused is near or beyond his or her expiration of term of service may render pleas improvident because the accused may not receive the benefit of the bargain. The convening authority will only approve plea agreements containing a waiver provision if it clearly states that any waiver is only applicable to pay and allowances that the accused is otherwise entitled to receive. See *United States v. Perron*, 58 M.J. 78 (C.A.A.F. 2003).

**A11.30. Dependency Determinations under Article 58b, UCMJ.** Refer to AFI 51-201, paragraph 13.29 for information on making dependency determinations.

**A11.31. Service of Legal Review on the Accused.** The Air Force Court of Criminal Appeals has addressed whether a SJA's legal advice to a convening authority regarding requests for deferral or waiver of forfeitures must be served upon the accused with an opportunity to respond. Legal advice pertaining to deferral requests need not be served on the accused. See paragraph 1.31.1. Legal advice pertaining to waiver requests must be served on the accused. See paragraph 1.31.2. In either case, legal offices should process requests promptly.

A11.31.1. Article 57(a), UCMJ, Deferral of Forfeiture Requests. In *United States v. Key*, 55 M.J. 537 (A.F.C.C.A. 2001), the Court held that a SJA review of a request for deferral of forfeitures does not need to be served on the defense for comment prior to submission to the convening authority. The Court compared such a request to a request for deferral of confinement, for which no SJA recommendation is required and, when prepared, historically, is not served on the accused. The SJA or designee ensures that any SJA review and action by the convening authority on the request is included in the ROT.

A11.31.2. Article 58b, UCMJ, Waiver of Forfeiture Requests. In *United States v. Spears*, 48 M.J. 768 (A.F.C.C.A. 1998), the Court considered whether a legal review of a request for a waiver of forfeitures must be served on the defense prior to submission to the convening authority. The Court noted that SJA are not required to prepare legal reviews of requests for waiver of automatic forfeitures. The Court treated the request for waiver of forfeitures as a clemency request and declared that practitioners must exercise care when addressing the request for waiver of forfeitures before the record is completed. *Spears* set this basic approach: any legal review prepared by the SJA for the convening authority prior to completion of the SJAR should be attached to the SJAR and become part of the completed ROT. Any legal review that may be prepared after the SJAR should be treated as an addendum to the SJAR and served on the defense when it contains new matters. The SJA or designee serves the legal review on the accused and defense counsel before submission to the convening authority and includes it in the completed ROT.

**A11.32. Deferral and Waiver in Cases With Offenses Committed Prior to 1 April 1996.** For cases in which all of the charged offenses occurred before 1 April 1996, the U.S. Court of Appeals for the Armed Forces in *United States v. Gorski*, 47 M.J. 370 (C.A.A.F. 1997), held that application of Article 57(a) and 58b, UCMJ, violates the ex post facto clause of the Constitution.

A11.32.1. For cases affected by the *Gorski* decision, any forfeitures collected pursuant to Article 58b, UCMJ (i.e., mandatory forfeitures); Article 57(a)(1)(A), UCMJ (i.e., adjudged forfeitures taken prior to convening authority action); and any pay and allowances withheld due to a reduction in grade pursuant to Article 57(a)(1)(A), UCMJ (i.e., reduction in grade prior to convening authority action), are without legal effect and will be restored.

A11.32.2. For cases involving offenses committed both before and after 1 April 1996, the Court in *United States v. Carter*, 49 M.J. 392 (C.A.A.F. 1998), applied unitary sentencing principles and limited the *Gorski* holding to those cases where the maximum sentence for any or all offenses committed on or after 1 April 1996 would induce mandatory forfeitures under Article 58b, UCMJ.

**Table A11.1. Relationship between Adjudged and Mandatory Forfeitures**

FORFEITURE PERIOD	ADJUDGED FORFEITURES	MANDATORY FORFEITURES (See Note 1)
DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED (w/o action)	Not in effect. Accused continues to be paid unless post expiration of term of service	Not in effect. Accused continues to be paid unless post expiration of term of service
14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED TO ACTION	In effect, except for any portion the convening authority defers. (See Note 2)	In effect, except for any portion the convening authority defers (See Note 2), and/or waives and directs payment to the accused's qualifying dependents. (See Notes 3 & 4)
ACTION TO END OF FORFEITURE PERIOD	The amount the convening authority approves is still in effect. The convening authority may approve, disapprove, commute or suspend the adjudged forfeitures in whole or in part.	Still in effect, except any portion the convening authority waives or has waived. (See Notes 4 & 5)

**NOTES:**

1. Mandatory forfeitures only apply when the three conditions listed in paragraph 1.27.2.1. exist.
2. If the accused applies for deferment, the convening authority may defer all or a portion of the adjudged forfeitures and/or mandatory forfeitures 14 days after the date on which the sentence was adjudged until the convening authority takes action. The accused should specify whether the deferment requested is for adjudged forfeitures, mandatory forfeitures, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused will be paid a sum equal to entitled pay and allowances, minus any amounts forfeited (adjudged forfeitures and/or mandatory forfeitures not deferred). The convening authority may rescind a deferment (adjudged forfeitures and/or mandatory forfeitures) at any time.
3. The convening authority may waive available mandatory forfeitures with or without a request from the accused. The convening authority may waive mandatory forfeitures to the extent that the accused is entitled to pay and allowances (see Note 1 above).
4. Mandatory forfeitures may be waived until the earlier of: 1) a period not to exceed six months; 2) the accused's release from confinement; or 3) the last day the accused is otherwise entitled to pay and allowances (See Note 1 above).
5. At action, the convening authority may waive all or a portion of the available mandatory forfeitures for the benefit of the accused's dependents. The convening authority may disapprove, commute or suspend all or a portion of the adjudged forfeitures to increase the amount of mandatory forfeitures available for the convening authority to waive.

***Section A11I—Contingent Confinement***

**A11.33. Contingent Confinement.** The officer or non-commissioned officer in charge of confinement at the confinement facility must be provided a copy of the Report of Result of Trial, convening authority action, and court-martial order.

***Section A11J—Notification of Adjudged Sentence, Action of the Convening Authority, and Deferment or Waiver***

**A11.35. Reporting by Base-Level Staff Judge Advocate.** In all courts-martial with mandatory forfeitures under Article 58b, adjudged forfeitures, or reduction in grade (enlisted only), the SJA of the office that prosecuted the case must send a memorandum by the most expeditious means available to the Air Force Personnel Center Enlisted Promotions Branch and the member's finance office, with informational copies to AFSFC/FC and DFAS-DE/FJPC. A template memorandum is at Figure A11.16. The referenced memorandum must be sent within 24 hours of the date the convening authority takes action under R.C.M. 1107, or 14 days after the sentence is adjudged, whichever is earlier. If any portion of the punishment or mandatory forfeitures is deferred, or if the convening authority waives any portion of the mandatory forfeitures prior to the date of the message, the memorandum must include the terms of such deferment or waiver. Notification can be made to Defense Finance & Accounting Services at [afcourtmartials@dfas.mil](mailto:afcourtmartials@dfas.mil); HQ AFPC/DPSOE at [afpc.dpppwm@us.af.mil](mailto:afpc.dpppwm@us.af.mil); and the Air Force Security Forces Center at [afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil).

**A11.36. Reporting by Convening Authority's Staff Judge Advocate.** If action is taken more than 14 days after the sentence is adjudged, in any case where the approved sentence includes a

reduction in grade or forfeitures (mandatory or adjudged), the SJA of the convening authority must send a second memorandum within 24 hours after the convening authority's action. If any portion of the punishment or mandatory forfeiture is deferred or if the convening authority waives any portion of the mandatory forfeiture, the second memorandum must include the terms of such deferment or waiver. The message should be sent to the same addressees listed in paragraph 1.35 and, if the accused is confined, to the confinement facility. A template may be found at Figure A11.16. For members who enter a prisoner status requiring a permanent change of station, the memorandum should also be sent to the gaining AFO.

**A11.37. Notification to Confinement Facility.** See AFI 51-201 paragraph 13.42 for required notifications to confinement facilities.

*Section A11K—Excess Leave*

**A11.38. Involuntary (Required) and Voluntary Excess Leave.** See AFI 51-201, Section 13K for procedures and requirements related to putting a military member on excess leave pending appellate review of an unsuspended punitive separation.

**Figure A11.2. Sample Report of Result of Trial (AMJAMS)**

REPORT OF RESULT OF TRIAL  
IN THE CASE OF  
*United States v. Technical Sergeant John J. Smith*

Date: 16 November 2015

Name of Accused: John J. Smith                      Grade: E-6                      SSN: 123-45-6789

Organization: 436th Maintenance Squadron, Dover Air Force Base, Delaware (Air Mobility Command)

Type of Court: General Court-Martial

Forum: Members      Enlisted Members Included: No

Summary of charge(s), specification(s), pleas, and findings:

Charge(s):	Arraigned Offense(s)	Pleas	Findings
CHARGE I	Art: 112a	G	G
Specification 1: 112AA1	Did, at or near Dover Air Force Base, Delaware, on or about 5 March 2015, wrongfully use phencyclidine, a Schedule II controlled substance.	NG	NG
Specification 2: 112AA1	Did, at or near Dover Air Force Base, Delaware, on divers occasions between on or about 3 February 2015 and on or about 30 April 2015, wrongfully use cocaine, a Schedule II controlled substance.	G	G
CHARGE II	Art: 120	NG	G
Specification: 120BE	Did, at or near Dover Air Force Base, Delaware, on or about 6 March 2015, engage in a sexual act with SVD, to wit: sexual intercourse with SVD, who was substantially incapacitated.	NG	G

Sentence Adjudged: 3 months confinement, Reduction to E-1

Sentence/Acquittal Date: 16 November 2015

Pretrial Confinement Credit: Not applicable

Plea Agreement Involved: No      Conditions of Plea Agreement: Not Applicable

DNA Processing Required Under 10 U.S.C. § 1565: Yes

Firearms Prohibition Under 10 U.S.C. § 922 (including Lautenberg offenses): Yes

Sex Offender Registration Required: Yes

*Name, Rank, and Title of Person Signing*  
Mary B. Imthebest, Major, USAF  
Trial Counsel

Distribution:

1 – Unit Commander

1 – Major Command  
 1 – Numbered Air Force  
 1 – General Court-Martial Convening Authority  
 1 – General Court-Martial Convening Authority/Staff Judge Advocate  
 1 – Special Court-Martial Convening Authority  
 1 – Special Court-Martial Convening Authority/Staff Judge Advocate  
 1 – Force Support Squadron  
 1 – [Air Force Office of Special Investigations] *or* [Security Forces Office of Investigations]  
 1 – Air Force Security Forces Center  
 1 – Confinement Facility Commander (if applicable)  
 1 – Confinement Officer (if applicable)  
 1 – Air Force Legal Operations Agency Military Justice Division  
 1 – Air Force Judiciary

**Figure A11.3. Notification to Victim of Opportunity to Submit Victim Impact Statement**  
[Letterhead]

(Date)

MEMORANDUM FOR (Rank and Name of Victim)

FROM: (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

SUBJECT: Submission of matters, United States v. (Rank and Name of accused)

1. On (Date of conviction), (Current grade and name of the accused) was convicted by (Type of Court-Martial) of (Insert charges and specifications). For these crimes, (he/she) was sentenced to (Sentence). The next step in the process is for the Convening Authority, (grade and name of Convening Authority), to review the findings and sentence. In certain cases, the Convening Authority has discretion to approve all or any portion of the findings and sentence. In other cases, the discretion of the Convening Authority is limited by law. I am writing to let you know how you can provide input to (me) (the Convening Authority's Staff Judge Advocate) for the Convening Authority's consideration.

2. Before the Convening Authority takes action, (I) (the Convening Authority's Staff Judge Advocate) will, pursuant to Rule for Courts-Martial 1106, submit a recommendation to (him/her), with a copy to defense counsel. (I) (the Convening Authority's Staff Judge Advocate) will review the record of trial and advise the Convening Authority on whether the court-martial was lawfully constituted and had jurisdiction over the accused and each offense, whether any errors were committed which materially prejudiced (his/her) substantial rights, whether there is enough evidence in the record to support each finding of guilty, and whether the adjudged sentence is lawful.

3. You may submit a statement in writing to (me) (the Convening Authority's Staff Judge Advocate) for consideration in advising the Convening Authority. The choice is entirely yours. This statement could describe the impact (Current grade and name of the accused)'s crime had on

your life. [You may also discuss whether you believe the Convening Authority should approve the (findings and sentence/sentence) or grant some form of clemency, if authorized by law]. However, your statement should not reference any crimes for which (Current grade and name of the accused) was not convicted by the court-martial in order to avoid any prejudice to (his/her) post-trial rights.

4. You have 10 days to submit matters for consideration by the convening authority from the date you receive a copy of the authenticated record of trial or the date you receive a copy of the recommendation of the staff judge advocate, whichever is later. If you want to submit a statement, please provide it to the following office or email address: (office address) (e-mail address). Your signature is required on any statement submitted. [I will then provide your letter to the Convening Authority's Staff Judge Advocate.] If you submit a statement, we will provide it, along with all of the relevant trial related documents, to (Current grade and name of the Accused) and (his/her) attorney. (Current grade and name of the accused) and (his/her) attorney will then have an opportunity to comment on your statement, if submitted, and to provide our office with matters they want the Convening Authority to consider [when making (his/her) decision on whether to approve the (findings and sentence/sentence)].

5. You may ask for additional time to submit your statement. I will provide your request to the Convening Authority who may grant up to an additional 20 days.

6. (*If eligible*) You may also consult with (a legal assistance attorney) or (Special Victims' Counsel) on whether to submit a victim impact statement and the contents of such a statement in accordance with AFI 51-304, *Legal Assistance, Notary, and Preventive Law Programs*.

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(NAME), (Rank), USAF  
Staff Judge Advocate/Trial Counsel

1st Indorsement, (Rank and Name of Victim)

Date:

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

I acknowledge receipt of this notification.

(Rank and Name of Victim)

2nd Indorsement, (Rank and Name of Victim)

Date:

MEMORANDUM FOR (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

I understand that I may provide a statement to (you/the Convening Authority's Staff Judge Advocate) for consideration in advising the Convening Authority [on whether to approve all or any portion of the (findings and sentence/sentence)].

\_\_\_\_\_ I am submitting the attached statement

\_\_\_\_\_ I do not intend to submit a statement.

(Rank and Name of Victim)

3d Indorsement, (Judge Advocate Office and Rank and Name of Base level Staff Judge Advocate)

Date:

MEMORANDUM FOR (Rank and Name of Victim)

((Rank and Name of Victim) provided a statement) ((Rank and Name of Victim) did not provide a statement)

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

**Figure A11.4. Submission of Matters by the Accused**

(Date)

MEMORANDUM FOR (Rank and Name of Accused)

FROM: (Judge Advocate Office)

SUBJECT: Submission of Matters to the Convening Authority – *United States. v. (Rank and Name of Accused)*

1. Since you have been convicted and sentenced by court-martial, you have the right to submit matters for consideration by the convening authority of your court-martial before the convening authority takes action on your case. The matters you submit may include any matters that might affect the convening authority's decision to approve or disapprove findings of guilt or part of the sentence in your case as permitted by law. These matters may include:

- a. Allegations of errors affecting the legality of the findings or sentence in your case.
- b. Portions or summaries of your record of trial, or copies of evidence introduced at trial.
- c. Matters in mitigation that were not available for consideration at your trial.
- d. Clemency recommendations by any court member, the military judge, or any other person.

e. Any other matters you or your counsel believe the convening authority should be aware of before taking action in your case, whether or not available or introduced into evidence at your trial.

f. *(If the accused is enlisted)* Your desire to submit an application for Return to Duty. See AFI 31-105.

2. You should consult with your defense counsel to decide whether to submit such matters. The convening authority will consider all matters you submit before taking action in your case. Failure to submit matters within the time provided in paragraph 4 constitutes a waiver of your right to do so.

3. If you decide not to submit matters for the convening authority's consideration, you may waive, in writing, the right to submit such matters. Such a waiver may expedite the post-trial processing and review of your case, if that is what you desire. You should consult your defense counsel before waiving your rights to submit matters. Once you make such a written waiver, it may not be withdrawn or revoked. You may indicate any waiver of your rights to submit matters on the indorsement to this letter or by submitting a separate written waiver.

4. *[For a General Court-Martial or Special Court-Martial, insert:]* You have 10 days to submit matters for consideration by the convening authority from the date you receive a copy of the authenticated Record of Trial or, if applicable, the date both you and your defense counsel receive a copy of the recommendation of the staff judge advocate, whichever is later. If you are unable to submit your matters within this period, you may, for good reason, apply to the convening authority, through the convening authority's staff judge advocate for an extension of the period.

*[For a Summary Court-Martial, insert the following as paragraph 4:]* You have 7 days from the date your sentence was announced to submit your matters for the convening authority's consideration. Your matters must be submitted by (date)(time). If you are unable to submit your matters within this period, you may, for good cause, apply to the convening authority, through the convening authority's staff judge advocate, for an extension of the period.

5. In addition to the submissions described above, you may submit an application to the convening authority, through the servicing Staff Judge Advocate, to defer any forfeitures of pay or allowances, reduction in grade, or service of a sentence to confinement. If you have dependents, you may also submit an application to the convening authority, through the servicing Staff Judge Advocate, to waive any mandatory forfeitures of pay and allowances under Article 58b(b), UCMJ, with the amount waived paid to your dependents. Applications for deferral and/or waiver may be submitted immediately. In order for the convening authority to give such requests proper consideration, they should normally be submitted no later than the time provided in paragraph 4 above.

(NAME), (Rank), USAF

(Duty Title)

cc: Defense Counsel

1st Indorsment, (Rank and Name of Accused)

(Date)

MEMORANDUM FOR (Judge Advocate Office)

Receipt acknowledged at (time) on (date).

I have consulted with my defense counsel concerning my rights to submit matters for the convening authority's consideration before the convening authority takes action in my case. After considering the advice of my defense counsel, I (waive)(do not waive) my right to submit such matters. I (will)(will not) submit any matters for the convening authority's consideration.

(NAME), (Rank), USAF  
Accused

**Figure A11.5. Waiver of Submission of Matters by the Accused (No Request for Deferment of Reduction in Grade or Forfeitures, or Waiver of Mandatory Forfeitures)**

(Date)

MEMORANDUM FOR (Defense Counsel)

FROM: (Rank and Name of Accused)

SUBJECT: Waiver of Right to Submit Clemency Matters – *United States v. (Rank and Name of Accused)*

1. I have been briefed by my Defense Counsel, (Rank and Name of Defense Counsel), (Location), concerning my rights to submit matters to the convening authority, detailed in Article 60, UCMJ, (and) Rule for Courts-Martial 1105 (and Article(s) 57a (and 58b), UCMJ), before he/she takes action in my case. After considering my rights and the advice of my counsel, I hereby elect that I will not submit any matters for the convening authority's consideration. This waiver is voluntary and no one has coerced me in any way or made any promises in regard to my decision. I understand that this waiver is irrevocable once submitted.

2. I understand my rights and the time limitations to make submissions to the convening authority. [For a General Court-Martial or Special Court-Martial, insert:] I understand that I have 10 days from (the later of) my receipt of a copy of the authenticated record of trial (or receipt of the Staff Judge Advocate's Recommendation or Addendum, if served upon me)) to submit matters. I understand that I may request an extension of up to 20 additional days to submit matters and, for good cause, the convening authority or that authority's Staff Judge

Advocate may grant my request. *[For a Summary Court-Martial, insert:]* I understand that I have 7 days from the date my sentence was announced to submit matters for the convening authority's consideration. I understand that I may, for good cause, apply to the convening authority, through the convening authority's Staff Judge Advocate, for an extension of the period.

3. I understand that the convening authority may in certain cases permitted by law disapprove findings of guilt to any charge and/or specification, but may not change a finding of not guilty to guilty. I also understand that the convening authority may in certain cases permitted by law disapprove a legal sentence, mitigate [lessen] the sentence, or change a punishment to one of a different [but not more severe] nature. I understand the convening authority may not increase the severity of the punishment.

4. My counsel has informed me that the convening authority has in certain cases permitted by law discretion to defer sentences, including confinement, reduction in grade and (adjudged and/or mandatory) forfeitures (as well as sole discretion to waive mandatory forfeitures of pay (and allowances)). I hereby voluntarily elect that I will not submit any requests for a deferment or waiver.

(NAME), (Rank), USAF  
Accused

1st Ind, (Defense Counsel)

(Date)

MEMORANDUM FOR (Convening Authority)

1. (Rank and Name of Accused), having [received the record of trial (and) the Staff Judge Advocate's Recommendation (and Addendum), dated \_\_\_\_\_][been sentenced by (general)(special)(summary) court-martial on (date)], has, after receiving the advice of counsel concerning (his)(her) rights to submit matters to the convening authority pursuant to Article 60, UCMJ, and Rule for Courts-Martial 1105, voluntarily decided to waive the right to submit matters for consideration by the convening authority.

2. I have advised (Rank and Name of Accused) that (he)(she) may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove findings of guilt in legally permissible cases, or to approve any legally permissible portion of the sentence. This includes any allegations of errors affecting the legality of the findings or sentence; portions of the record of trial and copies of documentary evidence offered or introduced at trial; matters in mitigation which were not available for consideration at the court-martial; and clemency recommendations from any person. I have also advised (him)(her) that the convening authority must consider any written submissions, if any, prior to taking action.

(NAME), (Rank), USAF

## Defense Counsel

**Figure A11.6. Waiver of Submission of Matters by the Accused (No Request for Deferment of Reduction in Grade or Forfeitures, or Waiver of Mandatory Forfeitures)**

(Date)

MEMORANDUM FOR (Defense Counsel)

FROM: (Rank and Name of Accused)

SUBJECT: Waiver of Right to Submit Clemency Matters – *United States v. (Rank and Name of Accused)*

1. I have been briefed by my Defense Counsel, (Rank and Name of Defense Counsel), (Location) concerning my rights to submit matters to the convening authority, detailed in Article 60, UCMJ, and Rule for Courts-Martial 1105 (and Article(s) 57a (and 58b), UCMJ), before (he)(she) takes action in my case. I previously submitted a Request for [(Deferment of [Reduction in Grade] and/or [Forfeitures]), (Waiver of Mandatory Forfeitures)] on (date). [(Decision(s) on [that/those] request(s) (is/are) still pending.) (The convening authority previously denied my request.)] After considering my rights and the advice of my counsel, I hereby elect that I will not submit any additional matters for the convening authority's consideration. This decision is voluntary. I have not been coerced in any way or received any promises in regard to my decision.

2. I understand my rights and the time limitations to make submissions to the convening authority. [*For a General Court-Martial or Special Court-Martial insert:*] I understand that I have 10 days from (the later of) my receipt of a copy of the authenticated record of trial (or receipt of the Staff Judge Advocate's Recommendation (, or Addendum, if served upon me)) to submit matters. I understand that I may request an extension of up to 20 additional days to submit matters and, for good cause, the convening authority or that authority's staff judge advocate may grant my request. [*For a Summary Court-Martial, insert:*] I understand that I have 7 days from the date my sentence was announced to submit matters for the convening authority's consideration. I understand that I may, for good cause, apply to the convening authority, through the convening authority's staff judge advocate, for an extension of the period.

3. I understand that the convening authority may in certain cases permitted by law disapprove findings of guilt to any charge and/or specification, but may not change a finding of not guilty to guilty. I also understand that the convening authority may in certain cases permitted by law disapprove a legal sentence, mitigate [lessen] the sentence, or change a punishment to one of a different [but not more severe] nature. I understand the convening authority may not increase the severity of the punishment.

4. My counsel has informed me that the convening authority has in certain cases permitted by law discretion to defer sentences, including confinement, reduction in grade and (adjudged and/or mandatory) forfeitures (as well as sole discretion to waive mandatory forfeitures of pay (and allowances)). I hereby voluntarily elect that I will not submit any requests for a deferment or waiver.

(NAME), (Rank), USAF  
Accused

1st Ind, (Defense Counsel)

(Date)

MEMORANDUM FOR (Convening Authority)

1. (Name and Rank of Accused), having [received the record of trial (and) the Staff Judge Advocate's Recommendation (and Addendum), dated \_\_\_\_\_][been sentenced by (general)(special)(summary) court-martial on (date)], has, after receiving the advice of counsel concerning (his)(her) rights to submit matters to the convening authority pursuant to Article 60, UCMJ, and Rule for Courts-Martial 1105, voluntarily decided to waive the right to submit matters for consideration by the convening authority.

2. I have advised (Rank and Name of Accused) that (he)(she) may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove findings of guilt in legally permissible cases, or to approve any legally permissible portion of the sentence. This includes any allegations of errors affecting the legality of the findings or sentence; portions of the record of trial and copies of documentary evidence offered or introduced at trial; matters in mitigation which were not available for consideration at the court-martial; and clemency recommendations from any person. I have also advised (him)(her) that the convening authority must consider any written submissions, if any, prior to taking action.

(NAME), (Rank), USAF  
Defense Counsel

**Figure A11.7. Waiver of Submission of Matters by the Accused (Request for Deferment of Reduction in Grade or Forfeitures, or Waiver of Mandatory Forfeitures)**

(Date)

MEMORANDUM FOR (Defense Counsel)

FROM: (Rank and Name of Accused)

SUBJECT: Waiver of Right to Submit Clemency Matters – *United States v. (Rank and Name of Accused)*

1. I have been briefed by my defense counsel, (Name and Rank of Defense Counsel), (Location) concerning my rights to submit matters to the convening authority, detailed in Article 60, UCMJ, and Rule for Courts-Martial 1105 (and Article(s) 57a (and 58b), UCMJ), before (he)(she) takes action in my case. I previously submitted a Request for [(Deferment of [Reduction in Grade] and/or [Forfeitures]), (Waiver of Mandatory Forfeitures)] on (date). [(Decision(s) on [that/those]

request(s) (is/are) still pending.) (The convening authority previously denied my request.)] After considering my rights and the advice of my counsel, I hereby elect that I will not submit any additional matters for the convening authority's consideration. This decision is voluntary. I have not been coerced in any way or received any promises in regard to my decision.

2. I understand my rights and the time limitations to make submissions to the convening authority. I understand that I have 10 days from (the later of) my receipt of a copy of the authenticated record of trial (or receipt of the Staff Judge Advocate's Recommendation, (or Addendum, if served upon me)) to submit matters. I understand that I may request an extension of up to 20 additional days to submit matters and, for good cause, the convening authority or that authority's staff judge advocate may grant my request.

3. I understand that the convening authority may in certain cases permitted by law disapprove findings of guilt to a charge and/or specification, but may not change a finding of not guilty to guilty. I also understand that the convening authority may in certain cases permitted by law disapprove a legal sentence, mitigate (lessen) the sentence, or change a punishment to one of a different [but not more severe] nature. I understand the convening authority may not increase the severity of the punishment.

4. My counsel has informed me that the convening authority has in certain cases permitted by law discretion to defer sentences, including confinement, reduction in grade and (adjudged and/or mandatory) forfeitures, (as well as sole discretion to waive mandatory forfeitures of pay (and allowances)). I request that my prior request(s) be (approved)(reconsidered). (I do not specifically request any other specific form of clemency.)

(NAME), (Rank), USAF  
Accused

1st Ind, (Defense Counsel)

(Date)

#### MEMORANDUM FOR (Convening Authority)

1. (Rank and Name of Accused), having [received the record of trial (and) the Staff Judge Advocate's Recommendation (and Addendum), dated \_\_\_\_\_] [been sentenced by (general)(special)(summary) court-martial on (date)], has, after receiving the advice of counsel concerning his/her rights to submit matters to the convening authority pursuant to Article 60, UCMJ, and Rule for Courts-Martial 1105, voluntarily elected to waive the right to submit matters for consideration by the convening authority.

2. I have advised (Rank and of Accused) that (he)(she) may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove findings of guilt in legally permissible cases or to approve any legally permissible portion of the sentence. This includes any allegations of errors affecting the legality of the findings or sentence; portions of the record of trial and copies of documentary evidence offered

or introduced at trial; matters in mitigation which were not available for consideration at the court-martial; and clemency recommendations from any person. I have also advised (him)(her) that the convening authority must consider any written submissions, if any, prior to taking action.

(NAME), (Rank), USAF  
Defense Counsel

**Figure A11.8. Convening Authority Action Memorandum (Summary Court-Martial or Special Court-Martial Without Adjudged Punitive Discharge)**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Action: *United States v. (Rank and Name of Accused)*

1. On (date), you referred the case of (rank and name of accused), (accused's organization), to trial by (summary)(special) court-martial. The court convened on (date). Attached is the Report of Result of Trial memorandum, which summarizes the charges and specifications, pleas, findings and sentence. Also attached is a personal data sheet on the accused for your consideration prior to taking action on the sentence. In addition, you may consider the record of trial, personnel records of the accused, and such other matters, as you deem appropriate. However, if you consider matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused must be notified and given an opportunity to rebut.

2. Pursuant to Article 60, UCMJ, the accused has submitted the attached matters (Atchs 2, 3, 4 and 5) for your consideration prior to taking final action in this case. You must consider all written matters submitted by the defense and may consider any other matters submitted by the defense prior to taking action on the findings and sentence.

**OR**

2. Pursuant to Article 60, UCMJ, the accused may submit matters for your consideration prior to taking final action in this case. However, (the accused did not submit clemency matters.)(the accused has chosen to waive his right to submit clemency matters (Atch 2).)(the accused has chosen to waive his right to submit clemency matters and has also waived the remaining portion of his time to submit clemency matters (Atch 2).)

3. A proposed Action of the Convening Authority (Atch 1) approving the findings and sentence of the court has been prepared for your signature. Should you desire to take some other action in this case, we will prepare the appropriate document at your direction. If you concur, please sign the Action of the Convening Authority.

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

8 Attachments:

1. (Proposed Action of the Convening Authority)( DD Form 2329 with Proposed Action)
2. Defense Counsel Ltr, dtd \_\_\_\_
3. Accused's Ltr, dtd \_\_\_\_
4. Mr. \_\_\_\_ Ltr, dtd \_\_\_\_
5. Air Force Good Conduct Medal Citation, dtd \_\_\_\_
6. Report of Result of Trial memorandum
7. Personal Data Sheet
8. Record of Trial (2 volumes)

**OR**

5 Attachments:

1. (Proposed Action of the Convening Authority)( DD Form 2329 with Proposed Action)
2. Waiver of Clemency Matters, dtd \_\_\_\_ (if used)
3. Report of Result of Trial memorandum
4. Personal Data Sheet
5. Record of Trial (2 volumes)

1st Ind, (Convening Authority)

(Date)

MEMORANDUM FOR (Judge Advocate Office)

I considered the attachments before taking action on this case.

(NAME), (Rank), USAF  
Commander

**Figure A11.9. Trial Counsel Recommendation to the Convening Authority Regarding Substantial Assistance by the Accused**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Trial Counsel's Recommendation – *United States v. (Rank and Name of Accused)*; Substantial Assistance

I was trial counsel on this case and I recommend (Rank and Name of Accused) be recognized for his/her substantial assistance in the (investigation) (prosecution) of (Rank and Name of Other Accused). [Briefly describe how accused provided substantial assistance.]

(NAME), (Rank), USAF  
Trial Counsel

**Figure A11.10. Staff Judge Advocate's Recommendation (For Offenses Committed on or after 24 June 2014)**

(Date)

[This sample should be used in cases where the Accused was convicted only of offenses occurring after 24 June 2014. (See Note 1). If the Accused was found guilty of at least one offense occurring before 24 June 2014, use the sample included at Attachment 8.9.]

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Staff Judge Advocate's Recommendation – *United States v. (Rank and Name of Accused)*

1. On (date of referral), you referred the case of (rank and name of accused), (unit of assignment), (base), to trial by (general) (special) court-martial. On (date of trial), court convened. Attached is the Report of Result of Trial memorandum, which summarizes the charges and specifications, pleas, findings, and sentence. Also attached is a personal data sheet on the accused for your consideration prior to taking action on the sentence. Pursuant to Rule for Courts-Martial 1106, I make the following recommendations.

2. The primary evidence against the accused consisted of (a plea of guilty) (a stipulation of fact), (a confession), (testimony by the victim), and ( ). There is no corrective action required in regard to the findings of guilty. I am satisfied that the evidence upon which the conviction is based is legally sufficient. (For (list offense), you have the authority to approve or dismiss the finding of guilt.) [See Note 2] OR (For (list offense), you only have the authority to approve the finding of guilt and cannot dismiss the finding of guilt.) [See Note 3]

3. [Include any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence under Rule for Courts-Martial 1106(d)(3). Also address any military judge awarded additional credit for illegal pretrial confinement.]

4. [*Note: If the defense raised legal errors in matters submitted under Rule for Courts-Martial 1105, address them pursuant to Rule for Courts-Martial 1106(d)(4). Also, address requests for deferral of punishment and waiver of required forfeitures, and if applicable, include that upon application, the accused's dependents may also qualify for transitional compensation that may be approved in addition to any waived forfeitures. See paragraph 8.12. ]*

5. The accused was sentenced to ( ). The maximum imposable sentence for the offense(s) for which the accused was convicted is ( ). (The mandatory minimum for the offense(s) for which the accused was convicted is ( ).)

6. I have considered all matters in the record of trial, including all matters presented in the pre-sentencing portion of the trial. (Trial counsel is recommending the accused be recognized for his/her substantial assistance during the investigation/prosecution of (\_\_\_\_)). As the convening authority, you have the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part without limitation.) (There was a plea agreement in this case where the accused agreed to (plead guilty to all charges and specifications) (\_\_\_\_)). In exchange, (confinement would be limited to \_\_\_\_ (years)(months))(the case would be referred to a special court-martial)(\_\_\_\_). In accordance with the plea agreement, I recommend you only approve so much of the sentence as calls for ( ).) (A dishonorable discharge was mandatory for the offense under Art ( ). You may only commute the discharge to a bad conduct discharge. [See Note 4] (You have the authority to disapprove, commute or suspend in whole or in part the adjudged sentence.) [See Note 5] OR (You do not have the authority to disapprove, commute or suspend in whole or in part (confinement) (punitive discharge). You do have the authority to disapprove, commute or suspend in whole or in part (adjudged forfeitures) (reduction in rank) (reprimand) (fine).” The sentence adjudged (is) (is not) appropriate for the offense(s) for which the accused was convicted. [If the sentence is not appropriate explain why it is not appropriate.] (I recommend you (approve), (disapprove), (commute), (suspend) the (confinement) (punitive discharge) (forfeitures) (reduction in rank) (restriction) (hard labor without confinement) (reprimand) as adjudged.)

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

3 Attachments:

1. Report of Result of Trial memorandum

2. Personal Data Sheet

[3. Trial Counsel Recommendation – Substantial Assistance memorandum]

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

Note 2: For findings, evaluate each offense separately. If the offense (1) is not under Articles 120(a), 120(b), 120b, or 125, (2) has a maximum sentence of less than or equal to 2 years, AND (3) the adjudged sentence does not include a punitive discharge or greater than six months confinement; then the convening authority has the authority to approve or disapprove the finding of guilt.

Note 3: For findings, evaluate each offense separately. If the offense (1) is under Articles 120(a), 120(b), 120b, or 125, (2) has a maximum sentence of more than 2 years, OR (3) the adjudged sentence includes a punitive discharge or greater than six months confinement; then the convening authority can only approve the finding of guilt and cannot disapprove the finding of guilt.

Note 4: Use this language only when a plea agreement is in place.

Note 5: The convening authority may not disapprove, commute, or suspend, in whole or in part, any confinement for a period exceeding 6 months or a punitive discharge, except upon trial counsel recommendation for substantial assistance or pursuant to a valid plea agreement. Rule for Courts-Martial 1107(d)(1)(A)–(B). The confinement and punitive discharge are analyzed as separate components. For example, if an accused is found guilty of assault consummated by a battery and sentenced to a bad conduct discharge and 3 months of confinement, the convening authority may disapprove or reduce the confinement, but may not disapprove the bad conduct discharge. See Rule for Courts-Martial 1107(d)(1)(F), Discussion.

**Figure A11.11. Staff Judge Advocate’s Recommendation (for Offenses Committed before 24 June 2014 or before and on or after 24 June 2014)**

(Date)

[This sample should be used in cases where the Accused was convicted only of offenses occurring exclusively before 24 June 2014, or where the Accused was convicted of at least one offense occurring before 24 June 2014 *and* at least one offense on or after 24 June 2014. (See Note 1). If the Accused was found guilty only of offenses occurring on or after 24 June 2014, use the sample included at Attachment 8.8.]

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Staff Judge Advocate’s Recommendation – *United States v. (Rank and Name of Accused)*

1. On (date of referral), you referred the case of (rank and name of accused), (unit of assignment), (base), to trial by (general) (special) court-martial. On (date of trial), court convened. Attached is the Report of Result of Trial memorandum, which summarizes the charges and specifications, pleas, findings, and sentence. Also attached is a personal data sheet on the accused for your consideration prior to taking action on the sentence. Pursuant to Rule for Courts-Martial 1106, I make the following recommendations.

2. The primary evidence against the accused consisted of (a plea of guilty) (a stipulation of fact), (a confession), (testimony by the victim), and ( ). There is no corrective action required in regard to the findings of guilty. I am satisfied that the evidence upon which the conviction is based is legally sufficient. You have the authority to approve or disapprove the finding of guilt for all offenses.

3. [Include any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence under Rule for Courts-Martial 1106(d)(3). Also address any military judge awarded additional credit for illegal pretrial confinement.]

4. [*Note: If the defense raised legal errors in matters submitted under Rule for Courts-Martial 1105, address them pursuant to Rule for Courts-Martial 1106(d)(4). Also, address requests for deferral of punishment and waiver of required forfeitures, and if applicable, include that upon application, the accused's dependents may also qualify for transitional compensation that may be approved in addition to any waived forfeitures. See paragraphs 8.12. ]*

5. The accused was sentenced to ( ). The maximum imposable sentence for the offense(s) for which the accused was convicted is ( ). [Include mandatory minimum sentence if applicable.]

6. I have considered all matters in the record of trial, including all matters presented in the pre-sentencing portion of the trial.

a. You have the authority to approve, disapprove, commute, or suspend the adjudged sentence as explained below.

b. [*Insert the appropriate language below*]

*[If the Accused was found guilty of at least one offense that carries a mandatory minimum sentence under Article 56(b), UCMJ, [See Note 2] use the following, **unless**: (1) trial counsel is recommending the accused be recognized for his/her substantial assistance in another case; or (2) there is a plea agreement with a sentence cap of a bad conduct discharge :]*

As the convening authority, you have the authority to disapprove, commute, or suspend in whole or in part (confinement) (forfeitures) (reduction in rank) (reprimand) (fine). The offense(s) of (*list mandatory minimum offenses for which the accused was found guilty*) (carries) (carry) a mandatory minimum sentence of (dishonorable discharge) (dismissal). [See Note 2]. If you approve the finding of guilt for (this offense) (at least one of these offenses), a (dishonorable discharge) (dismissal) is mandatory. If you disapprove the finding of guilt for (this offense) (all of these offenses), you have the authority to disapprove, commute, or suspend the (dishonorable discharge) (dismissal). [See Note 3].

*[If the Accused was found guilty of at least one offense that carries a mandatory minimum sentence under Article 56(b), UCMJ, [See Note 2] **and** there is a plea agreement with a sentence cap of a bad conduct discharge, use the following]:*

As the convening authority, you have the authority to disapprove, commute, or suspend in whole or in part (confinement) (forfeitures) (reduction in rank) (reprimand) (fine). The offense(s) of

*(list mandatory minimum offenses for which the accused was found guilty)* ordinarily (carries) (carry) a mandatory minimum sentence of dishonorable discharge. [See Note 2]. If you approve the finding of guilt for (this offense) (at least one of these offenses), you only have the authority to commute the discharge to a bad conduct discharge pursuant to the approved plea agreement discussed below. [See Note 4]. If you disapprove the finding of guilt for all of these offenses, you have the authority to disapprove, commute, or suspend the dishonorable discharge. There was a plea agreement in this case where the accused agreed to (plead guilty to all charges and specifications) *(list any other conditions imposed on the accused by the plea agreement)*. In exchange, a punitive discharge would be limited to a bad conduct discharge (confinement would be limited to \_\_\_\_ ) *(list any other sentencing limitations in the plea agreement)*. In accordance with the plea agreement, I recommend you only approve so much of the sentence as calls for the bad conduct discharge *(list any other sentencing limitations in the plea agreement)*.

*[If the Accused was found guilty of at least one offense that carries a mandatory minimum sentence under Article 56(b), UCMJ, [See Note 2] and trial counsel is recommending the accused be recognized for his/her substantial assistance in another case, use the following:]*

As the convening authority, you have the authority to disapprove, commute, or suspend in whole or in part (forfeitures) (reduction in rank) (reprimand) (fine). The offense(s) of *(list mandatory minimum offenses for which the accused was found guilty)* ordinarily (carries) (carry) a mandatory minimum sentence of (dishonorable discharge) (dismissal). [See Note 2]. However, trial counsel is recommending the Accused be recognized for (his) (her) substantial assistance in the (investigation) (prosecution) of *(list offender)*. Based on this recommendation and the Accused's assistance, you also have the authority to disapprove, commute, or suspend the adjudged (dishonorable discharge) (dismissal). [See Note 5]

*[If the Accused was not found guilty of an offense that carries a mandatory minimum sentence under Article 56(b), UCMJ, use the following:]*

As the convening authority, you have the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part without limitation. *[If applicable]* There was a plea agreement in this case where the accused agreed to (plead guilty to all charges and specifications) *(list any other conditions imposed on the accused by the plea agreement)*. In exchange, (confinement would be limited to \_\_\_\_ ) *(list any other sentencing limitations in the plea agreement)*. In accordance with the plea agreement, I recommend you only approve so much of the sentence as calls for *(list any other sentencing limitations in the plea agreement)*.

c. The sentence adjudged (is) (is not) appropriate for the offense(s) for which the accused was convicted. [If the sentence is not appropriate explain why it is not appropriate.] (I recommend you (approve), (disapprove), (commute), (suspend) the (confinement) (punitive discharge) (adjudged forfeitures) (reduction in rank) (restriction) (hard labor without confinement) (reprimand) as adjudged.)

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

3 Attachments:

1. Report of Result of Trial memorandum
2. Personal Data Sheet
- [3. Trial Counsel Recommendation – Substantial Assistance memorandum]

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

Note 2: Note that the mandatory minimum sentence applies only to those offenses listed in Article 56(b)(2), UCMJ, committed on or after 24 Jun 2014. See Section 1705, Fiscal Year 2014 National Defense Authorization Act.

Note 3: Section 531(g)(2)(A) of the Fiscal Year 2015 National Defense Authorization Act.

Note 4: Rule for Courts-Martial 1107(d)(1)(E)(ii).

Note 5: Rule for Courts-Martial 1107(d)(1)(E)(i).

**Figure A11.12. Addendum to Staff Judge Advocate’s Recommendation when Matters are Submitted by Victim or Accused**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Addendum to Staff Judge Advocate’s Recommendation: *United States v. (Rank and Name of Accused)*

1. Pursuant to Article 60, UCMJ, [the accused] has submitted the attached matters (Atchs 2, 3, 4 and 5) for your consideration prior to taking final action in this case. [The victim also submitted matters (Atchs 6) for your consideration prior to taking final action.] Rule for Courts-Martial 1107(b)(3)(A)(iii) provides that you must consider [both] defense [and victim] ~~these~~ matters before taking final action in this case. You shall also consider the result of trial and the recommendation of the Staff Judge Advocate. In addition, you may consider the record of trial, personnel records of the accused, and such other matters as you deem appropriate. However, if you consider matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused must be notified and given an opportunity to respond.

2. The defense alleges legal error in that [\_\_\_\_\_]. I considered carefully these allegations of error, and find them to be without merit.

3. I also reviewed the attached clemency matters submitted by the defense. [My earlier recommendation remains unchanged.] [I recommend that you approve the findings and sentence as adjudged.][I recommend \_\_\_\_\_.]

4. A proposed Action of the Convening Authority (Atch 1) [approving the findings and sentence of the court has been prepared for your signature][has been prepared based on my recommendation]. Should you desire to take some other action in this case, we will prepare the appropriate document at your direction. If you concur, please sign the Action of the Convening Authority.

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

6 Attachments:

1. Proposed Action of the Convening Authority
2. Defense Counsel Ltr, dtd \_\_\_\_
3. Accused's Ltr, dtd \_\_\_\_
4. Mr. \_\_\_\_ Ltr, dtd \_\_\_\_
5. Air Force Good Conduct Citation, dtd \_\_\_\_
6. Victim's Ltr, dtd \_\_\_\_
7. Staff Judge Advocate's Recommendation (w/ \_\_ Atchs), dtd \_\_\_\_

1st Ind., (Convening Authority)

(Date)

MEMORANDUM FOR: (Judge Advocate Office)

I have considered the attached matters before taking action on this case.

(NAME), (Rank), USAF  
Commander

**Figure A11.13. Addendum to Staff Judge Advocate's Recommendation when Matters are not Submitted by Victim or Accused**

(Date)

MEMORANDUM FOR (Convening Authority)

FROM: (Judge Advocate Office)

SUBJECT: Addendum to Staff Judge Advocate's Recommendation: *United States. v. (Rank and Name of Accused)*

1. Pursuant to Article 60, UCMJ, the accused may submit matters for your consideration prior to taking final action in this case. However, [the accused did not submit clemency matters.][the accused has chosen to waive his right to submit clemency matters (Atch 2).][the accused has

chosen to waive his right to submit clemency matters and has also waived the remaining portion of his time to submit clemency matters (Atch 2).]

2. My earlier recommendation remains unchanged. I recommend that you approve the findings and sentence as adjudged.
3. A proposed Action of the Convening Authority (Atch 1) approving the findings and sentence of the court has been prepared for your signature. Should you desire to take some other action in this case, we will prepare the appropriate document at your direction. If you concur, please sign the Action of the Convening Authority.

(NAME), (Rank) USAF  
Staff Judge Advocate

3 Attachments:

1. Proposed Action of the Convening Authority
2. Waiver of Clemency Matters, dtd \_\_\_\_ (if used)
3. Staff Judge Advocate's Recommendation (w/ \_\_ Atchs), dtd \_\_\_\_

1st Ind, (Convening Authority)

(Date)

MEMORANDUM FOR: (Judge Advocate Office)

I have considered the attachments before taking action on this case.

(NAME), (Rank), USAF  
Commander

**Figure A11.14. Sample Convening Authority Actions**

Punitive Discharge Approved

**ACTION OF THE CONVENING AUTHORITY:**

**DEPARTMENT OF THE AIR FORCE, HEADQUARTERS, EIGHTY FIRST TRAINING WING (AETC), KEESLER AIR FORCE BASE, MISSISSIPPI 39534-2553**

In the case of AIRMAN FIRST CLASS JOHN R. SMITH, 123-45-6789, United States Air Force, 81st Communications Squadron, the sentence is approved and, except for the bad conduct discharge, will be executed. The Air Force Corrections System is designated for the purpose of confinement and the confinement will be served therein or elsewhere as directed by Air Force

Security Forces Center, Confinement and Corrections Directorate. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC SMITH will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.

(NAME), (Rank), USAF  
Commander

Adjudged Sentence in Part

**ACTION OF THE CONVENING AUTHORITY:**

**DEPARTMENT OF THE AIR FORCE, HEADQUARTERS, EIGHTY FIRST TRAINING WING (AETC), KEESLER AIR FORCE BASE, MISSISSIPPI 39534-2553**

In the case of AIRMAN FIRST CLASS JOHN R. SMITH, 123-45-6789, United States Air Force, 81st Communications Squadron, only so much of the sentence as provides for 2 months confinement, forfeiture of \$775.00 pay per month for 2 months, reduction to the grade of E-1 and a bad conduct discharge is approved and, except for the bad conduct discharge, will be executed. The term of confinement having been served, no place of confinement is designated. Unless competent authority otherwise, directs, AIRMAN BASIC SMITH will be required under Article 76a UCMJ, to take leave pending completion of appellate review.

(NAME), (Rank), USAF  
Commander

New Action Required

**ACTION OF THE CONVENING AUTHORITY:**

**DEPARTMENT OF THE AIR FORCE, HEADQUARTERS, SECOND AIR FORCE (AETC) KEESLER AIR FORCE BASE, MISSISSIPPI 39534-2804**

In the case of AIRMAN FIRST CLASS JOHN R. SMITH, XXX-XX-XXXX, the record of trial having been returned by (The Judge Advocate General)(the Air Force Court of Criminal Appeals) (higher headquarters) with directions that a new action be accomplished, the action taken (by me)(by my predecessor) on 16 February 2016, is withdrawn, and Special Court Martial Order Number 8, Headquarters Eighty First Training Wing (AETC), dated 16 February 2016, is rescinded and the following is substituted for the original action: In the case of AIRMAN FIRST CLASS JOHN R. SMITH, XXX-XX-XXXX, United States Air Force, 81st Communications Squadron, the entire sentence is approved and, except for the bad conduct discharge, will be executed. The term of confinement having been served, no place of confinement is designated.

Unless competent authority otherwise directs, AIRMAN BASIC SMITH will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.

(NAME), (Rank), USAF  
Commander

### **Figure A11.15. Convening Authority Action Language**

#### **Approving Adjudged Sentence in its Entirety:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved [and will be executed][and, except for the (type of punitive discharge), will be executed].

#### **Approving Adjudged Sentence in Part:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence as provides for \_\_\_\_\_ (identify each punishment that is approved by type and amount, to include any punitive discharge if applicable) is approved [and will be executed][and, except for the (type of punitive discharge), will be executed].

#### **Sentences Including Death or Punitive Discharge:**

If an adjudged sentence includes death, dismissal, or discharge, the convening authority may not order these punishments executed in the initial action. See R.C.M. 1113(c). Use the following format in the action: "In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and, except for the (part of the sentence extending to death)(dismissal)(dishonorable discharge)(bad conduct discharge), will be executed."

#### **Review Required under Article 69(a)**

Include the following in the convening authority's initial action in general court-martial cases requiring review under Article 69(a), UCMJ: "In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and will be executed. The record of trial is forwarded to The Judge Advocate General for examination under Article 69(a), UCMJ, unless appellate review is waived or withdrawn under Article 61, UCMJ."

#### **Sentences Including Confinement**

##### **Designating Place of Confinement:**

If an accused's punishment includes confinement, service of which has not been completed at time of action, use the following language in the convening authority's action to designate place of confinement: "The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as directed by Air Force Security Forces Center, Confinement and Corrections Directorate."

If no military facilities are reasonably available, the installation commander may authorize the use of civilian facilities to incarcerate inmates in accordance with AFI 31-105. Use the

following language in the convening authority's action to designate place of confinement: "The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere directed by Air Force Security Forces Center, Confinement and Corrections Directorate. If no military facility is reasonably available, confinement will be served in a civilian facility as directed by the installation commander."

**Confinement Completely Served Prior to Action:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and (, except for the (type of punitive discharge),) will be executed. The term of confinement having been served, no place of confinement is designated.

**Deferred Confinement. Rule for Courts-Martial 1101(c):**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and will be executed. Pursuant to Article 57a, UCMJ, the service of the sentence to confinement was deferred on \_\_\_\_\_ until \_\_\_\_\_.

**Credit for Illegal Pretrial Confinement. Rule for Courts-Martial 1107(f)(4)(F).**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), (the sentence is approved)( and will be executed)(only so much of the sentence as provides for \_\_\_\_\_ (identify the punishment that is approved by type and amount) is approved [and will be executed][and, except for the (type of punitive discharge), will be executed]). The accused will be credited with \_\_\_\_\_ days for illegal pretrial confinement against the sentence to confinement.

**Suspended Confinement:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and will be executed, but the execution of that part of the sentence extending to [confinement] [confinement in excess of \_\_\_\_\_] is suspended for \_\_\_\_\_(months) (years), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. [The period of confinement having been suspended, no place of confinement is designated][The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as directed by Air Force Security Forces Center, Confinement and Corrections Directorate.]. Also, see paragraph 8.27.4. for additional requirements when punishment is suspended.

**Directing Excess Leave**

(CONFINEMENT) Include the following in the convening authority's action to place an accused with an approved, unsuspended and unexecuted dismissal, dishonorable discharge or bad conduct discharge on excess leave upon completion of the term of confinement: "Unless competent authority otherwise directs, upon completion of the sentence to confinement, (REDUCED RANK, as approved, and NAME of ACCUSED) will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review." See [Section A11K](#) for additional guidance on excess leave pending appellate review.

(CONFINEMENT COMPLETED) Include the following in the convening authority's action to place an accused with an approved, unsuspended and unexecuted dismissal, dishonorable discharge or bad conduct discharge on excess leave when confinement has been served: "Unless competent authority otherwise directs, (REDUCED RANK, as approved, and NAME of ACCUSED) will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review." See [Section A11K](#) for additional guidance on excess leave pending appellate review.

**Figure A11.16. Convening Authority Action Language Involving Forfeitures  
Disapproval of All Adjudged Forfeitures:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence as provides for a bad conduct discharge, confinement for \_\_\_ ([month(s)] [year(s)]), and reduction to the grade of \_\_\_ is approved and, except for the bad conduct discharge, will be executed. [*Note: No reference to any adjudged forfeitures.*]

**Disapproval of a Portion of Adjudged Forfeitures:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence as provides for a bad conduct discharge, confinement for \_\_\_ ([month(s)] [year(s)]), forfeiture of \$\_\_\_ pay per month for \_\_\_ ([month(s)] [year(s)]), and reduction to the grade of \_\_\_ is approved and, except for the bad conduct discharge, will be executed. [*Note: The approved forfeitures are less than the adjudged forfeitures in amount, length, or both.*]

**Mitigation of All Adjudged Forfeitures:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), only so much of the sentence extending to forfeiture of (total pay and allowances) ( [\$\_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is changed to a reprimand. The sentence as changed to a bad conduct discharge, confinement for \_\_\_ ([month(s)] [year(s)]), reduction to the grade of \_\_\_, and a reprimand is approved and, except for the bad conduct discharge, will be executed. [*Note: The adjudged sentence did not include a reprimand. Also, the language of the reprimand must be included in the convening authority's action.*]

**Suspension of Entire Period of Adjudged Forfeitures:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and, except for the bad conduct discharge will be executed, but the execution of that part of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is suspended for \_\_\_ ([month(s)] [year(s)]), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action.

**Suspension of Six Months of Adjudged Forfeitures for Six Months:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (UNIT), the sentence is approved and, except for the bad conduct discharge will be executed, but the execution of the first six months

of that part of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) is suspended for six months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The collection of the remaining \_\_\_ ([month(s)] [year(s)]) of forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_] pay per month for \_\_\_ [month(s)] [year(s)]) will begin at the end of the period of suspension, or sooner if the suspension is vacated. [*Note: This language is based on the scenario contemplated in United States v. Emminizer, 56 M/J. 441 (C.A.A.F. 2002). To our knowledge, it has not been tested at the appellate level.*]

**Deferral of Adjudged and Mandatory Forfeitures:**

Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), UCMJ, (all) (\$\_\_\_ pay per month) of the adjudged and mandatory forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_\_ - insert other date prior to action]) until ([the date of this action] [\_\_\_\_\_ - specify an earlier date]).

**Deferral of Adjudged Forfeitures Only:**

Pursuant to Article 57, Section (a)(2), UCMJ, (all) (\$\_\_\_ pay per month) of the adjudged forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_\_ - insert other date prior to action]) until ([the date of this action] [\_\_\_\_\_ - specify an earlier date]).

**Deferral of Mandatory Forfeitures Only:**

Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), UCMJ, (all) (\$\_\_\_ pay per month) of the mandatory forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_\_ - insert other date prior to action]) until ([the date of this action] [\_\_\_\_\_ - specify an earlier date]).

**Waived Forfeitures to Begin at Action or on an Earlier Date:**

Pursuant to Article 58b, Section (b), UCMJ, (all) (\$\_\_\_ pay per month) of the mandatory forfeitures are waived for a period of \_\_\_ months [*Note: no more than 6 months*] or release from confinement (*if applicable:* or expiration of term of service), whichever is sooner, with the waiver commencing on ([the date of this action] [\_\_\_\_\_ - specify an earlier date if the waiver is retroactive]). The (total pay and allowances) ([\$\_\_\_] pay per month) is directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of ([herself] [himself]) and the accused's \_\_\_ dependent children] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_]).

**Waived Forfeitures Granted on an Earlier Date and Memorialized in the Action:**

Pursuant to Article 58b, Section (b), UCMJ, (all) (\$\_\_\_ pay per month) of the mandatory forfeitures were waived for a period of \_\_\_ months [*Note: no more than 6 months*] or release from confinement (*if applicable:* or expiration of term of service), whichever is sooner, ([from 14 days after sentence was adjudged] [from \_\_\_\_\_ - insert other date prior to action]). The (total pay and allowances) ( [\$\_\_\_ ] pay per month) was directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of ([herself] [himself]) and the accused's \_\_\_ dependent children] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_]).

*Note:* Be sure to include language designating confinement and language directing excess leave.

**Figure A11.17. Notification of Adjudged Sentence or Convening Authority Action**

(Date)

MEMORANDUM FOR HQ AFPC/DP1SSP (enlisted only)  
 AFSFC/SFC  
 DFAS-IN/FLTBA  
 (Local Servicing Finance Office)

FROM: (Judge Advocate Office)

SUBJECT: (Adjudged Sentence)(Convening Authority Action) (SPCM or General Court-Martial) – *United States v. (Accused's Rank and Name)*

1. Request you update personnel and pay data as the result of sentence on:

- a. (Rank)
- b. (First Name)(Middle Initial)(Last Name)
- c. (SSN)
- d. (Unit)

2. On (Date of Sentence)(Action), the following sentence was (adjudged)(approved):

- a. DISCHARGE: (Dismissal)(DD)(bad conduct discharge)(N/A)
- b. CONFINEMENT: \_\_\_\_\_ (years)(months)(N/A)
- c. FORFEITURE: (Total)(\$\_\_\_\_\_ pay per month for \_\_\_\_\_ months)(N/A)
- d. FINE: (\$\_\_\_\_\_)(N/A)
- e. REDUCTION TO: (Grade)(N/A)
- f. DATE ADJUDGED: (Date)

*Use the following paragraph with the 14 day message:*

3. [(Adjudged forfeitures)(Reduction in grade)(Automatic forfeitures of (2/3)(total) pay and allowances)(took effect)(will take effect) on (date) (were deferred until action).] (and/or) [Automatic forfeitures in the amount of (total)(\$\_\_\_\_\_ per month) pay and allowances were waived from (date) until (date).]

*Use the following paragraphs in the message after action is taken:*

3. Entire sentence was ordered executed (except discharge/dismissal)(except discharge and the following portions, which were suspended: \_\_\_\_\_)(except \_\_\_\_\_). Automatic forfeitures of (total)(\$\_\_\_\_\_ per month) pay and allowances (took effect on (date)) (were deferred)(were waived) (from (date) until (date)).

4. Action was promulgated by (Special Court-Martial Order)(General Court-Martial Order) No. \_\_\_\_\_, Headquarters (Convening Authority) dated \_\_\_\_\_.

(NAME), (Rank), USAF  
(Duty Title)

**Figure A11.18. Notification of Required Excess Leave and Indorsements**

MEMORANDUM FOR (Rank, Name, SSN, Losing Unit of Accused)

FROM: (Convening Authority or Staff Judge Advocate if excess leave is directed in action)

SUBJECT: Required Excess Leave / Appellate Review Leave

1. On (date of sentence), you were sentenced by (general/special) court-martial. Your sentence, as approved by the court-martial convening authority, included (final action: type of discharge, confinement sentence, grade reduction). You are hereby required, under Article 76a, UCMJ (UCMJ), to take leave pending completion of appellate review of your conviction by court-martial. The effective date of your appellate review leave will be determined administratively, and you will receive an Air Force Form 899, *Request and Authorization for Permanent Change of Station – Military*, and Air Force Form 988, *Leave/Request Authorization*, through your Force Support Squadron and approved by HQ AFSFC indicating your departure date and your appellate review leave start date.

2. If you have accrued ordinary leave, you can elect to:

a. Receive pay and allowances during the period of accrued leave, then continue on unpaid required excess leave; or

b. Receive a lump sum payment for the accrued leave, as of the day before the required excess leave begins, and serve the entire period of required leave on unpaid excess leave. If you elect this option, you are only entitled to base pay. This entitlement does not extend to allowances or special pay.

3. If you have no accrued leave, the entire period of appellate review leave will be unpaid excess leave.

4. While on required appellate review leave, you remain a member of the United States Air Force, on active duty and subject to UCMJ, to lawful orders and regulations and to recall from required appellate review leave as provided in paragraph 5. While on appellate leave you and your dependents will be entitled to medical care, use of military exchange facilities, commissaries, and other military welfare benefits. These entitlements may be curtailed or terminated for cause; therefore, you and your dependents must follow all applicable rules and maintain proper conduct. In order to make use of these benefits, you and your dependents will be issued appropriate identification cards of limited duration.

5. You are required to provide a correct leave address and report any changes to your address to

(Base Military Justice Section) and **HQ AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236**. Failure to provide a correct address may result in loss of valuable opportunities to recoup any pay and allowances, which you may be entitled to if your sentence is disapproved or set aside. It may also prevent you from receiving important instructions regarding your case while undergoing appellate review. You are also subject to recall from appellate leave. Failure to return promptly to your unit (if directed by order delivered or mailed to your leave address) could result in placement in absent without leave or desertion status and could result in disciplinary action.

6. You will be informed of any significant action or decisions with regard to the appellate review of your conviction. This information and instructions will be sent to you at your leave address. If you have any questions concerning your status or your court-martial, contact the Appellate Defense Division, AFLOA/JAJA, 1500 West Perimeter Road, Suite 1100, Joint Base Andrews Naval Air Facility Washington, Maryland, 20762 (Phone: (240) 612-4770 or toll free 1-800-414-8847). You may also contact your defense counsel, or any defense counsel or staff judge advocate office at any Air Force base.

7. You are required to complete the 1st Indorsement to this memorandum. This includes providing an appellate leave address, making your elections regarding accrued leave and acknowledging that you cannot depart on excess leave without out processing through Force Support Squadron Separations office and without orders from AFSFC/FC.

8. (Base Force Support Squadron, SEPARATIONS POC information) will brief you regarding your status, obligations and entitlements while on excess leave and complete all personnel actions in regards to out processing; they will also allow you to ask any questions you may have in this regard.

(Name, Rank, USAF)  
(Commander)(Staff Judge Advocate)

1st Ind, (Rank , Name, SSN, Losing Unit of Accused)

MEMORANDUM FOR (Losing Commander)

1. On \_\_\_\_\_, I received a copy of this document regarding required excess leave. In accordance with paragraph 7 of this memorandum, I provide the following appellate review leave address and contact information:

(Street Address) \_\_\_\_\_

(City, State) \_\_\_\_\_

(Zip code) \_\_\_\_\_

(Phone number) \_\_\_\_\_

(E-mail address) \_\_\_\_\_

In regards to my accrued leave, I elect as follows:

\_\_\_\_\_ Receive pay and allowances during the period of accrued leave then continue on unpaid required excess leave.

\_\_\_\_\_ Receive a lump sum payment for the accrued leave, as of the day before the required excess leave begins, and serve the entire period of required leave on unpaid excess leave. I will only be entitled to base pay. This entitlement does not extend to allowances or special pay.

\_\_\_\_\_ I do not have accrued leave, the entire period of appellate leave will be unpaid excess leave.

I acknowledge that I cannot depart on excess leave without out processing through (Force Support Squadron).

(Name, Rank, USAF)

Accused

2nd Ind (Losing Commander)

MEMORANDUM FOR (Rank, Name, SSN, Losing Unit of Accused)

1. The (general/special) court-martial convening authority, (through (his/her) staff judge advocate), has directed that you be placed on required excess leave pending completion of appellate review of your recent court-martial conviction. During the period of excess leave, you will be administratively assigned to **AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236**. Upon completion of out-processing, you shall immediately proceed to the leave address you provided where your accrued leave, if elected, and your required excess leave will commence.
2. You are required to complete all base out processing and personnel actions through the local Force Support Squadron; upon approval of appellate leave package by AFSFC/FCI you will receive an Air Force Form 899 Request and Authorization for Permanent Change of Station and Air Force Form 988 Leave Request Authorization indicating your departure date and your appellate review leave start date.
3. You are required to complete the 3d Indorsement below, which includes providing both your current leave address and telephone number. You are also required to promptly report any change in that address by first class mail. You must make arrangements for receiving all mail that is addressed to the leave address you provide. Send any change of address to **AFSFC/FC, 1517 Billy Mitchell Blvd, Bldg 954, Joint Base San Antonio-Lackland, Texas 78236**.
4. (Insert name and designation of briefer) briefed you on (Insert date of briefing) regarding your status, obligations, and entitlements while on required leave and on the appeal of your case, and permitted you to ask any questions you had in this regard.

(Name, Rank, USAF)  
(Commander)(Title of Representative)

3d Ind (Rank, Name, SSN, Losing Unit of Accused)

MEMORANDUM FOR (Losing Commander)

On this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, I received a copy of the convening authority’s letter placing me on excess leave. I have been briefed as noted in paragraph 3 of my current commander’s indorsement. I understand that I must provide information as to any change of address without delay and am responsible for receiving mail addressed to me at the address last provided by me. My initial leave address and telephone number, for use until I provide a change as required by paragraph 2 of the 2nd Indorsement, is as follows:

(Street Address) \_\_\_\_\_  
(City, State) \_\_\_\_\_  
(Zip code) \_\_\_\_\_  
(Phone number) \_\_\_\_\_  
(E-mail address) \_\_\_\_\_

I also understand that my appellate defense counsel also requests that I provide a long term alternative address and phone number of a relative or other person to contact if I cannot be reached at the above address. That address, the provision of which is optional, is:

(Street Address) \_\_\_\_\_  
(City, State) \_\_\_\_\_  
(Zip code) \_\_\_\_\_  
(Phone number) \_\_\_\_\_  
(E-mail address) \_\_\_\_\_

Finally, I understand it is critical that I keep my appellate defense counsel informed of my current address.

(Name, Rank, USAF)  
Accused

cc:  
AFLOA/JAJM  
AFLOA/JAJA  
HQ AFSFC/FC  
Losing Unit/CC

Losing FSS/CC  
Losing Unit /JA  
Gaining Unit/CC  
Gaining FSS/CC  
Gaining Unit/JA

## Attachment 12

**INSTRUCTIONS AND TEMPLATES FOR COURTS-MARTIAL ORDERS IN CASES REFERRED TO TRIAL PRIOR TO 1 JANUARY 2019****Figure A12.1. Courts-Martial Orders (for cases with charges referred prior to 1 January 2019)**

**A12.1. Court-Martial Order.** A court-martial order is used to promulgate the result of trial and action by the convening authority (initial action), and any subsequent action the convening authority or higher authorities take on a case after the initial action (supplementary orders), including the final order. Use the guidance in R.C.M. 1114, Appendix 17, and the samples included at Attachment 9 to prepare and issue court-martial orders. See AFMAN 51-203, paragraph 10.5, for guidance on convening authority action in summary courts-martial.

**A12.2. Separate Orders.** Use a separate court-martial order to announce the results for each accused tried, whether or not they were tried jointly.

**A12.3. Authority to Publish Court Martial Order.** This chapter is the sole authority for the publication of court-martial orders. The appropriate convening authority publishes court-martial orders, or AFLOA/JAJM may direct publication. Additionally, AFLOA/JAJ publishes final court-martial orders executing sentences in cases acted on by TJAG, and AFLOA/JAJR publishes final court-martial orders in cases acted on by the Secretary of the Air Force and the President. In the event a convening authority's command is deactivated, responsibility for publication of orders falls to:

A12.3.1. The next higher level of command exercising GCMCA;

A12.3.2. A re-designated unit, when the initial order was published under its old designation;  
or

A12.3.3. A unit assuming the records, personnel, functions, etc., of an inactivated or transferred unit that published the initial order.

**A12.4. Authentication (Signature).** The authority issuing the court-martial order signs it personally, or delegates such authority. Do not designate a representative below the grade of Master Sergeant. Include the signature block of the issuing authority and, if applicable, the signature block of the person authenticating pursuant to a delegation. Only the person actually authenticating the court-martial order signs it. The convening authority personally signs a supplemental order that comprises an action subsequent to the initial action. R.C.M. 1114(b)(2). A digital signature using a Public Key Infrastructure certificate (typically via a Common Access Card) satisfying the requirements of AFI 33-321, *Authentication of Air Force Records*, may be substituted for a written signature.

**A12.5. Promulgation of Court Martial Order.** See Figures A12.2 through A12.10 for examples.

A12.5.1. Promulgate court-martial orders as follows:

A12.5.1.1. For a GCM, use a GCM Order. For a SPCM, use a SPCM Order. For a SCM, use a SCM Order.

A12.5.1.2. Number consecutively, starting with number one for each fiscal year.

A12.5.1.3. Above the heading of the first order of a fiscal year, cite the number of the last order published in the previous fiscal year. If no orders were published the preceding year, state there were no orders published in the previous fiscal year.

A12.5.1.4. Continue court-martial orders of commands redesignated during a fiscal year in the same series of numbers. Cite the authority for the redesignation above the heading of the first page in the first order published after redesignation.

A12.5.1.5. For SCMs, court-martial orders are required for acquittals when the convening authority takes action after the initial action.

#### A12.5.2. Orders Logs.

A12.5.2.1. Have a separate court-martial order log for each type of court-martial and each convening authority. For example, a single-base GCMCA will have one log for SPCMs and one log for general courts-martial. Each SPCMCA will have his/her own log for SPCMs. A court-martial order log is in addition to the convening orders log.

A12.5.2.2. The log should reflect the court-martial order number assigned to a particular case. Hard copies, as opposed to electronic copies, of the original court-martial orders are stored with the court-martial order log.

#### **A12.6. Court Martial Order Format.** Use the following format and Figures A12.2 through A12.10.

A12.6.1. Single-sided on letter size paper.

A12.6.2. Margins. Leave a two-inch margin at the top and bottom of all pages, and a one-inch margin on the left and right side of all pages. On the first page of an order include the order number one-half inch from the bottom of the page at the left margin. Number the second and succeeding pages one-half inch from the bottom of the page at the left margin. On the first line of the second and succeeding pages, state the order number, headquarters, and date of the court-martial order (e.g., Special Court-Martial Order No. 3, Headquarters 71 Fighter Wing, Vance Air Force Base, Oklahoma, 6 May 2011).

A12.6.3. Heading. Include "DEPARTMENT OF THE AIR FORCE," the complete unit designation, the name of the major command abbreviated in parentheses, the mailing address, and the order number and date.

A12.6.3.1. DNA Processing. In cases where DNA processing is required by DoD Directive 5505.14, SJAs must ensure court-martial orders contain the annotation "DNA Processing Required. 10 U.S.C. § 1565 and 34 U.S.C. 40702" in 14-point boldface type on the first page of the order. (T-0) The annotation must be one line, centered, and one inch from the top of the page. See AFI 51-201, Chapter 15, for additional discussion on DNA processing requirements.

A12.6.3.2. Crimes Prohibiting Firearm Possession or Purchase. (18 U.S.C. § 922) SJAs must ensure CMOs prepared for individuals convicted of a qualifying crime of domestic violence contain the annotation "Crime of Domestic Violence – 18 U.S.C. § 922(g)(9)." SJAs must ensure CMOs prepared for individuals convicted of other offenses that prohibit firearm possession or purchase include the language "Firearms Prohibition. 18 U.S.C. § 922(g)." (T-0) The annotation must be one line, centered, in 14-point boldface type, and

one inch from the top of the page. See AFI 51-201, Chapter 15 for additional discussion of requirements associated with domestic violence offenses.

A12.6.3.3. Sex Offender Notification. SJAs must ensure CMOs prepared for individuals convicted of a qualifying sexually violent offense or offense against a minor contain the annotation “Sex Offender Notification Required. DoDI 1325.07.” (T-1) The annotation must be one line, centered, in 14-point boldface type, and one inch from the top of the page. See AFI 51-201, Chapter 15 for additional discussion of requirements associated with sex offender notification.

A12.6.4. Body. Do not number paragraphs in the body. Center the headings titled “SENTENCE” and “ACTION” and use subparagraphs under each.

A12.6.5. Announcement of the Proceedings. State the accused’s grade at the time of arraignment, name, social security number, branch of service, and unit. State the location of the arraignment.

A12.6.6. Grade and Name. Always reflect the grade and name of an accused in capital letters. The first time the name is used, state the grade or title, first name, middle initial, last name. If the name is used again, use only the grade or title and last name. When referencing the accused after stating a reduction in grade was approved, use the accused’s reduced grade (e.g., when directing excess leave in the convening authority’s action).

A12.6.7. Abbreviations. Abbreviations from a standard dictionary, or Air Force Handbook 33-337, *The Tongue and Quill*, may be used if they make the order clearer.

A12.6.8. Close. In the close, use the appropriate authority line depending on who authenticates the order, followed by the signature block of the person authenticating. For Department of the Air Force, use “BY ORDER OF THE SECRETARY OF THE AIR FORCE.” For the Air Force Academy, use “FOR THE SUPERINTENDENT.” For The Judge Advocate General use “FOR THE JUDGE ADVOCATE GENERAL.” For all other units, use “FOR THE COMMANDER.” No authority line is required when the convening authority personally signs the court-martial order. Paralegals in grade E-7 thru E-9 must include duty titles.

## **A12.7. Matters Unfit for Publication and Classified Matters.**

A12.7.1. Unexpurgated and Expurgated Court-Martial Orders. When the content of a court-martial order includes classified or other matters unfit for publication, prepare both an expurgated and an unexpurgated copy. The version with the content replaced is called the expurgated order. Both carry the same order number and full distribution list, but only certain parties receive the unexpurgated version (see paragraph 1.7.2 of this attachment). Make the following substitutions in the expurgated order:

A12.7.1.1. Names of children under 16 years of age are replaced with initials, regardless of verdict (in both the expurgated and unexpurgated court-martial orders);

A12.7.1.2. Names of minor victims under 18 years of age are replaced with initials when the charged offense is a child pornography offense, regardless of verdict (in both the expurgated and unexpurgated court-martial orders);

A12.7.1.3. Names of adult sex offense victims are replaced with initials, regardless of verdict;

A12.7.1.4. Classified information is replaced with asterisks.

#### A12.7.2. Distribution.

A12.7.2.1. Unexpurgated Orders. AFLOA/JAJM, the commanding officer responsible for the confinement facility where the accused is held, and the confinement officer or noncommissioned officer receive the unexpurgated court-martial order unless it contains classified information. Only distribute unexpurgated court martial orders containing classified information to AFLOA/JAJM as a part of the original ROT, and maintain an unexpurgated version in the legal office's copy of the ROT.

A12.7.2.2. Expurgated Orders. All other individuals or organizations required to receive a court-martial order are provided expurgated copies.

A12.7.2.3. To avoid confusion between the recipients, on both versions mark those parties who are to receive the unexpurgated copies with asterisks, and below the distribution list mark, “\*Recipients of unexpurgated court-martial order.”

A12.7.2.4. Refer to the Court-Martial Order Distribution Checklist on the Virtual Military Justice Deskbook for the most current guidance on distribution.

**A12.8. Initial Promulgating Order (R.C.M. 1114).** Initial court-martial orders promulgate the results of trial and any initial action taken under Article 60, UCMJ. R.C.M. 1114. It is important they accurately reflect the proceedings of the court-martial.

A12.8.1. Preparing Orders. Prepare initial court-martial orders when the convening authority takes action on a case where the court returned any finding of guilty and a sentence.

A12.8.1.1. Orders in Cases without a Guilty Finding. Issue a court-martial order in trials terminated after arraignment but before findings (i.e., all charges dismissed or withdrawn, including upon declaration of a mistrial), and trials resulting in a finding of not guilty of all charges, including not guilty by reason of lack of mental responsibility and acquittals. Include the date of the termination or not guilty finding. Explain the circumstances of the termination. The date of the court-martial order is the same date it is published. Do not issue a court-martial order in trials terminated without findings before arraignment.

A12.8.1.2. Rehearing or New Trial. Indicate in an initial court-martial order whether a case is a rehearing or new trial as shown in Figure A12.6.

#### A12.8.2. Form.

A12.8.2.1. Date. The date of the court-martial order is the same date the convening authority took action. If the convening authority did not take action (e.g., in an acquittal), the date of the court-martial order is the date it is published.

A12.8.2.2. Charges, Specifications, Pleas and Findings. List the charges and specifications on which the accused was arraigned. After each charge and specification, abbreviate the plea and finding using “G” for guilty and “NG” for not guilty. If no plea was entered, state “None entered.” If an accused's plea changed during trial, explain the circumstances surrounding the change. If no finding was entered, state the reason. The disposition of each charge and specification should be clear, including those amended, merged, withdrawn and/or dismissed.

A12.8.2.2.1. Summarized Specifications. R.C.M. 1114(c) requires the promulgating order to contain at least a summary of the charges and specifications on which the accused was arraigned. Because the accused's personal information is contained in the introductory paragraph of the court-martial order, it need not be repeated in the specification subparagraph. However, the remainder of the specification on which the accused was arraigned should be verbatim.

A12.8.2.2.1.1. Consider summarizing lengthy bad check specifications. Ensure any summarized specification includes factors such as value, amount, or other such circumstances affecting maximum punishment.

A12.8.2.2.2. Lesser Included Offenses. The charge should reflect any plea or findings of guilt to a lesser included offense. If found not guilty of the greater offense, but guilty of the lesser included offense, then annotate NG of Art. X, but guilty of Art. Y. See Figure A12.2.

A12.8.2.2.3. Exceptions and Substitutions. When an accused pled or was found guilty by exceptions, the language in the specification being excepted should be verbatim. The plea or finding of the specification should accurately reflect the words being excepted and, if applicable, substituted. See Figure A12.2.

A12.8.2.2.4. Amendments. Indicate, in parentheses and after the affected portion of the specification, an amendment to a charge or specification made after arraignment. See Figure A12.3.

A12.8.2.2.5. Renumbering of Charges. Use care in proof reading court-martial orders involving charges and specifications withdrawn, dismissed, or severed that result in the renumbering of remaining charges and specifications. Charges and specifications withdrawn before arraignment do not appear in the court-martial order if the other charges were correctly renumbered. Charges and specifications withdrawn after arraignment do appear in the court-martial order. See Figure A12.5.

A12.8.2.3. Sentence. State the forum that adjudged the sentence, the date the sentence was adjudged, and the adjudged sentence. When the convening authority orders a reprimand executed, place the language of the reprimand after the action and before the distribution. Make sure the reprimand language is included in the convening authority action.

A12.8.2.4. Action. Reflect the action taken by the convening authority under Article 60, UCMJ. On court-martial orders, the action may be summarized to the extent it does not repeat the accused's personal information (which should be in the introductory paragraph). The remainder of the convening authority's action should be verbatim. When the convening authority mitigates an action before publication or before the accused was notified of the action, the initial court martial order reflects only the mitigated action. The wording of the action in court-martial orders should follow the wording in the action memorandum verbatim, excluding the accused's personal information. If an error occurs, court-martial orders should not be corrected, but rescinded and accomplished again.

**A12.9. Supplementary Order.** Promulgate any action taken on a case subsequent to the initial action in a supplementary order. For example, use a supplementary order to suspend or remit a

sentence (R.C.M. 1108), vacate an earlier suspension (R.C.M. 1109), terminate deferment (R.C.M. 1101(c)(7)), and take final action.

A12.9.1. Form. All supplementary orders contain the following:

A12.9.1.1. A cite to the initial court-martial order and any later court-martial orders modifying the findings, sentence or action.

A12.9.1.2. The date the sentence was adjudged and the trial forum.

A12.9.1.3. The AFLOA/JAJM court-martial reference number (ACM) assigned to the case.

A12.9.2. Convening Authority Signature. The convening authority personally signs all supplementary orders. See R.C.M. 1114(b)(2). A digital signature using a Public Key Infrastructure certificate (typically via a Common Access Card) satisfying the requirements of AFI 33-321 may be substituted for a written signature.

A12.9.3. Order Vacating Suspension. If suspended confinement is later vacated, include in the court-martial order the information in MCM, Appendix 17(d), and the following additional information: the trial forum, the date the sentence was adjudged, the period of any deferment, any modification of confinement, and identifying data of any orders affecting the sentence to confinement.

A12.9.4. Article 64, UCMJ, Review. When the GCMCA is required to take action under R.C.M. 1112(e), in a non-bad conduct discharge special court-martial, ensure the court-martial order states the review is "Pursuant to the authority of R.C.M. 1112(f)." Ensure the cover and all court-martial orders are typed or stamped "64(a) Review," signed and dated.

A12.9.5. Final Orders. A final order is a supplementary order used after appellate review is complete to promulgate a convening authority's action and/or reflect modifications of findings and sentence. In addition, use a final order after withdrawal of appellate review and when the proceedings are abated upon the death of an accused during appellate review. A final order should reflect the post-trial and appellate history of the case, including actions taken by the convening authority, the appellate courts, Secretary of the Air Force and TJAG. Ensure that GCMCA final orders execute all dishonorable or bad conduct discharges, and Secretary of the Air Force final orders execute all dismissals. R.C.M. 1113(c)(1)(B) and (c)(2). In cases involving re-hearings, the final order only reflects modifications of the findings and sentence.

A12.9.6. International Hold Situations. When the accused is overseas and being retained in a foreign country because of pending foreign criminal proceedings, consult Air Force Joint Instruction 51-706, *Status of Forces Policies, Procedures, and Information*, before issuing a court-martial order. This includes any order executing the sentence; an initial order where Article 71, UCMJ, does not require further review before it may be ordered executed; or a supplemental order after completion of appellate action when the latter is required. See *also* AFI 51-402, *International Law*.

A12.9.7. Supplementary Orders When the Accused May Be Adjudged Two Punitive Discharges. An accused cannot be discharged twice from the same enlistment. If an accused has an approved punitive discharge from one court-martial and is facing another court-martial which may adjudge a more severe punitive discharge, execute the sentence from the first court-martial, except the discharge. If the accused receives a dishonorable discharge in the second

court-martial after receiving a bad conduct discharge in the first court-martial, execute the dishonorable discharge after final appellate review of the second court-martial. If the approved sentence of the second court-martial includes a bad conduct discharge or no punitive discharge, do not delay execution of the first punitive discharge solely to wait for appellate review of the second court-martial. If the accused is discharged using the second punitive discharge, a supplementary order for the first court-martial must address the first discharge (e.g., the bad conduct discharge will not be executed because the accused was discharged pursuant to General Court Martial Order No. 1, this headquarters, dated 1 June 2011).

#### **A12.10. Corrected Copy.**

A12.10.1. Do not amend court-martial orders. Issue a corrected copy to correct errors in the heading and close, the body of the order, the announcement of the proceedings, the action taken, and errors in typing or printing that make the order ambiguous. To correct a court martial-order, include the deleted matter with a line through it and leave it legible. If the correction is an addition, underscore the added matters. If the correction is a substitution, include both the deleted and the added items, with the former lined out and the latter underscored. Identify it as a corrected copy in the heading by using "CORRECTED COPY – DESTROY ALL OTHERS." **Note:** In cases involving a sex offense and/or child victims, if the corrected copy is expurgating an erroneously unexpurgated matter, do not include the previously unexpurgated text (see paragraph 1.7.1 of this attachment). The order number and date of the corrected copy remains the same as the original order. In the event additional corrections are required, the heading must reflect that the order is the second, third, etc., corrected copy. Incorporate changes from a previous corrected copy by deleting the language lined through and retaining the added language without the underscore. See Figure A12.5.

A12.10.2. Do not issue a corrected copy in any case in which a convening authority or reviewing authority withdraws an action and substitutes a new one. Prepare a new court-martial order rescinding the initial order. See Figure A12.10.

**A12.11. Distribution and Number of Copies.** List recipients of the court-martial order distribution and the number of copies beginning two spaces below the authentication signature element at the left margin. Include the complete mailing address. Refer to the Court-Martial Order Distribution Checklist on the Virtual Military Justice Deskbook for the most current guidance on distribution. **Note:** DO NOT mail additional copies of the court-martial order to AFLOA/JAJM; the copies inserted in the ROT are sufficient for what is required.

**A12.12. Retention and Disposition of Original Court Martial Order.** Staff Judge Advocates must retain the original of their Headquarters' court-martial orders and retire them in accordance with Air Force Records Disposition Schedule, Table 51-3.

**A12.13. Disposition of Stamped Orders.** When orders are examined and noted as legally sufficient under Article 64(a), UCMJ, permanently place four copies in the ROT. Only the original must have an original signature. The others may be mechanically reproduced. Distribute in accordance with paragraph 1.11 of this attachment.

**Figure A12.2. Sample Court-Martial Order – Heading, First Order of the Fiscal Year, and Guilty Plea to Lesser Included Offense**

**DNA PROCESSING REQUIRED. 10 U.S.C. § 1565**

General Court-Martial Order No. 3, 13 September 2015, was the last General Court-Martial Order of this headquarters published in Fiscal Year 15.

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS NINTH AIR FORCE (ACC)  
SHAW AIR FORCE BASE, SOUTH CAROLINA 29152-5002

General Court-Martial Order  
No. 1

18 October 2015

AIRMAN FIRST CLASS WILLIAM L. STEWART, 111-22-3333, United States Air Force, 20th Supply Squadron, was arraigned at Shaw Air Force Base, South Carolina, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 85. Plea: NG. Finding: NG, but G of a violation of Article 86.

Specification: Did, on or about 24 June 2015, without authority and with intent to remain away there from permanently, absent himself from his unit, 20th Supply Squadron, located at Shaw Air Force Base, South Carolina, and did remain so absent in desertion until he was apprehended on or about 25 July 2015. Plea: NG. Finding: NG, but G of absence without authority from his unit, from 24 June 2015 to 25 July 2015, in violation of Article 86.

CHARGE II: Article 121. Plea: NG, but G of the LIO of wrongful appropriation. Finding: G.

Specification 1: Did, at Shaw Air Force Base, South Carolina, on or about 30 August 2015, steal a camera of a value of about \$95.00, the property of Airman Joseph L. Smith. Plea: NG, but G of the LIO of wrongful appropriation, excepting the word "steal" and substituting therefore the words "wrongfully appropriate." Finding: G (of the charged offense of larceny).

Specification 2: Did, at Shaw Air Force Base, South Carolina, on or about 30 August 2015, steal a camera lens of a value of about \$124.00, the property of Colonel Thomas M. Jones. Plea: NG, but G of the LIO of wrongful appropriation, excepting the word "steal" and substituting therefore the words "wrongfully appropriate." Finding: NG, but G, of the LIO of wrongful appropriation, excepting the word "steal," and substituting therefore the words "wrongfully appropriate."

GCMO No. 1                      Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

SENTENCE

Sentence adjudged by officer members on 10 September 2015: Bad conduct discharge, confinement for 15 months, and reduction to airman basic.

ACTION

In the case of AIRMAN FIRST CLASS WILLIAM L. STEWART, 111-22-3333, United States Air Force, 20th Supply Squadron, only so much of the sentence as provides for a bad conduct discharge, confinement for 12 months, and reduction to airman basic is approved and, except for the bad conduct discharge, will be executed, but the execution of that portion of the sentence to bad conduct discharge is suspended until 30 June 2016, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as directed by Air Force Security Forces Center, Confinement and Corrections Directorate. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC STEWART will be required under Article 76a, UCMJ, to take leave pending completion of appellate review.

/s/ Robert T. Myers  
ROBERT T. MYERS  
Major General, USAF  
Commander

FOR THE COMMANDER

ANN D. JONES, SMSgt, USAF  
Paralegal Manager

DISTRIBUTION:

**Figure A12.3. Sample Court-Martial Order - Amended Specification****DNA PROCESSING REQUIRED. 10 U.S.C. § 1565**

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS TWELFTH AIR FORCE (ACC)  
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA 85707-4100

General Court-Martial Order  
No. 10

13 February 2016

STAFF SERGEANT GREGORY BURTON, 111-22-3333, United States Air Force, 358th Fighter Squadron, was arraigned at Davis-Monthan Air Force Base, Arizona, on the following offense at a court-martial convened by this headquarters.

CHARGE: Article 118. Plea: G. Finding: G.

Specification: Did, at Davis-Monthan Air Force Base, Arizona, on or about 4 August 2014, with premeditation (amended after arraignment to delete the words, "with premeditation") murder Staff Sergeant Richard Daum by means of stabbing him with a knife. Plea: G. Finding: G.

**SENTENCE**

Sentence adjudged by officer and enlisted members on 6 December 2015: Dishonorable discharge, confinement for 25 years, forfeiture of all pay and allowances, and reduction to airman basic.

**ACTION**

In the case of STAFF SERGEANT GREGORY BURTON, 111-22-3333, United States Air Force, 358th Fighter Squadron, only so much of the sentence as provides for a dishonorable discharge, confinement for 12 years, forfeiture of all pay and allowances, and reduction to airman basic is approved and, except for the dishonorable discharge, will be executed. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as directed by Air Force Security Forces Center, Confinement and Corrections Directorate. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC BURTON will be required under Article 76a, UCMJ, to take leave pending completion of appellate review.

/s/ J. A. Marlow  
J. A. MARLOW  
Major General, USAF  
Commander

FOR THE COMMANDER

ANN D. JONES, SMSgt, USAF  
Paralegal Manager

DISTRIBUTION:

GCMO No. 10                      Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

**Figure A12.4. Sample Court-Martial Order - Change of Pleas**

**DNA PROCESSING REQUIRED. 10 U.S.C. § 1565**

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 35TH FIGHTER WING (PACAF)  
APO AP 96319-5000

Special Court-Martial Order  
No. 5

29 December 2015

SENIOR AIRMAN MARY J. LUNDY, 111-22-3333, United States Air Force, 35th Civil Engineer Squadron, was arraigned at Misawa Air Base, Japan, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 128. Plea: NG (G plea not accepted by military judge; plea of NG directed to be entered). Finding: G.

Specification: Did, at Misawa AB, Japan, on or about 24 October 2015, unlawfully strike Lisa Green in the face with her fist. Plea: NG (G plea not accepted by the military judge, plea of NG directed to be entered). Finding: G.

CHARGE II: Article 134. Plea: NG (G plea not accepted by military judge, plea of NG directed to be entered). Finding: G.

Specification: Did, at Misawa AB, Japan, on or about 24 October 2015, orally communicate to Joe Smith, certain indecent language. Plea: NG (G plea not accepted by military judge; plea of NG directed to be entered). Finding: G.

CHARGE III: Article 108. Plea: NG (G plea not accepted by military judge; plea of NG directed to be entered). Finding: G.

Specification: Did, at Misawa AB, Japan, on or about 24 October 2015, willfully destroy the Misawa AB Noncommissioned Officer Club front door, military property of a value of less than

\$500.00. Plea: NG (G plea not accepted by the military judge; plea of NG directed to be entered). Finding: G.

#### SENTENCE

Sentenced adjudged by military judge on 12 December 2015: Hard labor without confinement for 30 days, restriction to the limits of Misawa AB for 60 days, forfeiture of \$100.00 pay per month for 8 months, and reduction to airman.

#### ACTION

In the case of SENIOR AIRMAN MARY J. LUNDY, 111-22-3333, United States Air Force, 35th Civil Engineer Squadron, the sentence is approved and will be executed. SPCMO No.5, HQ 35 FW, APO, AP, 29 December 2015.

s/Joseph T. Jones  
JOSEPH T. JONES, Colonel, USAF  
Commander

FOR THE COMMANDER

JOHNATHAN J. SMITH, Lt Col, USAF  
Staff Judge Advocate

DISTRIBUTION:

SPCMO No. 5          Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

**Figure A12.5. Sample Court-Martial Order - Corrected Copy****DNA PROCESSING REQUIRED. 10 U.S.C. § 1565**

CORRECTED COPY - DESTROY ALL OTHERS

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS EIGHTH AIR FORCE (ACC)  
BARKSDALE AIR FORCE BASE, LOUISIANA 71110-5002

General Court-Martial Order  
No. 3

10 October 2016

~~TECHNICAL~~ STAFF SERGEANT EDWARD MATTHEWS CROWLEY, 111-22-3333, United States Air Force, 28th Maintenance Squadron, was arraigned at McGuire Air Force Base, New Jersey, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 134 Plea: None Entered. Finding: Withdrawn and dismissed after arraignment.

Specification: Did, in the continental United States, on divers occasions, between on or about 15 June 2004 and 15 July 2015, commit indecent acts upon the body of a female under 16 years of age. Plea: None Entered. Finding: Withdrawn and dismissed after arraignment.

CHARGE II: (renumbered as CHARGE) Article 120. Plea: NG. Finding: G.

Specification: Did, in the continental United States, on divers occasions from on or about 17 December 2013 to on or about 10 June 2014, commit the offense of carnal knowledge with LJK. Plea: NG. Finding: G.

ADDITIONAL CHARGE: Article 112a. Plea: NG. Finding: Withdrawn after defense motion to suppress evidence.

Specification: Did, at or near Ellsworth Air Force Base, South Dakota, on or about 16 March 2015, wrongfully use marijuana. Plea: NG. Finding: Withdrawn after defense motion to suppress evidence.

**SENTENCE**

Sentence adjudged by military judge on 31 August 2015: Dishonorable discharge, confinement for 5 years, and reduction to airman basic.

## ACTION

In the case of STAFF SERGEANT EDWARD MATTHEWS CROWLEY, 111-22-3333, United States Air Force, 28th Maintenance Squadron, the sentence is approved, and except for the dishonorable discharge, will be executed. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as directed by Air Force Security Forces Center, Confinement and Corrections Directorate. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC CROWLEY will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.

/s/ Steven S. McLean  
STEVEN S. MCLEAN  
Lieutenant General, USAF  
Commander

FOR THE COMMANDER

DAVID A. DRAKE, SMSgt, USAF  
Paralegal Superintendent

DISTRIBUTION:

**Figure A12.6. Sample Court-Martial Order-Rehearing or New Trial**

DNA PROCESSING REQUIRED. 10 U.S.C. § 1565  
FIREARMS PROHIBITION. 18 U.S.C. § 922

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS EIGHTEENTH AIR FORCE (AMC)  
SCOTT AIR FORCE BASE, ILLINIOS 94535-5002

General Court-Martial Order  
No. 23

3 June 2015

SENIOR AIRMAN JANE DOE, 111-22-3333, United States Air Force, David Grant USAF Medical Center, formerly assigned to 375th Maintenance Squadron, Scott Air Force Base, Illinois, was arraigned before a general court-martial convened by this headquarters, a rehearing on the sentence having been ordered in General Court-Martial Order No. 7, Headquarters Fifteenth Air Force (AMC), dated 8 July 2013. The findings of guilt of the former proceedings were affirmed, but the sentence was set aside and a rehearing on the sentence authorized by the Air Force Court of Criminal Appeals, which decision was made final by the United States Court of Appeals for the Armed Forces by order dated 11 February 2015 (ACM 38240). The affirmed findings of the former proceedings are as follows:

CHARGE I: Article 80. Plea: G. Finding: G.

Specification 1: Did, on or about 25 February 2013, at or near Belleville, Illinois, attempt to wrongfully distribute lysergic acid diethylamide. Plea: G. Finding: G.

Specification 2: Did, on or about 25 February 2013, at or near Belleville, Illinois, attempt to wrongfully use a substance she intended and believed to be lysergic acid diethylamide. Plea: G. Finding: G.

CHARGE II: Article 112a. Plea: G. Finding: G.

Specification: Did, on or about 25 February 2013, at or near Belleville, Illinois, wrongfully distribute 50 grams, more or less, of cocaine. Plea: G. Finding: G.

#### SENTENCE

Sentence adjudged by military judge, upon a rehearing, on 1 April 2015: Bad conduct discharge, confinement for 3 years, forfeiture of all pay and allowances, and reduction to airman basic.

#### ACTION

In the case of SENIOR AIRMAN JANE DOE, 111-22-3333, United States Air Force, David Grant USAF Medical Center, formerly assigned to 375th Maintenance Squadron, Scott Air Force Base, Illinois, the sentence is approved and, except for the bad conduct discharge, will be

executed. The accused will be credited with any portion of the punishment served from 25 April 2013 to 31 March 2015, under the sentence adjudged at the former trial in this case, and for 30 days for illegal pretrial confinement as directed by the military judge. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as directed by Air Force Security Forces Center, Confinement and Corrections Directorate. Unless competent authority otherwise directs, upon completion of the sentence to confinement AIRMAN BASIC DOE will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review.

/s/James T. Smith  
JAMES T. SMITH  
Major General, USAF  
Commander

FOR THE COMMANDER

HOWARD JONES, Colonel, USAF  
Staff Judge Advocate

DISTRIBUTION:

**Figure A12.7. Sample Court-Martial Order - Acquittal of all charges**

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS TWELFTH AIR FORCE (ACC)  
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA 85707-4100**

General Court-Martial Order  
No. 10

13 February 2017

STAFF SERGEANT GREGORY BURTON, 111-22-3333, United States Air Force, 358th Fighter Squadron, was arraigned at Davis-Monthan Air Force Base, Arizona, on the following offense at a court-martial convened by this headquarters.

CHARGE: Article 118. Plea: NG. Finding: NG.

Specification: Did, at or near Davis-Monthan Air Force Base, Arizona, on or about 4 August 2015, with premeditation (amended after arraignment to delete the words, "with premeditation") murder Staff Sergeant Richard Daum by means of stabbing him with a knife. Plea: NG.  
Finding: NG.

SENTENCE

The findings were announced by officer and enlisted members on 6 December 2016.

ANN D. JONES, SMSgt, USAF  
Paralegal Manager

DISTRIBUTION:

**Figure A12.8. Sample Court-Martial Order - Final Supplementary Order**

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS NINTH AIR FORCE (ACC)  
SHAW AFB SC 29152

Special Court-Martial Order  
No. 7

2 December 2016

In the special court-martial case of SENIOR AIRMAN WALTER F. DUNE, 111-22-3333, United States Air Force, 18th Maintenance Squadron, the accused having withdrawn his rights to appellate review under Article 61, and review under Rule for Courts-Martial 1112 having been completed, the sentence to bad conduct discharge, confinement for 3 months, forfeiture of \$250.00 per month for 8 months, and reduction to airman basic, as promulgated in Special Court-Martial Order No. 2, Headquarters 18th Wing (PACAF), dated 5 November 2015, has been finally affirmed. Article 71(c) having been complied with, the bad conduct discharge will be executed. The unexecuted portion of the sentence to confinement was remitted by Special Court-Martial Order No. 13, Headquarters 18th Wing (PACAF), dated 2 February 2016. The sentence was adjudged by military judge on 12 September 2015 (ACM S30049).

(signature)  
W. E. SMITH  
Lieutenant General, USAF  
Commander

DISTRIBUTION:

**Figure A12.9. Sample Court-Martial Order - Final Supplementary Order and Waiver/Withdrawal of Appellate Review**

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS TWELFTH AIR FORCE (ACC)  
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA 85707-4100

(General) (Special) Court-Martial Order  
No. \_\_\_\_\_

12 January 2017

In the (general) (special) court-martial case of AIRMAN FIRST CLASS WARREN M. WEST, 111-22-3333, United States Air Force, 355th Support Group, the accused, (having waived his rights to appellate review under Article 61) (having withdrawn his rights to appellate review under Article 61), and Article 71(c) having been complied with, the [entire adjudged sentence] as promulgated in (General) (Special) Court-Martial Order No. \_\_\_\_\_. (Headquarters \_\_\_\_\_) (this headquarters), dated \_\_\_\_\_, will be executed. The sentence was adjudged by (officer members) (officer and enlisted members) (military judge) on \_\_\_\_\_ (ACM \_\_\_\_\_).

(signature)  
BRUCE M. STRONG  
Lieutenant General, USAF  
Commander

DISTRIBUTION:

(GCMO.\_\_\_\_) (SPCMO.\_\_\_\_) Personal Data – Privacy Act of 1974 (5 U.S.C. § 552a)

**Figure A12.10. Sample Court-Martial Order - New Action****DNA PROCESSING REQUIRED. 10 U.S.C. § 1565****DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS THIRD AIR FORCE (USAFE)  
RAMSTEIN AB, GE 09240**

General Court-Martial Order  
No. 25

6 March 2016

MASTER SERGEANT CURTIS MAYS, 111-22-3333, United States Air Force, 52nd Communications Squadron, was arraigned at Spangdahlem Air Base, Germany, on the following offense at a court-martial convened by this command.

CHARGE. Article 85. Plea: NG, but G of a violation of Article 86. Finding: NG, but G of a violation of Article 86.

Specification: Unauthorized absence from unit from 1 February 2015 to 29 September 2015 with intent to remain away there from permanently in desertion. Plea: G, except the words "and with intent to remain away there from permanently" and "in desertion." Finding: G, except the words "and with intent to remain away there from permanently" and "in desertion."

**SENTENCE**

Sentence adjudged by officer and enlisted members on 4 November 2015: Bad conduct discharge, confinement for 5 months, forfeiture of \$200.00 pay per month for 5 months, and reduction to airman basic.

**ACTION**

In the case of MASTER SERGEANT CURTIS MAYS, 111-22-3333, the record of trial having been returned by (higher headquarters)(The Judge Advocate General)(Air Force Court of Criminal Appeals)(Court of Appeals for the Armed Forces) with directions that a new action be accomplished, the action taken by (me) (my predecessor) on 23 January 2016 is withdrawn, and General Court-Martial Order Number 17, Headquarters Third Air Force (USAFE), dated 23 January 2016, is rescinded and the following is substituted for the original action: Only so much of the sentence as provides for a bad conduct discharge, confinement for 82 days, forfeiture of \$200.00 pay per month for 5 months, and reduction to airman basic is approved, and, except for the part of the sentence extending to a bad conduct discharge, will be executed. The term of confinement having been served, no place of confinement is designated.

/s/ Thomas J. Jackson  
THOMAS J. JACKSON  
Major General, USAF  
Commander

FOR THE COMMANDER

SONIA LEE, Colonel, USAF  
Staff Judge Advocate

DISTRIBUTION:

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**Attachment 13****INSTRUCTIONS AND TEMPLATES FOR APPEALS AND REVIEWS, REHEARINGS, RETRIALS, DUBAY HEARINGS, AND CLEMENCY IN CASES IN WHICH THE MILITARY JUSTICE ACT OF 2016 SENTENCING FRAMEWORK DOES NOT APPLY****Figure 13.1. Former Chapter 10 of AFI 51-201: Appeals, Rehearings, Retrials, DuBay Hearings, and Clemency in Cases in Which the Military Justice Act of 2016 Sentencing Framework Does Not Apply*****Section A13A—Appellate Defense Counsel and Review*****A13.1. Request for Appellate Defense Counsel (Article 70, UCMJ).**

A13.1.1. Include an Air Force Form 304, Request for Appellate Defense Counsel, signed by the accused in every ROT forwarded to the Air Force Court of Criminal Appeals or forwarded to The Judge Advocate General for review.

A13.1.1.1. The accused's trial defense counsel assists the accused in filling out the form, obtains the accused's signature, and submits it to the trial counsel or appropriate SJA as soon as practicable after sentence announcement.

A13.1.1.2. If the accused waives appellate counsel, re-serve the Air Force Form 304 and obtain the member's signature after the convening authority has taken action on the case. Both copies of the Air Force Form 304 are placed in the ROT.

A13.1.1.3. The Air Force Form 304 provides the accused's preferred mailing address (appellate leave address, etc.) for all appellate review correspondence when the accused is not in a confinement facility. An adequate address must be provided even if the accused waives appellate review. Do not use the ADC office or the base organization address. In those instances where an accused's initial Air Force Form 304 indicates a waiver of appellate counsel but a second Air Force Form 304 is not part of the ROT, the record will be returned to the servicing SJA for execution of this requirement.

A13.1.2. If an accused's death sentence has been approved by the President pursuant to Article 71, UCMJ, and the accused seeks to file a post-conviction habeas corpus petition in Federal civilian court, the accused may request a military defense counsel from TJAG. Upon receipt of the accused's request, TJAG will detail military counsel under Article 70(e), UCMJ, to represent the accused in such proceedings and any appeals there from.

**A13.2. Withdrawal of Request for Appellate Defense Counsel.** Use the following format to withdraw a request for appellate defense counsel:

A13.2.1. I consulted with my [military trial defense counsel] [civilian defense counsel], (insert counsel's name), and have been advised of the action taken by the court-martial convening authority in my case. I received a copy of my ROT for review. I am aware of my right to representation by appellate counsel. I hereby withdraw the request for appellate counsel executed by me on (insert date).

A13.2.2. The accused may also decline appellate representation by checking the appropriate box on the Air Force Form 304.

A13.2.3. If the accused initially declines appellate representation after sentence is announced, the accused must be given another opportunity to elect or decline appellate representation after the convening authority's action is served upon the accused. See *United States v. Xu*, 70 M.J. 140 (C.A.A.F. 2011) (Summary Disposition).

A13.2.3.1. If the accused again declines appellate representation after receiving the action, include both versions of the Air Force Form 304 in the ROT, and forward only the original ROT to AFLOA/JAJM for appellate review.

A13.2.3.2. In those instances where an accused's initial Air Force Form 304 indicates a waiver of appellate counsel but a second Air Force Form 304 is not part of the ROT, the record will be returned to the servicing SJA for execution of this requirement.

### **A13.3. Waiver or Withdrawal of Appellate Review (Article 61, UCMJ; Rule for Courts-Martial 1110).**

A13.3.1. If an accused wishes to waive or withdraw from appellate review, follow the procedures outlined in R.C.M. 1110. The request to waive or withdraw must be filed after the convening authority takes action. The waiver or withdrawal should be accomplished on a DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review*, DD Form 2331, *Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General*. Manual for Courts-Martial, Appendix 19 & 20. Waiver or withdrawal of appellate review bars review by the Air Force Court of Criminal Appeals and by TJAG under Article 69(a), UCMJ. It does not prevent later submission of an Article 69(b), UCMJ application.

A13.3.2. An Article 64(a), UCMJ, review is required for special and general courts-martial where an accused waives appellate review. See R.C.M. 1112. A judge advocate appointed by the GCMCA SJA over the accused at the time of trial conducts the review. A memorandum must be prepared addressing issues in R.C.M. 1112(d), inserted in the original and all copies of the ROT, and served on the accused. The case will be forwarded to the GCMCA for a supplemental order if (1) the judge advocate who reviewed the case recommends corrective action; and (2) the sentence approved by the convening authority includes a dismissal, a dishonorable or bad conduct discharge, or more than six months confinement.

### ***Section A13B—Judge Advocate Review (Article 64(a), UCMJ; Rule for Courts-Martial 1112)***

**A13.4. Judge Advocate Review.** An Article 64(a), UCMJ, review is required in three types of cases: (1) any general court-martial in which the accused has waived or withdrawn appellate review; (2) any special court-martial in which the accused has waived or withdrawn appellate review or in which the approved sentence does not include a bad conduct discharge or confinement for one year; and (3) in all summary courts-martial. A judge advocate appointed by the GCMCA SJA over the accused at the time of trial conducts the review. No review is required if the accused is found not guilty of all offenses, the convening authority disapproved all findings of guilty, or the accused is found not guilty for all offenses only because of lack of mental responsibility.

A13.4.1. Indicate compliance with Article 64(a) with a stamped or typed notation signed and dated by the reviewing officer on the cover of the first volume of all copies of the ROT and on

all copies of the court-martial order. Only the original cover and court-martial order has an original signature. The others may be mechanically reproduced.

A13.4.2. If all judge advocates on the GCMCA's staff are disqualified from conducting such a review or the GCMCA is disqualified from taking any required action on the case, the MAJCOM SJA will select another GCMCA and SJA to perform the review and take any required action. If there is no eligible convening authority in the command, or if the major commander is the convening authority, the MAJCOM SJA may request another MAJCOM to act or to designate another GCMCA within that other MAJCOM to take action on the case. If agreement cannot be reached between major commands, contact AFLOA/JAJM for assistance in identifying an officer exercising general court-martial convening authority to act on the case.

### **A13.5. Form and Content of Judge Advocate Reviews.**

A13.5.1. Reviews of these courts-martial will contain only those matters required by Article 64(a). In those cases in which no corrective action is required by the convening authority, the review will consist of a stamped or typed entry on the cover of volume one of the original ROT, and on the back of the DD Form 2329, *ROT by Summary Court-Martial*, and on all the court-martial orders for non-bad conduct discharge special courts-martial. The entry shall be entitled, "Article 64(a), UCMJ, Review" and shall consist of the conclusions required in Article 64(a), the command of the reviewer, the date, signature of the reviewer, and the reviewer's signature block.

A13.5.2. In cases where the review does not require corrective action (even if it addresses allegations of error by the accused), the review is prepared in writing, dated, and signed by the reviewer; covers the matters required by Article 64(a), UCMJ; and includes a statement that the findings and sentence are correct in law and fact. The review is attached to the ROT. The cover of volume one and all copies of the court-martial order are annotated with a typed or stamped notation consisting of the date, signature block, the command of the reviewer, and a statement that Article 64(a), UCMJ, has been complied with.

A13.5.3. When the GCMCA at the time the court-martial was convened is required to take corrective or further action under Article 64, UCMJ, the judge advocate's review will be in writing, dated and signed by the reviewer, and will address the matters required in Article 64(b), as well as determine whether the findings and sentence are correct in law and fact. After the convening authority takes action in accordance with Article 64(c), the review and action are included in the ROT.

A13.5.3.1. In cases where the review stated that corrective action was required as a matter of law, and the convening authority refused to take action that was at least as favorable to the accused as that recommended by the reviewer, the ROT, review, and action of the convening authority are transmitted to TJAG through AFLOA/JAJM for review under Article 69(b), UCMJ. (T-1)

A13.5.3.2. If the officer taking action under Article 64, UCMJ, orders a rehearing, the ROT, action and court-martial order will be sent to the officer who convened the court-martial who determines whether a rehearing is practicable. See Section 10F. If a rehearing is to be held and the accused has been transferred to another command, the officer who convened the court-martial will coordinate with the officer presently exercising special court-martial jurisdiction over the accused.

A13.5.4. Except cases requiring Article 69, UCMJ, review under R.C.M. 1112(g), Secretarial action under Article 71, UCMJ, or rehearings, cases are final under Article 76, UCMJ, upon completion of the judge advocate's review and any required action by the GCMCA.

A13.5.4.1. The GCMCA's action may execute all unexecuted portions of the sentence except those portions requiring Secretarial approval under Article 71, UCMJ.

A13.5.4.2. If the GCMCA orders a rehearing, forward the review, ROT, action, and court-martial order to the convening authority that convened the court-martial. This convening authority determines whether a rehearing is practicable.

**A13.6. Distribution of Judge Advocate Reviews.** After completing the Article 64(a) review and, when applicable, any action by the GCMCA under R.C.M. 1112(f), forward the original ROT and four copies of the court-martial order plus any supplementary orders to AFLOA/JAJM, indicating compliance with Article 64(a) as stated in paragraph A13.4.1. Provide one copy each of the court-martial order indicating compliance with Article 64(a) to each addressee as required by paragraph A12.11, as applicable.

***Section A13C—Review by the Office of The Judge Advocate General (Article 69, UCMJ)***

**A13.7. Article 69(a), UCMJ, Review (Rule for Courts-Martial 1201(b)(1)).** The ROT in each general court-martial that is not otherwise reviewed under Article 66, UCMJ, shall be examined in the Office of The Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under Article 61, UCMJ.

A13.7.1. Submission of Matters by the Accused. The accused may submit matters for TJAG's consideration. Any matters must be submitted directly to AFLOA/JAJM on or before the thirtieth day after the date the GCMCA approved the sentence, unless the accused establishes good cause for not filing matters within that time. (T-1)

A13.7.2. Notification of Article 69(a) Examination Results. AFLOA/JAJM notifies the convening authority's Staff Judge Advocate of the examination results. If TJAG does not direct a review by the Air Force Court of Criminal Appeals, AFLOA/JAJM forwards a copy of the initial promulgating order to the convening authority's Staff Judge Advocate, reflecting the results of the review. AFLOA/JAJM serves one copy of the order upon the accused and obtains a receipt demonstrating service. If the defense counsel's name and address is included in matters submitted by the accused, AFLOA/JAJM also sends a copy of the results to the defense counsel.

A13.7.3. Other Action by The Judge Advocate General. If TJAG orders a rehearing, the procedures in Section A13F will apply. If TJAG forwards the case for review by the Air Force Court of Criminal Appeals, the GCMCA'S SJA will, upon request, send two copies of the ROT to AFLOA/JAJM.

**A13.8. Application for Relief under Article 69(b), UCMJ (R.C.M. 1201(b)(3)).** TJAG may vacate or modify the findings or sentence, or both, reassess the sentence, or set aside the findings or sentence and order a rehearing of a court-martial case which has become final in law but has not been reviewed by the Air Force Court of Criminal Appeals or TJAG. R.C.M. 1201(b). This applies to all courts-martial, including those cases forwarded under R.C.M. 1112(g)(1).

A13.8.1. Prerequisite of Finality of Review. An application may not be filed and will not be reviewed under Article 69(b), UCMJ, unless the convening authority has taken action, and a judge advocate completed the review and any other action required by Article 64, UCMJ.

A13.8.2. Submission of Application.

A13.8.2.1. The application must be filed in the Office of the Judge Advocate General on or before the last day of the two-year period, beginning on the date the sentence is approved, unless the accused establishes good cause for failure to file within that time.

A13.8.2.2. The accused sends the application directly to AFLOA/JAJM, and it is considered filed when received by that office.

A13.8.3. Contents of Application. In all cases, the application is written and signed by the accused or the applicant's legal representative under oath or affirmation. Defense counsel does not receive a copy of TJAG's action unless counsel's name is on the application. The application must contain the following:

A13.8.3.1. The accused's name, social security number, and present mailing address;

A13.8.3.2. The date and place of trial and type of court-martial;

A13.8.3.3. The sentence of the court as approved and any subsequent reduction by clemency or otherwise;

A13.8.3.4. A succinct statement of the specific relief requested and the specific grounds for the relief (a concise brief of the applicable law with appropriate citations is encouraged); and

A13.8.3.5. Any documentary or other evidence pertinent to the facts asserted under the specific grounds alleged, including copies of the court-martial order, if available.

***Section A13D—Review by the Air Force Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court of the United States***

**A13.9. Air Force Court of Criminal Appeals Review (Article 66, UCMJ; Rule for Courts-Martial 1203).**

A13.9.1. The Air Force Court of Criminal Appeals reviews cases referred to it by TJAG under R.C.M. 1201(a) or (b)(1).

A13.9.2. Notification of the Air Force Court of Criminal Appeals's Decision. The decision is transmitted to the accused directly from AFLOA/JAJM via the officer exercising general court-martial convening authority over the accused.

**A13.10. The United States Court of Appeals for the Armed Forces Review (Article 67, UCMJ; R.C.M. 1204).** The United States Court of Appeals for the Armed Forces reviews the record in all cases: (1) in which the sentence, as affirmed by Air Force Court of Criminal Appeals, extends to death; (2) referred by TJAG after review by the Air Force Court of Criminal Appeals; and reviewed by Air Force Court of Criminal Appeals, except those referred to it by The Judge Advocate General under R.C.M. 1201(b)(1), in which, upon petition by the accused and on good cause shown, The United States Court of Appeals for the Armed Forces has granted a review.

**A13.11. Petition by Writ of Certiorari for Supreme Court Review (Article 67a, UCMJ).** Petitions for Supreme Court review by writ of certiorari may be filed by the accused or the United States in those cases specified in Article 67a(a) and R.C.M. 1205(a). Such petitions are filed according to the rules of the Supreme Court of the United States.

A13.11.1. Military appellate defense counsel may assist the accused in preparing a petition for writ of certiorari and provide representation before the Supreme Court when requested by the accused.

A13.11.2. When requested to do so by the Attorney General of the United States, TJAG will appoint appellate government counsel to represent the United States.

***Section A13E—Petition for New Trial (Article 73, UCMJ; R.C.M. 1210).***

**A13.12. Petition for New Trial.** Petitions for new trial are prepared and processed under R.C.M. 1210, and are filed with AFLOA/JAJM on behalf of TJAG. A petition for new trial may be submitted because of newly discovered evidence or fraud on the court, in any kind of court-martial, within two years after approval of the sentence by the convening authority.

A13.12.1. The petition must be in writing and contain the matters required by R.C.M. 1210(c). When practicable, the petition should be typewritten and double-spaced. The petition is signed under oath or affirmation by the petitioner, a person possessing the power of attorney of the petitioner for that purpose, or a person with the authorization of an appropriate court of law to sign the petition as the petitioner's representative. The petitioner forwards the original and two copies of the petition and supporting documentation directly to AFLOA/JAJM. An accused may submit only one petition for new trial for the same reason within the two-year limitation period.

A13.12.2. Forwarding the Petition.

A13.12.2.1. If the petitioner's case is pending before the Air Force Court of Criminal Appeals, AFLOA/JAJM forwards the following documents to the Court: the signed petition plus two copies, copies of each supporting document, and any prepared briefs. AFLOA/JAJM also forwards a copy of the petition and all documents to appellate defense and appellate government counsel. R.C.M. 1210(e).

A13.12.2.2. If the petitioner's case is pending before The United States Court of Appeals for the Armed Forces, AFLOA/JAJM forwards the following documents to the Court: the original petition plus seven copies, copies of each supporting document, and any prepared briefs. AFLOA/JAJM also forwards a copy of the petition and all documents to both appellate defense and appellate government counsel. R.C.M. 1210(e).

**A13.13. The Judge Advocate General Review of the Petition.** If the petitioner's case is not pending before a court, AFLOA/JAJM, on behalf of TJAG or an officer designated by TJAG, shall review the petition. Upon request by the designated officer(s), TJAG shall appoint appellate defense counsel and appellate government counsel to act in the case. Upon such appointment, the designated officer(s) shall forward one copy of the petition and all documents to each appellate counsel. The designated officer(s) may direct appellate defense and government counsel to provide briefs in the case and upon written request or, if the designated officer(s) deem(s) it appropriate, may order oral arguments to be presented before the officer(s).

**A13.13.1. Filing Briefs Requiring The Judge Advocate General Review.**

A13.13.1.1. Form and Number of Briefs. Briefs are to be typewritten, double-spaced on letter size white paper, and in an original plus three copies. Counsel shall be limited to filing one brief per side unless TJAG or the designated officer(s) reviewing the petition otherwise permits.

A13.13.1.2. Time for Filing. The brief on behalf of the petitioner shall be filed with AFLOA/JAJM within 20 days after appellate defense counsel has been appointed by TJAG and a copy of the petition and supporting documents have been provided counsel. Appellate government counsel may file a brief within the 20 days after petitioner's brief has been filed. If counsel for the petitioner has filed no brief, appellate government counsel will file a brief within 20 days after expiration of the time allowed for the filing of a brief on behalf of the petitioner. Upon written request, the time for filing briefs by either counsel may be extended at the discretion of TJAG or the designated officer(s) reviewing the petition.

**A13.13.2. Oral Arguments.** If ordered by the designated officer(s) or granted upon the request of counsel, oral arguments shall be heard after written briefs are filed.

A13.13.2.1. Notice. The designated officer(s) shall give appellate counsel at least 10 days' notice of the time and place of oral arguments.

A13.13.2.2. Time Limits. No more than thirty minutes on each side shall be allowed for oral arguments unless the time is extended by the designated officer(s).

A13.13.2.3. Number of Counsel; Opening and Closing. The designated officer(s) may limit the number of counsel making an oral argument. The counsel for the petitioner has the right to make opening and closing arguments.

A13.13.2.4. Failure to Appear. Appellate counsel's failure to appear at the time and place set for oral argument may be regarded as a waiver thereof and the designated officer(s) may proceed on the case as submitted without argument or may continue the case for argument at a later date, giving due notice thereof.

A13.13.2.5. Presence of Petitioner. The petitioner does not have a right to be present at the time of oral arguments before the designated officer(s).

A13.13.2.6. Opinion and Action. A memorandum opinion and an action shall be prepared by the designated officer(s) for consideration by TJAG. After the action has been signed, AFLOA/JAJM, shall cause a copy thereof to be served on petitioner and shall take such action as may be necessary to carry out the orders of TJAG as contained in the action.

***Section A13F—Rehearing and Other Remedial Action (Article 63, UCMJ)*****A13.14. Case Remanded by an Appellate Court.**

A13.14.1. When a decision of the Supreme Court, the United States Court of Appeals for the Armed Forces, or the Air Force Court of Criminal Appeals directs or authorizes further proceedings, such as a rehearing, a limited hearing, or a new action by the convening authority, reasonable efforts must be made to locate the accused and provide the accused with a copy of the decision. Further proceedings in Air Force Court of Criminal Appeals cases need not be

delayed solely to permit an accused to petition for a grant of review or otherwise appeal the matter. Any special instructions deemed necessary to carry out the mandate of the court are to be transmitted by AFLOA/JAJM with the remanded ROT.

A13.14.2. Pursuant to Article 76(a), UCMJ, an accused may only be placed on involuntary appellate leave when the approved sentence includes a punitive discharge. When an appellate court sets aside the action or the sentence, the accused should be taken off of appellate leave.

**A13.15. Procedure When Rehearing is Authorized (R.C.M. 810).** When an order of a reviewing or convening authority, an order of TJAG, a decision of Air Force Court of Criminal Appeals, a mandate issued by the United States Court of Appeals for the Armed Forces, or a judgment of the Supreme Court authorizes a rehearing on the findings or sentence, the following procedures apply:

A13.15.1. Notification of the Court-Martial Convening Authority and Identification of the Responsible Court-Martial Convening Authority. AFLOA/JAJM, or the Article 64, UCMJ, reviewing officer, as appropriate, sends a transmittal letter, and a copy of the pertinent decision, mandate, or order to the original court-martial convening authority's SJA (or the current court-martial convening authority if the original court-martial convening authority no longer exists). If the accused is no longer within the command of the original convening authority, a courtesy copy is forwarded to the accused's current convening authority with jurisdiction to convene the type of court-martial involved.

A13.15.1.1. The "original court-martial convening authority" is the convening authority who approved the accused's sentence. The original court-martial convening authority is also the responsible convening authority if the accused is still under his or her jurisdiction.

A13.15.1.2. If the accused is no longer under the jurisdiction of the original court-martial convening authority, the original convening authority decides whether to remain the responsible court-martial convening authority or to transfer responsibility for the case to the officer presently exercising authority over the accused to convene the type of court-martial involved.

A13.15.1.2.1. If the original court-martial convening authority transfers responsibility, the current court-martial convening authority becomes the responsible court-martial convening authority.

A13.15.1.2.2. If the original court-martial convening authority remains the responsible court-martial convening authority and determines that a rehearing should be held, the original court-martial convening authority requests that the accused be returned for the purpose of rehearing or reaches an understanding as to situs with the officer presently exercising court-martial convening authority over the accused for the type of court-martial involved.

A13.15.1.3. If the original court-martial convening authority no longer exists, the person exercising authority over the accused to convene the type of courts-martial involved is the responsible court-martial convening authority.

A13.15.2. Receipt of Decision and Speedy Trial Clock. Receipt of decision by the SJA of the original convening authority (or the current convening authority if the original convening authority no longer exists) triggers the speedy trial clock for both rehearings on findings and

rehearings on sentence only. In a sentence-only rehearing, an accused is “brought to trial” at the first Article 39(a) session. *United States v. Becker*, 53 M.J. 229 (C.A.A.F. 2000); R.C.M. 707(b)(3)(D).

A13.15.3. Notification of the Accused and Counsel. When a post-trial review or action directs or authorizes further proceedings, the responsible court-martial convening authority’s SJA must make reasonable efforts to locate and provide both the accused and trial defense counsel with a copy of the document requiring additional action. Ensure receipts are accomplished.

A13.15.4. Notification of the Victim(s). When a post-trial review or action directs or authorizes further proceedings and the case involved a named victim, the responsible court-martial convening authority’s SJA must make reasonable efforts to locate and provide any named victim and counsel (if applicable) with a copy of the document requiring additional action. Ensure receipts are accomplished.

A13.15.5. Action. The responsible convening authority should ensure action is taken consistent with the post-trial directions from the reviewing or appellate authority. The responsible convening authority publishes a supplementary court-martial order indicating either:

A13.15.5.1. That a rehearing is ordered before another court-martial to be designated. A supplemental court-martial order should be used to reflect any order for a rehearing; or

A13.15.5.2. If a rehearing on sentence is impracticable, that the sentence has been set-aside and a sentence of no punishment is approved; or

A13.15.5.3. If a rehearing on findings is impracticable, that the findings of guilt and the sentence have been set aside and the charges are dismissed.

A13.15.6. Ensure appropriate coordination is made with all counsel and the military judge.

A13.15.7. Sentence Reassessment. When partial findings have been approved and a rehearing as to other offenses and the sentence ordered, the convening authority may, if specifically authorized by either the Air Force Court of Criminal Appeals or the Court of Appeals for the Armed Forces, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges, if any. R.C.M. 1107(e)(2)(B)(iii), Discussion.

**A13.16. Referral.** Whether re-referring the matter to a rehearing in full or for a limited purpose, the following actions shall be accomplished:

A13.16.1. The responsible convening authority directs the rehearing. This may be done at any location the convening authority determines to be appropriate. If the rehearing is held at a location requiring the accused to travel, the accused should be placed on temporary duty.

A13.16.2. A military judge is detailed. The military judge may be the same as in the original trial or a new one may be detailed.

A13.16.3. A new convening order is published with all new members.

A13.16.4. A new referral indorsement in the same form as on page 2 of the Charge Sheet is completed following normal rules of referral.

A13.16.4.1. The appropriate instructions concerning the rehearing are incorporated on the referral form.

A13.16.4.2. The new referral is attached to the original referral.

### **A13.17. ROT and Post-Rehearing Concerns.**

A13.17.1. The original ROT and any copies must remain intact, except for documents needed for reintroduction at rehearing, such as the charge sheet and exhibits, if required.

A13.17.2. Any documents withdrawn from the original ROT and used at the rehearing should be substituted in the record and all copies with a description of the document, reasons for withdrawal, and new location of the document should be included. Do not withdraw the original copies of a decision of a court, action of a convening authority, post-trial review or recommendation, pretrial advice, and Article 32 preliminary hearing report.

A13.17.3. If the accused served confinement resulting from the original trial, the convening authority's new action must reflect that the accused will be credited for the time served.

A13.17.4. The court-martial order must indicate the case is a rehearing. See Figure A12.6. If a rehearing is ordered, a supplementary court-martial order should be used.

A13.17.5. The record of the rehearing is a separate volume from the original ROT. Place the record of rehearing on top of the original ROT. Other volumes are renumbered as appropriate.

10.17.6. A verbatim transcript is required for a rehearing proceeding. Forward the original and two copies of the verbatim rehearing record, along with the original ROT, to AFLOA/JAJM.

**A13.18. DuBay Hearing.** See AFI 51-201, paragraph 14.45 for instructions regarding DuBay hearings.

### ***Section A13G—Remission and Suspension (Article 74, UCMJ)***

#### **A13.19. General Information.**

A13.19.1. After the action is published or the accused has been officially notified of the action, the Secretary of the Air Force has the authority to remit or suspend any part or amount of the unexecuted part of any sentence, except one approved by the President, unless the Secretary of the Air Force delegated such authority in this section.

A13.19.2. The term "unexecuted part of a sentence" includes that part which has been approved and ordered executed but which has not been carried out (e.g., punitive discharges or dismissals not ordered into execution, unserved confinement, hard labor without confinement or restriction, and uncollected forfeitures).

**A13.20. Authority Reserved to Secretary of the Air Force.** Only the Secretary of the Air Force may remit or suspend, any part or amount of the unexecuted part of the sentences listed below. This limitation does not apply to the convening authority's powers under R.C.M. 1107; Article 60, UCMJ.

A13.20.1. Any sentence of a person convicted by a military tribunal, under the Secretary of the Air Force's jurisdiction, resulting from the President's commutation of a sentence of death to a lesser punishment (R.C.M. 1206 (b)(3));

A13.20.2. Any sentence the Secretary of the Air Force approved and ordered into execution;

A13.20.3. A dismissal, dishonorable discharge, or bad conduct discharge that is imposed for the conviction of an offense when a sentence to death is authorized by the Manual for Courts-Martial;

A13.20.4. Those cases referred to the Secretary of the Air Force for action by commanders authorized to exercise Article 74, UCMJ, authority. Commanders are encouraged to forward cases involving issues most appropriate for resolution at the Air Force policy level to AFLOA/JAJR for Secretary of the Air Force decision.

**A13.21. Authority of The Judge Advocate General.** TJAG may exercise Secretary of the Air Force authority under Article 74(a), UCMJ, and remit or suspend in whole or in part any unexecuted part of a sentence, with the exception of those cases specified in paragraph A13.20. The Director, United States Air Force Judiciary, may act for The Judge Advocate General to remit or suspend up to 90 days of an approved sentence to confinement.

**A13.22. Authority of the Accused's Commander.** Except in cases listed in paragraph A13.17, and where The Judge Advocate General has not acted, the commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of an accused's sentence adjudged by a summary court-martial or a special court-martial, except for a bad conduct discharge, regardless of whether the person acting has previously approved the sentence.

A13.22.1. A commander exercising only special court-martial convening authority over the command to which the accused is assigned may not remit a bad conduct discharge, but may suspend a bad conduct discharge only in the initial action.

A13.22.2. A commander exercising general court-martial convening authority over the command to which the accused is assigned may remit or suspend any part or amount of the unexecuted part of any sentence except in cases listed in paragraph A13.20.

A13.22.3. If the accused is transferred to a Level II Regional Confinement Facility or a long-term corrections facility, as defined in AFI 31-105, *Air Force Corrections System*, or to the Federal Bureau of Prisons, and the accused has been assigned to AFSFC/FC, this authority is exercised only by the Commander, Air Force District of Washington, or the officer exercising general court-martial convening authority over Air Force personnel in those institutions. (T-1)

**A13.23. Publication of Secretary of the Air Force Actions under Article 74, UCMJ.** Promulgate actions taken by the Secretary of the Air Force in cases specified in paragraph A13.20 in appropriate general court-martial orders. R.C.M. 1114(b). The Director, Air Force Personnel Council and TJAG are authorized to announce the action taken by Secretary of the Air Force in all other cases.