

VICTIM AND WITNESS ASSISTANCE HANDBOOK



Any Challenge, Anytime, Anywhere!

Office of the Staff Judge Advocate
Shaw Air Force Base, South Carolina

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DISCLAIMER

FAILURE TO PROVIDE THE INFORMATION OR SERVICES LISTED IN THIS HANDBOOK DOES NOT CREATE A CAUSE OF ACTION OR DEFENSE IN FAVOR OF ANY PERSON. NO LIMITS ARE HEREBY PLACED ON THE LAWFUL PREROGATIVES OF THE AIR FORCE OR ITS OFFICIALS.

PREAMBLE

The Victim and Witness Protection Act of 1982, as implemented by DOD Instruction 1030.2 and AFI 51-201, protects and helps crime victims and witnesses. The military justice system cannot function without victim and witness cooperation. The Office of the Staff Judge Advocate and other base agencies will do everything possible to ensure that victims and witnesses receive due consideration; are extended authorized assistance; are treated with dignity and courtesy; and are subjected to minimum interference with personal privacy and property rights. Subject to available resources, operational commitments and military exigencies, Air Force personnel in the military justice process will work to ease the physical, psychological and financial hardships suffered by victims of crimes investigated by the Air Force.

This handbook is intended to provide information concerning the protection and assistance of victims and witnesses, to inform them about the availability of emergency medical care and human services programs, and to inform them of the steps in the military justice process and their roles therein, without infringing on the constitutional and statutory rights of the accused or limiting command prerogatives. Commanders, law enforcement personnel, Air Force Office of Special Investigations (AFOSI) agents and supervisors who believe a military member, family member, or Air Force employee is a victim of or witness to a crime should refer the individual to the Office of the Staff Judge Advocate. Our telephone number is (803) 895-1560, DSN 965-1560. When you call the Office of the Staff Judge Advocate, please be sure to ask for the Victim Witness Assistance Coordinator. When you visit the Office of the Staff Judge Advocate, please bring a copy of this handbook with you.

DEFINITIONS

Victim

A person who suffers direct or threatened physical, emotional or financial harm as the result of an offense. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, "victim" includes, in the following order of priority, the victim's spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court.

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, this term includes, in the following order of priority, the witness' spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court. The term does **not** include an individual allegedly involved in a crime as a conspirator, accomplice, or principal.

Offense

A crime punishable under the Uniform Code of Military justice committed by a person subject to the Uniform Code of Military Justice.

Serious Offense

An offense involving personal violence or attempted or threatened personal violence, for which a maximum period of confinement of one year or more would be authorized und the Manual for Courts-Martial, or an offense involving the destruction or permanent loss of property of a value greater than \$100.

Judge Advocate

A military member who is also an attorney.

Staff Judge Advocate

The senior judge advocate, who also provides legal advice to the command structure and is responsible for the administration of matters related to military justice at the level of command, who also is the Local Responsible Official (LRO) for the Victim/Witness Assistance Program here at Shaw AFB. The Office of the Staff Judge Advocate at Shaw AFB consists of the Staff Judge Advocate, several other judge advocates and several military paralegals.

Trial Counsel

The judge advocate at the base level who acts as the trial attorney or the representative of the United States Government during any judicial proceeding. It is important to remember trial counsel represents the United States government, not the specific victim(s) and/or witness(es) in a case.

Defense Counsel

The judge advocate that represents the accused. This person is usually an area defense counsel, only representing military members facing disciplinary action and is not a member of an Office of the Staff Judge Advocate at any level.

Victim/Witness Assistance Program Coordinator

The person who coordinates the Victim/Witness Assistance Program. The coordinator is to act as the link between a victim/witness and the government.

Victim/Witness Liaison

The person appointed in certain cases by the Victim/Witness Assistance Program Coordinator to act as the link between a victim/witness and the government.

INTRODUCTION

The federal government has passed laws that enhance and protect the roles of crime victims and witnesses in the criminal justice process. These laws facilitate the protection of victims and witnesses from any further harm, the notification of victims and witnesses of organizations and places where they can receive help or care, and the explanation of rights of victims and witnesses.

This handbook is designed to inform victims and witnesses of their rights; supply the names and telephone numbers of organizations that can help victims and witnesses in the healing process and protect them from further harm; as well as explain the workings of the criminal justice system in the military.

YOUR RIGHTS AS A VICTIM OR WITNESS

Many of the rights and protections that are afforded to the victims and witnesses of crimes are contained in the Victim and Witness Protection act of 1982 and in the Victims' Rights and Restitution Act of 1990.

Rights of Victims:

- The right to be treated with fairness and with respect for your dignity and privacy
- The right to be reasonably protected from the accused offender
- The right to be notified of court proceedings
- The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if you as the victim heard other testimony at trial
- The right to confer with the attorney for the Government in the case
- The right to restitution
- The right to information about the conviction, sentencing, imprisonment, and release of the offender

Rights of Witnesses:

- The right to be treated with fairness and with respect for your dignity and privacy
- The right to be reasonably protected from the accused offender
- The right to have explanations provided to your employers or creditors
- The right to available assistance with transportation, child care, lodging, and parking
- The right to a waiting area separate from the accused and other defense witnesses, to the extent possible
- The right to information about the conviction, sentencing, imprisonment, and release of the offender

EMERGENCY MEDICAL CARE AND SERVICES AVAILABLE FOR VICTIMS AND WITNESSES

If you are a victim or a witness of a crime, there are many services available on Shaw AFB and within the local community. The following list includes some services which may be available to you.

Medical Assistance: Base Clinic Appointments: 803-895-CARE
Tricare: 1-800-444-5445

Active duty military members and their family members in need of medical care should contact their primary care provider unless it is an emergency.

Life Skills: 803-895-6199
Family Advocacy: 803-895-6201/6224

Life Skills and Family Advocacy counselors are available to assist active duty military and their family members who are victims or witnesses of a crime. Both agencies are also available to assist civilian victims and witnesses with references to local counseling services.

Airman & Family Readiness Center: 803-895-1253

The Airman & Family Readiness Center offers a wide variety of programs for both victims and witnesses of crimes, including financial assistance, counseling and referrals to off-base assistance programs.

Base Chapel: 803-895-1106/1107

The Base Chapel may also provide confidential spiritual counseling to victims and witnesses of crimes.

Office of the Staff Judge Advocate: 803-895-1560

Legal Assistance: Free legal advice is available to active duty military and family members.

Claims Services: Victims of theft of property or vandalism on Shaw AFB, may, under limited circumstances, be entitled to compensation.

Other Services:

The American Red Cross: 803-895-6504
St Eugene Demazenod Shelters: 803-469-4312
Child Abuse Hotline: 1-800-4-A-CHILD (1-800-422-4453)
Santee Baptist Assn Crisis Closet: 803-775-6524
Sumter Child Advocacy Center: 803-774-5600
Adult and Child Protective Services: 803-775-2273

GENERAL INFORMATION & ASSISTANCE

The Office of the Staff Judge Advocate at Shaw AFB prosecutes Air Force members who have committed crimes punishable under the Uniform Code of Military Justice (UCMJ). As either a victim of such crimes and/or as a witness in a court-martial, this handbook is to help you understand the military justice system and your role in the process. To effectively administer justice, the United States, and the Air Force in particular, must establish all of the facts both against and for someone accused of committing a crime. You can help the Air Force in the administration of a fair and effective military justice system by providing the information you know about the alleged offense. The following addresses some topics of general information and assistance.

Threats & Intimidation

It is a federal offense to threaten, intimidate, harass, or mislead a witness in a criminal proceeding or investigation. When appropriate, steps will be taken to protect you from intimidation or similar threats. If anyone threatens you, or if you feel that you are being harassed because of your contribution to the case, immediately notify the judge advocate in charge of the case or the Air Force agency investigating the offense.

Legal Office	895-1560
Security Forces	895-3602/3605
AFOSI	895-2403
Command Post	895-5850(for after hours support)

No Contact Orders

In the military, commanders can order persons under their command to do certain things or to abstain from doing things. These lawful orders can have the same effect as restraining orders. Violations of lawful orders are punishable under the UCMJ. If you are threatened or intimidated, your judge advocate can obtain an order from that person's commander. Even if you are unsure whether or not the threat is real, talk to the Victim Witness Coordinator or Liaisons as soon as possible.

Witness Fees

If you are not a federal government employee, you will receive a witness fee for each day that you are required to attend a court-martial, including time spent waiting to testify. Out of town witnesses receive reimbursement for certain travel expenses in addition to their daily witness fee. At the conclusion of your testimony, you will complete a travel voucher, Department of Defense Form 1351-2, to make a claim for your fees. The

paralegal assigned to the case in the Military Justice Division will help you file your witness voucher. Upon completion of your travel voucher, funds can either be deposited into your account electronically or a check can be mailed to your home address.

If you are a federal government employee and you testify in a court-martial, you will receive your regular salary while testifying, notwithstanding your absence from your job, but you will not collect a witness fee in addition to your salary.

Victim and Family Input into Legal Decisions

If you are a victim of a serious offense, the judge advocate in charge of the matter will, except in limited situations, obtain your views about whether to take the matter to trial. If the matter goes to trial, the judge advocate will consult you about decisions made before, during and after the trial. Any adverse impact on you and your family will also be explored in detail. In this way, your situation and opinions can and will be given consideration throughout the case. Please be frank, thorough and totally honest when discussing these matters with the members of the Office of the Staff Judge Advocate. Also, please indicate the areas about which you would like further information. Please understand that the Air Force places great importance on your input and will take that input into consideration; however, nothing in the Victim/Witness Assistance Program limits the responsibility and authority of officials involved in the military justice process from taking any action deemed necessary in the interest of good order and discipline and of preventing conduct that is discrediting to the Air Force.

Return of Property Used as Evidence

Law enforcement officers may take and store property belonging to victims/witnesses as evidence in a criminal matter. Examples are stolen property and property at a crime scene. If your property is being held as evidence and you feel that you would like to regain your property before the matter is resolved, contact the judge advocate in charge of the case in the Staff Judge Advocate's Office. Sometimes arrangements can be made for early release of your property. This will require a determination as to the value of producing your property at subsequent court-martial. In any case, your property held for evidence will be safeguarded and returned as soon as possible. The prompt return of your property will always be sought. If a delay in the return of your property is required, the judge advocate in charge of the matter should explain the reasons for retaining your property and estimate when it can be returned to you.

Recovering Losses

Crime may mean a real financial loss to the victim. Perhaps you have experienced a theft of cash or valuable property, property damaged, medical expenses not covered by the Air Force, or a loss of income because you could not work. If any of these things have happened to you, please see if you have insurance which will cover the loss. If you have no insurance or only partial coverage, contact the Claims Office, which is a part of the Staff Judge Advocate's Office, to see if you have a basis for filing a claim.

Restitution

When an offender returns stolen property or otherwise makes good the losses caused a victim, he/she has given restitution to the victim. The Manual for Courts-Martial does not authorize restitution as a part of an accused's sentence. However, in the hope of receiving a lighter sentence, an accused may agree to make restitution voluntarily. You should cooperate fully with the judge advocate in charge of the case by giving information regarding the impact the crime had on you as the victim. If the accused offers restitution, the judge advocate will then have an accurate picture of what restitution should be in your case.

Civil Litigation

A victim may try to recover losses by a civil lawsuit against the accused. A private civil lawsuit is completely separate from the military justice system. If you qualify for legal assistance services, the legal office can offer free legal advice but cannot represent you in a civil lawsuit. Local attorneys are listed in the local telephone directories. Furthermore, many communities have local referral services for people seeking attorneys. For example, the South Carolina Bar has such a referral service and the phone number is 1-800-868-2284.

If you qualify, you may be able to get help free of charge or at a reduced rate from South Carolina Bar's Legal Assistance for Military Personnel. The phone number is 803-799-6653, ext. 142, or email at lamp@scbar.org. If your total losses are small, you will not need a lawyer to file in Small Claims Court. The difficulty in trying to obtain civil damages from the accused is that whatever money the accused once had may now be gone. Even though the person may not have resources to satisfy your court judgment, that person may receive some funds in the future, at which time you could attach your judgment to those resources.

State Crime Compensation Programs

Every state in the nation operates a program to help pay for some of the expenses resulting from crimes involving violence or abuse. The South Carolina State Office of Victim Assistance (SOVA) coordinates this

program in South Carolina. You may obtain an application for compensation from the Victim/Witness Assistance Program Coordinator or by calling SOVA at 803-734-1900 or 1-800-220-5370.

Transitional Compensation For Abused Family Members

The Department of Defense has established a program to make monthly payments of transitional compensation and provide other benefits, as applicable, for family members of military members who are separated from the military for abuse of a spouse or dependent child.

The Department of Defense policy on Transition Compensation covers the family of members who are on active duty for more than 30 days and (1) the member has been convicted of a “dependent-abuse” offense resulting in separation pursuant to a court-martial or (2) the member is administratively separated and the basis for separation includes “dependent-abuse”.

A “dependent-abuse” offense is defined as an act that involves the abuse of the spouse or dependent child of the member and is a criminal offense as defined by the Uniform Code of Military Justice or other applicable criminal codes. Such acts can include **but are not limited to**: sexual assault, rape, sodomy, assault, battery, murder, and manslaughter.

Eligibility for Transition Compensation can be lost upon: (1) the remarriage of the spouse, (2) the cohabitation of the spouse or dependent child with the member who committed the abuse, or (3) the active participation of the spouse in the abuse of the dependent child.

This is a fact-specific program. The Victim/Witness Assistance Program Coordinator or Liaison (if you have one) can provide further details on its application to your case.

Other Special Needs

The Victim/Witness Assistance Program Coordinator or Liaison (if you have one) will help you with the concerns about transportation; the location of the Staff Judge Advocate’s Office; food services; lodging; parking; and availability of interpreters/translators. The judge advocate assigned to the matter will address concerns about what to expect in court and what time to appear. You should feel free to ask for assistance from the Victim/Witness Assistance Program Coordinator or Liaison (if you have one).

Interviews by Prosecutors & Defense Lawyers

Even though the judge advocate acting as trial counsel may have sought your cooperation, witnesses do not belong to either side of a criminal case. It is proper for the defense lawyer to contact you about what you know. The

Office of the Staff Judge Advocate requests that you cooperate fully with both the government and the defense. In an interview with a representative of the government or defense, you should always do your very best to tell "the truth, the whole truth, and nothing but the truth." If you are contacted by the attorney for either side for an interview prior to the trial, cooperate with him or her. If a Victim/Witness Liaison has been assigned to you, they may attend any such interviews with you.

Making Statements

If you give a statement to an investigator or lawyer for the government or the defense, you do not have to sign the statement. Any statement that you make during an interview, even if not signed, may be used to try to challenge or discredit your testimony in court, if your court testimony differs from your prior statement. If your prior statement differs from your testimony in court, the statement may be used whether the statement is written or oral. If you decide to sign the statement, make sure you read it very carefully first and correct any mistakes. You may have a copy of your statement if you wish.

Discussing the case with persons outside the Legal Office

The judge advocate in charge of prosecuting the case may discuss various aspects of the case with you, both for your information and to prepare you for testimony if necessary. Anytime you have an interview with an attorney or investigator for the defense, please inform the judge advocate in charge of prosecuting the case. You may discuss the case with anyone you wish; however, such discussions are not always a good idea. For example, an accused may be under orders not to talk to you about the case as a condition on liberty prior to trial and might be placed in pretrial confinement if he/she does so.

Remember, if an accused approaches you and you find this upsetting, contact the judge advocate in charge of the matter immediately. Since you are a potential witness, you are encouraged not to discuss the case with members of the press because the rights of the government and the accused to a fair trial could be jeopardized by pretrial publicity. Also, after you have testified in court, you should not tell other witnesses about your testimony until after the case is over and do not ask other witnesses about their testimony.

Hearings & Trials are Subject to Scheduling Changes

You might be asked to testify in more than one kind of court hearing. Scheduling hearings at a convenient time for everyone involved can be difficult. A hearing may require the presence of witnesses; law enforcement officers; the attorneys for the government and the defense; the judge, investigating officer, or magistrate, as well as the accused. If you know in advance that you might have difficulty in making an appearance, let the judge

advocate in charge of the matter know so that an attempt may be made to adjust the schedule. If you have received a subpoena, you should know there are serious penalties if you don't obey that formal order to appear. Sometimes a hearing or court-martial must be postponed. The Staff Judge Advocate's Office will notify you promptly of any scheduling changes, which affect your attendance.

Victim Notification of Status of the Accused

If a victim or witness of a serious offense requests, the Office of the Staff Judge Advocate will notify him/her in advance, if possible, of the apprehension of the accused, the pretrial release of the accused, and the accused's trial or entry of a guilty plea followed by sentencing proceedings. Please provide your current address or telephone number to the judge advocate assigned to the matter and indicate on the form provided to you by the Victim/Witness Assistance Program Coordinator or Liaison (if you have one) the events for which you would like to be notified.

Separate Waiting Areas During Court-Martial Proceedings

At courts-martial and other proceedings, victims and witnesses will be afforded, to the extent practicable, the opportunity to wait in an area of the Staff Judge Advocate's Office separate from the accused or other defense witnesses. Separate waiting areas are appropriate when necessary to avoid embarrassment, coercion, or similar emotional distress. If the case includes numerous witnesses and you would like a separate waiting area, please discuss with the judge advocate in charge of the matter.

Coordination with Employers or Creditors

Upon request of a victim or witness, the Victim/Witness Assistance Program Coordinator or Liaison (if you have one) will take reasonable steps to inform an employer or school of the reasons a victim or witness must be absent from work or school. In appropriate cases, the Victim/Witness Assistance Program Coordinator or Liaison (if you have one) may also provide explanations to creditors of a victim or witness who is subjected to serious financial strain as a direct result of a crime or cooperation in the investigation or prosecution of a crime. If you need assistance in these areas, notify the Victim/Witness Assistance Coordinator or Liaison (if you have one).

Requests for Information

Any request for the release of investigative reports or other documents must be processed in accordance with DoD 5400.7/Air Force Supplement DoD Freedom of Information Act Program. If you have a request, please contact 20 CS/SCBR (Records Management) at 803-895-1630.

THE MILITARY JUSTICE PROCESS

There are different courses of action available to the commander within the military justice system. When there has been an allegation that a military member has violated a particular article of the Uniform Code of Military Justice, the member's commander discusses the offense and surrounding circumstances with a judge advocate in the Staff Judge Advocate's Office. After a thorough investigation of the alleged offense, the member's commander will consider all of the circumstances and may take any of the following actions: no actions at all; administrative separation; administrative action of a punitive nature; and/or trial by court-martial.

Investigation

The military has two investigative agencies: Air Force Office of Special Investigations (AFOSI) and Security Forces Office of Investigations (SFOI). Typically, AFOSI investigates the more serious types of offenses. A representative from either agency may call you for an interview. These agencies summarize their investigation in a written Report of Investigation (ROI), and provide copies to the Staff Judge Advocate's Office for review. A copy member's commander or the base's Inspector General may also appoint an investigating officer to investigate an Allegation of wrongdoing by a military member. Such an investigating officer may contact you concerning information. The investigating officers also summarize their investigation in a written report and provide copies to the Staff Judge Advocate's Office for review.

Non-Punitive Administrative Actions

In cases involving very minor offenses or in those cases with significant extenuating circumstances, a member's commander may choose to take non-punitive administrative action against the member. These actions include in order of severity from least to most severe: verbal counseling, letter of counseling, letter of admonition, letter of reprimand, letter of reprimand with an entry in an unfavorable information file, a demotion and an administrative separation.

Article 15 Proceedings

Some offenses that are minor in nature are not considered serious enough to warrant court-martial. However, this type of offense may warrant nonjudicial punishment under Article 15 of the Uniform Code of Military Justice. Under Article 15, the commander notifies the member of the offenses of which the commander has evidence. The military member may demand a trial by court-martial or choose to present any matters to the commander for decision as to whether the member committed the offense.

If the commander makes a determination that the member committed the offense, the commander will then determine what the member's punishment should be.

Administrative Discharge

A member may be discharged from the Air Force without a court-martial. For enlisted members with less than six years of service, a general or honorable discharge may be ordered without a board hearing; however, an enlisted member may demand a board hearing if the government pursues an under other than honorable conditions discharge or if the member has six or more years in the service. All officers are entitled to a board hearing.

WHAT HAPPENS IN A COURT-MARTIAL

You are entitled to understand what is happening in the case in which you are involved. There are many steps to a court-martial and you may be contacted by the judge advocate assigned to the case or the accused's lawyer regarding various stages of the military justice process. The judge advocate in charge of the case is called trial counsel. The accused's lawyer is called defense counsel.

Preferral: Accusing Someone of a Crime

When the offense is too serious for disposition by an Article 15 proceeding, or if the accused demands a trial by court-martial, the accused's commander signs a charge sheet accusing him/her of breaking the law by violating a particular article of the UCMJ. The accused's commander then forwards the charge sheet and other papers to the special court-martial convening authority. At Shaw AFB, this is the 20th Fighter Wing Commander. After discussing the offense and surrounding circumstances with the Staff Judge Advocate, Office of the Staff Judge Advocate, the convening authority may choose to send the charges back to the accused's commander with instructions to either drop the charges or initiate an Article 15 proceeding. Otherwise, the convening authority will decide to hold a special court-martial or have an investigation pursuant to Article 32, UCMJ.

Pretrial Confinement

If the evidence indicates the accused is likely to flee from prosecution or engage in serious criminal misconduct and lesser forms of restraint are inadequate, the accused's commander will place him/her in pretrial confinement (jail) to await trial. This decision is reviewed by a neutral and detached military magistrate who may need your testimony.

Article 32 Investigation: Legal Hearing after Preferral of Charges

An Article 32 investigation is like a grand jury proceeding in the civilian criminal justice system. Article 32 of the UCMJ says no charges can be sent to a general court-martial without an impartial investigation. A general court-martial is the most serious kind of court-martial and is the military equivalent of a felony court. The Article 32 investigator will examine the charge sheet and case file and call witnesses for sworn testimony. The accused and his/her lawyer have a right to be present when evidence is reviewed or witnesses testify, a right to cross-examine government witnesses and to call witnesses for the defense. The accused has a right to testify but doesn't have to say anything. At the end of the Article 32 investigation, the investigator recommends to the convening authority what's to be done with the case.

Who Decides Whether a Case Goes to a Court-Martial

The convening authority, whether it be the 20th Fighter Wing Commander for a special court-martial (SPCM), or the 9th Air Force Commander for a general court-martial (GCM), decides if a case will go to court. The convening authority decides who the court members will be based on what he/she knows about them as fair and mature officers.

Courts-Martial: The Players

The trial counsel (prosecutor) is a judge advocate from the Office of the Staff Judge Advocate. The accused is provided a judge advocate, usually the Area Defense Counsel, free of charge. The accused can also have a civilian lawyer at his/her own expense. The military judge is assigned from the USAF Trial Judiciary Office, Central Docketing Office at Bolling Air Force Base, DC. The accused decides whether to be tried by a judge alone or by a court with members. The accused, if enlisted, has a right to demand enlisted members on the court.

Referral: Taking the Charges to a Court-Martial

Once the charges have been referred to a court-martial, they are formally served on the accused. Once the charges are served, the trial can begin any time after three to five days depending on the type of court-martial. If the case is complicated, the trial may be delayed in order to give adequate time to prepare and arrange for witnesses. You will be notified of all delays.

The Court-Martial Process

The military trial has two parts. The first part, the findings portion, is to decide whether the accused is guilty or not guilty. The second part, if the accused is found guilty, is to decide what the punishment will be.

Findings: Pleas of the Accused

At trial, the accused will either plead not guilty, guilty, or guilty of some lesser included offense. A guilty plea, if knowingly made, is the strongest form of proof known to the law. The accused may plead not guilty to all the charges and rely on his/her right to have the government prove guilt beyond a reasonable doubt if it can. After the pleas, if any issue of guilt remains, the jury, if any, is questioned to ensure their impartiality, sworn, and instructed on their function.

Findings: Evidence

The trial and defense counsel may make opening statements about what they believe the evidence will show. Then, the trial counsel calls witnesses and brings in evidence to try and prove guilt. The defense counsel is given a chance to cross-examine these witnesses. The trial counsel can never call the accused as a witness. Defense then gets a chance to call their own witnesses and put in their evidence. They don't have to do anything and the accused doesn't have to testify. If the accused chooses not to testify, his/her silence cannot be used against him/her. If the accused does testify, anything he/she says can be used against him/her and the trial counsel can cross-examine him/her just like any other witness called for the defense. After the defense finishes putting in evidence and calling witnesses, the trial counsel can put on rebuttal witnesses or evidence. Rebuttal is trying to show the opposite of what was just said or put into evidence.

After both sides have put on all the evidence, the lawyer for each side gets to make a closing argument. The trial counsel tries to convince the court that he/she put on enough evidence to prove guilt beyond a reasonable doubt. Then the defense counsel tries to show where the prosecutor is wrong. The lawyers also summarize the evidence before the court and tell how they feel the law applies to the facts as they see them. The trial counsel might make two arguments, before and after defense counsel, because the government has the heavy burden of proof. If there is a jury, the judge then instructs the court members on their responsibilities and advises them of what the law is. The court members deliberate in private and decide by secret written ballot whether the accused is guilty or not guilty of the charges.

Findings: Deliberation

Deliberation on findings by the judge or court members may take several minutes or it may take hours. If the accused is found not guilty of the charges, the trial is over. If the accused is found guilty of any of the charges, whether by a guilty plea or findings, the sentencing part of the trial begins immediately.

Sentencing: What Evidence is Considered

In the civilian criminal justice system, the sentencing proceeding is held days later. In the military justice system, the prosecution proceeds by putting on any evidence that makes things look worse, called matters in aggravation. Besides evidence and testimony about the adverse impact the accused's crime had on the victim and the Air Force, the trial counsel will also put in evidence of the accused's previous court convictions (if any), Articles 15 or Letters of Reprimand in the accused's unfavorable information file, an official Air Force record. Airman Performance Reports or Officer Effectiveness Reports also will be admitted into evidence.

Sentencing: Defense Mitigation & Extenuation

After matters in aggravation are submitted to the court by the trial counsel, the defense counsel will submit mitigation and extenuation evidence. This is evidence which tends to show the accused is a basically good person who doesn't need the maximum punishment authorized, or the offense committed by the accused really wasn't so bad under the circumstances. The strict military rules of evidence are more liberal in this part of the trial. Usually, the defense can present to the court whatever information they think is needed for the court members or judge to decide on a fair punishment. The accused may testify under oath, make an unsworn statement, say nothing at all or the defense counsel can make a statement on the accused's behalf. If the accused testifies under oath, the trial counsel can cross-examine him/her.

Sentencing: Argument and Deliberation

After the defense puts on evidence in extenuation and mitigation, the trial counsel can put in rebuttal evidence. Next, the lawyers make their closing arguments about what the sentence should be. If there is a jury, the judge instructs them on their responsibilities and the law. The court then closes to deliberate or decide the proper punishment. Maximum punishments vary according to the type of court.

SPCM Maximum Punishments

Special Court-Martial: The maximum punishment possible is a bad conduct discharge (BCD), six months confinement (jail), forfeiture of two-thirds pay per month for six months, and reduction in rank to the lowest enlisted grade, Airman Basic.

GCM Maximum Punishments

General Court-Martial: Any sentence authorized by law is available including confinement in a federal prison. In any court-martial, "no punishment" is a possible option. Lastly, the accused is advised of his post-trial and appellate rights by the military judge.

Confinement

If the sentence includes jail time, usually the accused is taken directly to jail. The accused can ask to have the confinement postponed or deferred to a later date, but this is rarely approved and then only for the most compelling reasons. The accused's place of confinement will depend on the length of confinement, the accused's rehabilitation potential, and space availability. The accused and the defense counsel may submit allegations of legal error and clemency matters to the convening authority. The convening authority can suspend all or part of the sentence or approve the sentence as adjudged, designate the place of confinement, or disapprove the sentence. The convening authority may make restitution to a victim a condition of the suspension of a sentence. The convening authority cannot increase the sentence.

Appellate Review of Certain Sentences

If the sentence, as approved, includes death, dismissal, a bad-conduct discharge, dishonorable discharge or confinement for one year or longer, and the accused has not waived or withdrawn his/her right to appellate review, the case will automatically be appealed to the United States Air Force Court of Criminal Appeals. After that, a petition for review can be filed with the United States Court of Appeals for Armed Forces. If the case is reviewed by COMA, the accused can file a petition for review with the United States Supreme Court. If there is no automatic appeal, the accused can file an appeal or review request with The Judge Advocate General under Article 69, UCMJ. In the military review process, the accused will have free defense counsel provided if requested.

Non-Court Alternatives to UCMJ Offenses

As indicated earlier, a case does not always go to trial by court-martial. Additionally, the accused can ask to be administratively discharged or allowed to resign instead of going to trial. These requests are not usually approved. When they are approved, they are almost always for an under other than honorable conditions (UOTHC) discharge. This is the worst type of administrative discharge and is similar to a bad conduct discharge. Any questions you may have about what happens before, during or after court-martial in your case should be addressed to the trial counsel in the Office of the Staff Judge Advocate.

PREPARING TO TESTIFY

As a witness, you have a very important job, not only for the side you appear for but to yourself and to our American system of justice. In order for a court or board to make a correct decision, they must have all the evidence put

before them truthfully and accurately by witnesses. If you don't cooperate or fail to come forth as a witness, this could possibly cause an unjust result in a case. All the people involved in the case know your time is valuable and that you have other things you would rather be doing than testifying in court. Every attempt will be made to waste as little of your time as possible. There may be unavoidable delays in getting you on and off the witness stand, but be patient. You have not been forgotten.

Your Statements v. Court Testimony

Frequently witnesses who have already given oral or written statements before the trial or hearing are called to testify. You may wonder why you should be inconvenienced by going to court when they could use your statement instead. The judge will not allow the statement into evidence because the law requires the witness to appear in court, tell his or her story under oath, and be subject to questioning by all parties. Therefore, you are still needed in court, even if you have already given a statement.

Subpoenas

If you are a civilian witness and subpoenaed to a court-martial, don't ignore the subpoena. It is an order of the court and must be obeyed. Failure to appear in court as the subpoena tells you could place you in contempt of court. If you have any questions or problems about appearing, contact the attorney or trial counsel who sent you the subpoena.

HELPFUL HINTS BEFORE YOU TESTIFY IN COURT

Go Over the Facts

Prior to your appearance in court, go over the facts of the case in your mind. Visit the scene of the crime. It may help to refresh your memory. Before you testify, try to picture the scene, the objects there, the distance and exactly what happened so you can recall the facts more accurately when asked.

Neat Appearance

Be neat in your personal appearance. You are being judged not only by what you say, but how you look. You will first be sworn in. When you take the oath, say "I do" clearly. On the witness stand, get comfortable, sit straight and look around to familiarize yourself with the surroundings. Visit the courtroom in advance, if possible.

Tell the Truth

In testifying, the first rule is to tell the truth. Don't answer questions with half-truths. Don't try to judge whether an answer is going to help or hurt one side or the other. Don't let your personal feelings of who should win or lose color your testimony. Don't give your opinion about the guilt or innocence of

the people involved. That is the job of the court. As a witness, your only duty is to tell it like you saw it, nothing more, nothing less. If a question can't be truthfully answered with a "yes" or "no," you have a right to explain the answer. Try to give just the facts. Give your conclusions or opinions only if you are specifically asked for them.

Speak so you can be Heard

Answer the questions clearly and loudly enough so everyone can hear you. Don't talk too fast or too slowly. Don't mumble or slur your words. Look at the court panel and address your remarks to them so they will be able to hear and understand what you have to say.

Don't Memorize your Testimony

If you memorize your testimony, it will sound rehearsed and lack the ring of truth. Speak in your own words. Do not nod your head for "yes" or "no" answers. Listen to the questions carefully. If you don't hear a question, ask that it be repeated. If you don't understand a question, ask that it be rephrased in different words.

Don't Guess at an Answer

If you don't know the answer to a question, simply say that you don't know. A trial is not like a television quiz show where you must come up with some kind of an answer.

Answer Directly

Answer directly and simply only the question asked you. Don't volunteer information. Do not exaggerate or make overly broad statements that you may have to correct. Give positive, definite answers when at all possible. If you make a mistake in answering a question, correct it immediately. If your answer was not clear, clarify it immediately.

Objections made by the Attorneys

If an objection is made by one of the lawyers, or if the judge speaks, stop talking immediately. Don't try to complete your answer until told to continue. Don't argue with the attorney asking the questions. Keep your temper and always be courteous.

Cross-Examination

While testifying on cross-examination, don't look at the attorney who called you for help in answering the question. You must answer the attorney addressing you then. If the question is improper, the attorney will object, and the judge will rule on it. It's important, however, that you listen to the objection so that you understand why it's being made. If you are asked whether or not you have talked to anyone about your testimony before

coming to court, be sure and answer "yes" if you have. There is nothing wrong with discussing the facts with the attorneys, security police, or investigators before the trial.

Dates, Distances, Time or Speed

If the question is about dates, distances, time or speed and your answer is only an estimate, be sure you say it is only an estimate. Beware of suggestions by attorneys as to estimates and do not agree with their estimates unless you independently arrived at the same estimate.

Do's and Don'ts

Be natural; be yourself. Don't try to be someone you're not. If you relax and tell the truth and remember you are talking to other people, you'll get along fine.

Do not tell other witnesses what was said during testimony until after the case is over. Do not ask other witnesses about their testimony.

Do not discuss the case or your testimony within the hearing of the court members (jury). The only time the court members should hear from you is while you are testifying in the courtroom.

CONCLUSION

We hope this handbook has answered many of your questions as to how the military justice system operates and your expected role as a potential witness. Witnesses have important responsibilities in this process.(*). The Base Legal Office and the commander at Shaw Air Force Base thank you for your contributions, in time and energy, and for your help and cooperation. If you have any questions or problems related to the case and need assistance, please contact the judge advocate assigned to the case. A judge advocate can be contacted in the Office of the Staff Judge Advocate, (803) 895-1560.

*Prepared by 20 FW/JA
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