

# THE MILITARY LEGAL SYSTEM AT A GLANCE



*Office of the Staff Judge Advocate  
20th Fighter Wing  
Shaw AFB  
27 July 2016*

MEMORANDUM FOR ALL VICTIMS AND WITNESSES

FROM: 20 FW/SJA

SUBJECT: Victim and Witness Services at Shaw AFB

1. It has come to my attention that you have been a victim or a witness to a crime. Either experience may have left you uneasy or angry, and, in all probability, anxious about what may follow. The main purpose of this information packet is to provide information about the services at Shaw AFB that are designed to help you. Also provided are the names and telephone numbers of persons that you can contact with questions or concerns that you may have. Additionally, the packet describes the stages and role you may play in the legal system.
2. We will make an effort to keep you informed of the status of the case in which you are involved and of the times and places you may be needed. We also need to point out that the resolution of criminal charges requires a great deal of coordination to accommodate the schedules and availability of witnesses, victims, counsel and judges. It is not unusual for interviews and court dates to change several times prior to a trial. Our system of justice relies almost exclusively on the cooperation of victims and witnesses, and we thank you for your continuing understanding and cooperation.
3. In putting this packet together, we have tried to answer the most frequently asked questions. However, should you have any questions, please contact either my staff or me at (803) 895-1560. Thank you.

//signed//

TAMMIE L. SLEGDE, Lt Col, USAF  
Staff Judge Advocate

## INTRODUCTION

The Air Force Victim and Witness Assistance Program (VWAP) was designed to ensure that all victims and witnesses of crime who suffer physical, financial or emotional trauma receive the assistance and protection to which they are entitled. This information packet outlines your rights. After reviewing this information, if you have any questions, please contact the VWAP Coordinator at the legal office.

VWAP Coordinators for Shaw AFB are assigned to 20th Fighter Wing Office of the Staff Judge Advocate. If you have questions regarding any of the information contained in this packet or any other aspect of the Victim and Witness Assistance Program, please contact us at (803) 895-1560.

The information in the first part of this packet describes your rights as a victim or witness. You should also receive a copy of DD Form 2701.

The second part provides a brief description of the services that are available to victims and witnesses at Shaw AFB. We encourage you to contact any of the organizations that may be helpful. Nevertheless, remember that a Victim and Witness Liaison is always available to help you obtain the services you may need.

The third part of this packet briefly describes the court-martial process. A court-martial is similar to a civilian trial in many respects. If there is to be a court-martial, a person known as the trial counsel will be assigned. A trial counsel, usually a military attorney from the 20th Fighter Wing Legal Office, will prosecute the individual accused of the crime(s). A Victim Liaison will inform you when a trial counsel is assigned. The trial counsel and the Victim Liaison will then share the responsibility of keeping you informed and assisting you during the court-martial process. You should also receive a copy of DD Form 2702.

## YOUR RIGHTS AND PRIVILEGES

As a victim or witness of a crime, you have certain rights that are briefly described below. More detailed information regarding these rights, including the names and telephone numbers of persons who can assist you in obtaining the help that you need, is provided in this information packet.

***1. You have the right to be treated with fairness and respect for your dignity and privacy --*** You have the right to a private waiting area during all legal proceedings.

***2. You have the right to reasonable protection from a suspect or the accused --*** You have the right to be free from intimidation or any other form of harassment by the accused and his/her family.

***3. You have a right to reasonable, accurate, and timely notice of any of the following:***

- (A) A public hearing concerning the continuation of confinement prior to trial of the accused.
- (B) A preliminary hearing under section 832 of this title (Article 32) relating to the offense.
- (C) A court-martial relating to the offense.
- (D) A public proceeding of the services clemency and parole board relation to the offense.
- (E) The release or escape of the accused, unless such notice may endanger the safety of the person.

**4. You have the right to be present at all public hearings or proceedings, unless the military judge or investigating officer determines, after receiving clear and convincing evidence, that your testimony would be materially affected if you heard other testimony at the hearing or proceedings** -- If you desire, the trial counsel will assist in making arrangements for you to be present at hearings or proceedings whenever possible.

**5. You have the right to be reasonably heard at the following:**

- (A) A public hearing concerning the continuation of confinement prior to trial of the accused.
- (B) A sentencing hearing relating to the offense.
- (C) A public proceeding of the service clemency and parole board relating to the offense.
- (D) Any other hearing listed in paragraph 3.

**6. You have the right to confer with counsel representing the Government at any hearing listed in paragraph 3**-- If you desire, trial counsel will keep you informed of all material developments of the court-martial.

**7. You have the right to appropriate restitution as provided by law** -- Members of Shaw AFB Legal Office, can assist you when relief is available.

**8. You have the right to proceedings free from unreasonable delay.**

**9. You have a right to information about the accused's conviction, sentencing, confinement and release** -- If you desire, the trial counsel will assist you in obtaining this information. Additionally, qualifying individuals have the right to receive a copy of the Record of Trial (ROT) -- trial counsel can help coordinate the receipt of the ROT.

**10. Return of Personal Property** -- Sometimes it is necessary for investigators to temporarily take various items of personal property for use as evidence in the case. Such items may include clothing, bedding, personal photographs, etc. These items are your personal property and will often be returned to you shortly after trial. Should the loss of this property, although temporary, cause you any hardship, please notify the trial counsel. Also, notify the trial counsel if you do not want any of the property returned to you.

***11. Reimbursement for Personal Injury or Property Loss*** -- Should you suffer from personal injury or property damage or loss, you may be able to receive restitution. Contact the Base Legal Office, (803) 895-1560, or your Victim Liaison, (803) 895-1562, should you require any assistance or have any questions.

## **VICTIM SERVICES**

Please see the appendix to this packet for information on additional services provided by various agencies on Shaw AFB to assist you if you, or a member of your family, are a victim of a crime.

We will make every effort to afford the services listed, upon request and availability, to any person who has suffered direct physical or emotional harm or any other damage as a result of an offense investigated or prosecuted by US Air Force authorities.

### ***Information***

If you are a military member and you or a member of your family has been the victim of a crime and has suffered an injury, you are often entitled to medical assistance. This assistance includes not just treatment for physical injuries, but also treatment for any psychological injury you may have experienced. The following is a list of telephone numbers you can use to obtain medical treatment on Shaw AFB.

***Emergency Medical Services:*** Dial 911 for emergencies

***20th Medical Group Appointments:*** (803) 895-2273

***Life Skills Clinic:*** (803) 895-6199

***Restitution and other Relief:*** (803) 895-1560

For further information and referrals concerning victim counseling, treatment and support programs, please contact your Victim Witness Liaison or the Victim and Witness Program Coordinators at the Base Legal Office, Building 1118, at (803) 895-1562.

### **Protection**

It is a crime for someone to harass you, threaten you or otherwise attempt to prevent you from testifying or assisting with an investigation. If you are being harassed, intimidated or receive any type of threat, immediately contact Security Forces at (803) 895-3600, on base, or contact the local authorities by dialing 911 off-base. You should also immediately contact your Victim Witness Liaison, or the Victim Witness Assistance Program Coordinators at the Base Legal Office, Building 1118, at (803) 895-1562.

### Notice

To receive the earliest possible notice of the following stages of the criminal investigation and prosecution, contact your Victim Liaison or the VWAP Coordinators at the Base Legal Office, Building 1118, at (803) 895-1562.

- a. Status of the investigation (to the extent appropriate without interfering with it);
- b. Arrest of suspected offender;
- c. Preferral of charges against suspected offender;
- d. Schedule of judicial proceedings (where required or entitled to attend);
- e. Release or detention status of suspected offender;
- f. Acceptance of guilty plea or verdict after trial; and
- g. Sentence imposed.

### Consultation

Consultation with the appropriate commander or designee concerning decisions about the prosecution of a crime is available under certain circumstances. Contact your Victim Liaison or the VWAP Coordinators, if you desire to do so.

### Care of Evidentiary Property

Property of a victim being held as evidence will be maintained in good condition and returned when no longer needed. Direct questions as to the care or return of evidentiary property to the Security Forces Squadron Investigations Office at (803) 895-3600, or the Air Force Office of Special Investigations at (803) 895-2403.

### Separate Waiting Area

During court proceedings, a waiting area removed from and out of the sight and hearing of the accused and defense witnesses is provided. For further information, contact your Victim Liaison.

### Convening Authority Action

At the conclusion of a court-martial, the records of the trial are reviewed by an official known as the Convening Authority. The Commander, 20th Fighter Wing, is the convening authority for Special Courts-Martial, and the Commander, 9th Air Force, is the convening authority for General Courts-Martial. For a description of the difference between a General Court-Martial and a Special Court-Martial, please see the section “**YOUR ROLE IN THE MILITARY JUSTICE SYSTEM.**” After reviewing the record of a court-martial, the convening authority has the

opportunity to grant clemency, which could change the accused's sentence. The convening authority may not increase a sentence. If you have specific questions on what a convening authority may or may not do in your case, contact the trial counsel.

If you wish to submit matters for the convening authority's consideration, you must do this as soon as possible after the court-martial. Submit such matters in writing to Commander, 20 FW/CC, ATTN: Trial Counsel, at 1118. The mailing address is: Office of the Staff Judge Advocate, 504 Shaw Drive, Shaw AFB, South Carolina, 29152.

If you desire to be informed of the convening authority's action, you can request this information from your Victim Liaison.

### **Post-Trial Notice**

DD Form 2703 contains an overview of all of your post-trial rights. To receive general information about the accused's prison sentence and the earliest possible notice of the following events, contact your Victim and Witness Liaison.

- a. Consideration of the offender by the Air Force Clemency and Parole Board;
- b. Escape, deferment, parole, or any other form of release from confinement of the offender; and
- c. Death of offender, if occurring while in confinement.

You will fill out a DD Form 2704 in order to be notified of any change in the offender's status.

*Note: It is your responsibility to keep the Air Force officials informed of a current address. The contact information for HQ SFS can be obtained from the DD 2704 or you can reach out to the Legal Office for the most up to date contact information.*

### **Appeals**

If an individual is found guilty and receives a sentence, that person may appeal to a higher appellate court. To receive the earliest possible notice of any appellate proceedings, contact your Victim and Witness Liaison.

### **Disclaimer**

Failure to provide information or services above does not create a cause of action or defense in favor of any person. No limits are hereby placed on the lawful prerogative of the Air Force or its officials.

### Crimes Committed Off-Base

Crimes committed off-base that involve military members as victims or witnesses require coordination with the local police. The Military Justice Division of the Base Legal Office, is the primary point of contact for these matters. If you have any questions regarding how a matter is being handled or require any other information, please contact the Military Justice Division at the Base Legal Office, at (803) 895-1562.

### YOUR ROLE IN THE MILITARY CRIMINAL JUSTICE SYSTEM

The following is a brief description of the court-martial process and your role in it as a victim or a witness. A trial counsel handling your case will provide you with more detailed information and will be able to answer your questions at each stage of the process.

Early in the process, you will be contacted by a Victim and Witness Liaison, appointed by the Base Legal Office. If you have any questions regarding any aspect of the process, please call them at (803) 895-1562.

#### Stages

1. *The Crime* -- The entire process starts when a crime under the Uniform Code of Military Justice has been committed.

**YOUR ROLE:** Report the crime when it occurs!!! Numerous agencies are available to assist. The Air Force Office of Special Investigations (OSI), the Security Forces Squadron (SFS) or civilian law enforcement ordinarily serve as the investigative agencies. The Hospital, Mental Health providers, Family Advocacy Office, Family Support Center, and the Chaplain are also available to assist you as necessary.

2. *Pretrial Confinement* -- An offender's commander may place him or her in pretrial confinement. There is no bail or bond procedure within the military. A hearing will be held, and if a determination is made that the offender is likely to flee or commit another serious offense, the offender will be kept in confinement until trial. Offenders are kept in pre-trial confinement at the 20th Security Forces Confinement Facility, Shaw AFB, SC.

**YOUR ROLE:** Tell the investigators or trial counsel immediately if you know of anything indicating that the offender will flee or if you fear further offenses or violence by the offender. You will be informed should the offender be released from pre-trial confinement after the hearing.

3. *Investigation* -- The investigation begins immediately after a crime has been reported. Generally, agents of the SFS or OSI will conduct the investigation. If the crime occurred off-base, civilian authorities usually take the lead role in the investigation with OSI or the SFS closely monitoring the investigation. If the military does not have jurisdiction, the appropriate civilian authorities will be notified and will themselves determine whether prosecution is appropriate. If



both the civilian authorities and military have jurisdiction, you may be able to provide input to the legal office about who you would like to handle the case. If you have questions about the jurisdiction contact your local legal office. The Victim/Witness Liaison can provide you with a civilian agency for information pertaining to victim services within the civilian jurisdiction responsible for your case.

**YOUR ROLE:** Do your absolute best to cooperate fully and truthfully with all investigators. Each, whether military or civilian, is trained in the particular type of case in which you are involved. Their questions are not intended to embarrass you but are designed to determine the critical facts in the case. Keep an open line of communication with the investigators through all stages of the process including after any trial. If you have an attorney you may consult with your counsel on these matters.

4. *Preferral of Charges* -- At this point a person, usually the accused's commander, will formally read the charges against the person. This is the first step in going to trial. The accused, at this time, may request to be allowed to resign from the Air Force rather than face a court-martial.

**YOUR ROLE:** You will be informed by trial counsel as to the date of preferral and the nature of the charges against the accused. Additionally, should the defense submit an offer to resign from the Air Force rather than face a court-martial, the trial counsel will ordinarily consult with you.

5. *Preliminary Hearing* -- This occurs after the preferral and is similar to a grand jury investigation. Here, a person known as the Preliminary Hearing Officer will determine whether there is enough evidence to warrant a court-martial. The hearing is conducted much like a trial. Witnesses and victims may be called to testify – however, victims are not required to testify.

**YOUR ROLE:** You may be asked if you would like to appear and testify under oath regarding what you know about the crime. The trial counsel may already have spoken with you several times and prepared you for the questions that you will be asked at the hearing. If you have any questions or concerns, bring them to the attention of the trial counsel as soon as possible.

6. *Referral of Charges by Convening Authority* -- When a case is *referred* to a court-martial, it means the convening authority determined that enough evidence exists to warrant a trial by court-martial. A *convening authority* is an Air Force Officer who has the authority to formally initiate a court-martial.

Three types of courts-martial exist. General Courts-Martial are held for the most serious crimes. Special Courts-Martial are held for less serious crimes. Summary Courts-Martial are for the least serious crimes warranting a court-martial. The Commander of the 20th Fighter Wing is the convening authority for Special Courts-Martial. The Commander, 9th Air Force, is the convening authority for General Courts-Martial. The results of the Preliminary Hearing, the type of crime and/or the seriousness of the crime will determine whether the crime is referred to a General or a Special Court-Martial.

The main difference between the types of courts-martial is the degree of punishment that can be imposed. Summary Courts-Martial and Special Courts-Martial have limitations on the severity of punishment while General Courts-Martial have much broader authority.

The lowest level of court-martial is the Summary Court-Martial, roughly equivalent to a civilian municipal, police, or magistrate's court. A military officer sits as a judge. If found guilty, an accused may be sentenced to a maximum of loss of 2/3 of 1 month's pay, reduction in rank, and 30 days confinement (jail).

A Special Court-Martial is the intermediate military court. It consists of a legally qualified military judge and a panel of military members (jury). The panel will be all officers unless the accused is enlisted and requests enlisted members to be on the jury. If this request is made, at least 1/3 of the members will be enlisted. It also has a prosecuting attorney (trial counsel) and entitles the accused to a defense attorney. If requested by the accused, a judge alone may try him or her without a jury. This court may impose a maximum sentence of loss of 2/3 of 1 month's pay for 1 year, reduction in rank, confinement for up to 1 year, and a bad conduct discharge from the military.

A General Court-Martial is the most severe military court-martial and is reserved for the most serious offenses. The composition of a General Court-Martial is the same as for a Special Court-Martial. It may impose the maximum permissible punishment authorized by law, including a dishonorable discharge/dismissal, total forfeitures of all pay and allowances, life imprisonment, or the death sentence. The maximum punishments for each offense are listed in the Manual for Courts-Martial.

**YOUR ROLE:** Like prefferal, your role is limited, but you will ordinarily be informed by legal office personnel should the charges be referred to trial by court-martial and a trial date is set or dismissed.

7. *Court-Martial* -- This is the actual trial. There are two parts. In the first part the members (known as jurors in civilian courts) determine whether the accused is guilty or not guilty of a crime. In the second part, the members determine the punishment. The accused does have the right to have his or her case heard by a judge alone. In that case, the judge will determine guilt and the sentence if found guilty.

*Guilty/Not Guilty Phase* -- If the accused pleads not guilty to any or all of the crimes, then the trial counsel will attempt to prove guilt, on any remaining crimes, beyond a reasonable doubt. Trial Counsel will do this by presenting evidence. This evidence may include the testimony of witnesses and physical evidence, such as documents, photographs, etc. The defense will then have a similar opportunity to present evidence showing the innocence of the accused or the failure of the government to present evidence showing guilt beyond a reasonable doubt. The members or judge will then determine whether the accused is guilty, beyond a reasonable doubt, of any or all of the crimes. An accused is presumed innocent until he/she is found guilty at trial.

**YOUR ROLE:** Whether you are a victim or witness, you will probably have to testify. This means being available the day you are to testify, often by waiting in a private office within Building 1118, Wing Legal Office, with other government witnesses.

*In-Court Testimony* – Frequently witnesses who have already given oral or written statements before the trial or hearing are called to testify in court. You may wonder why going to court should inconvenience you when you have already given a statement. The reason is that the judge will not allow that statement into evidence because the law requires the witness to appear in person, 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.

*Review the Facts Before You Testify* – Prior to your appearance in court, go over the facts of the case in your mind to refresh your memory. Try to picture the scene, the objects there, the distance of one thing from another, and exactly what happened when, so you can recall the facts more accurately when asked about them in court. Try to remember locations, dates and times as well.

*Neat Appearance* – Be neat in your personal appearance. 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. If possible, the judge advocate in your case should make arrangements with you to visit the courtroom prior to trial.

*Tell the Truth* – The first rule about testifying 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. Your personal feelings of whom should “win” should not color your testimony. Your private opinion of guilt or innocence is not relevant, since it is the job of the court to make this decision. Your duty is simply to tell it like you saw it, nothing more and nothing less. If a question cannot be truthfully answered with a “yes” or “no” answer, you have a right to explain your answer. Try to give just the facts. Give your conclusions or opinions only if specifically asked.

*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. When you testify, look at the court panel (jury) and address your remarks to them so they will be able to hear and understand what you have to say. Some witnesses get nervous and their mouth becomes dry, remember you may request a cup of water if this happens to you. It might help settle your nerves.

*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 or don’t understand a question, ask that it be repeated or rephrased.

*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 answer. This is especially true when you are asked to remember something in writing that you don't have in front of you. You may ask to see the writing in order to refresh your memory.

*Answer Directly* – Answer directly the question asked of you. Don't volunteer information. Do not exaggerate or make overbroad statements that you might have to correct. Give positive, definite answers whenever possible. If you make a mistake in answering a question, correct it right away. If your answer was not clear – clarify it.

*Objections Made by the Attorneys* – If an objection is made, stop talking right away. Don't try to complete your answer until told to continue by the Military Judge. Don't argue with the attorney asking the questions. Keep your temper and always be courteous.

*Cross-Examination* – It's your responsibility to answer all questions to the best of your memory. If the question is not proper, the attorney will object and the judge will rule on it. It's important 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, but don't leave the impression someone told you what to say if that is not true. There is nothing wrong with discussing the facts with the attorneys, security forces personnel, or investigators before the trial. Remember, you may ask to see statements to refresh your memory and ensure your testimony is accurate.

*Dates, Distances, Time or Speed* – If your answer can only be 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 or refreshed your memory.

#### *More Do's and Don'ts*

- Be natural – be yourself. If you relax and tell the truth and remember you are just 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 hearing of the court members (jury).
- The only time court members should hear from you is while you are testifying in the court.

*Sentencing Phase* -- During this phase the members or the military judge will determine the proper amount of punishment. This procedure is similar to the guilt or innocence phase. The trial counsel may call witnesses to show aggravating factors concerning the crimes, such as the impact the offenses have had on the victim or on the Air Force. Also, trial counsel may call witnesses to characterize the accused's performance within the military.

The defense may call witnesses to lessen the seriousness of the offense, known as matters in extenuation and mitigation.

**YOUR ROLE:** You may have to return to the witness stand and testify as to how the offenses have affected you, particularly if you are the victim. Frequently, such testimony will have a great bearing upon the sentence the accused receives. Again, if you have any concerns, please discuss them fully with the Trial Counsel.

8. *Imposition of Punishment* -- The punishment can include a reduction in grade, fines, imprisonment or punitive discharge from the Air Force. If the punishment includes confinement, that will start when the trial ends. As a victim, you have the right to make an unsworn statement during the sentencing phase of trial. If you choose to make an unsworn statement you will not be cross-examined by the defense counsel. Your unsworn statement will describe the impact the crime has had on you. You may make the statement orally to the court or submit it in writing. If you wish to make an unsworn statement you must inform the trial counsel after the announcement of findings. If you are going to submit a written statement, it will be provided to the judge and defense counsel and the judge will determine if the statement is admissible.

**YOUR ROLE:** You must determine if you would like to make a written or oral unsworn statement. Trial Counsel will ordinarily keep you informed of the sentence.

9. *Action by Convening Authority* -- After the trial, the convening authority will review the results of the trial and any clemency petition submitted by the accused. A clemency petition is a request by the accused asking that the punishment be lessened for some reason. The convening authority, in certain instances, may reverse a guilty verdict, may reduce a guilty verdict to a lesser offense, or lessen the punishment. Additionally, the convening authority, in certain instances, may reduce or entirely set aside any portion of the adjudged sentence, but may not increase the sentence.

**YOUR ROLE:** If you are a victim of an offense in which the accused was found guilty, you have the right to submit a letter to the convening authority in clemency. You will be contacted by the legal office with information on the timeframe to submit the letter. If you have any questions contact the Trial Counsel.

10. *Appeal by the Accused* -- The accused may appeal the guilty verdict or the punishment or both. The case is first appealed to the Air Force Court of Criminal Appeals. During the appeals process the accused will still be serving his or her sentence.

*Air Force Court of Criminal Appeals* -- The first level of appeal within the Air Force, this court is composed of several active duty Air Force judges who hear and decide appeals from trial court decisions

*US Court of Appeals for the Armed Forces* -- Persons may appeal a decision of the Air Force Court of Criminal Appeals to this court. It is comprised of five civilian judges, and it is the highest level of appeal within the military. Decisions of the court are binding upon all of the services. Persons may appeal from this court to the United States Supreme Court.

*United States Supreme Court* -- This is the next and the highest level of appeal. All decisions are final.

*Air Force Clemency and Parole Board* – An accused may appeal to the Air Force Clemency and Parole Board and ask that his sentence is reduced even if the appellate courts do not grant him relief. If he appeals to the Board, you should be notified of the request, and be given the opportunity to submit a victim impact statement. In order to be notified, you must fill out the DD 2704 at the conclusion of trial.

**YOUR ROLE:** Trial counsel will ordinarily keep you informed at all stages of the appeal if you wish. Ensure you fill out the DD 2704 and keep your address updated so you can be notified of any Clemency and Parole Board hearings.

11. *Release from Confinement* -- Whether released by an appellate court, the convening authority, parole board, or at the natural termination of the period of confinement, eventually the accused will be released, unless a life sentence is imposed.

**YOUR ROLE:** Should the accused try to contact you by telephone, letter, or third person, for whatever reason, while undergoing punishment, notify the trial counsel. The content and purpose of the accused's message could affect their parole. Additionally, should you desire to know when the accused is released from confinement and any other pertinent information about his release, *e.g.*, his parole officer's name and address, the trial counsel can provide you a point-of-contact. Your Victim Liaison will provide you with the appropriate forms to request notification of the accused's release from confinement. Ensure you fill out the DD 2704 and keep your address updated so you can get the best information.

## **HELPING AGENCIES**

### **Shaw AFB Agencies Available to Military Beneficiaries:**

**Chaplains:** Provides counseling and support to victims and family members. (803) 895-1107. Ordinarily, communications with chaplains are treated as private and are protected by a legal privilege.

**Palmetto Health Tuomey Emergency Room:** Provides 24-hour emergency medical assistance. Point of contact for reaching assistance after duty hours. (803) 774-9000.

**Family Advocacy Program:** Provides intervention and counseling to individuals involved as victims, witnesses or offenders of domestic violence (i.e., spouse and/or child abuse). Services include: anger management, prevention, and relationship enhancement program. (Exceptions to confidentiality include duty to warn cases and PRP disqualifiers.) (803) 895 - 6201. Communications with FAP personnel are treated as private and may be protected by a legal privilege (*See* MRE 513 and AFI 40-301).

**Legal Office:** Implements the Air Force Victim and Witness Assistance Program (VWAP). Provides an advisor to provide victims information about their rights, to assist victims through investigations and legal proceedings, help obtain counseling or rehabilitation services, and advise on compensation programs available to victims of domestic violence. Assists with legal aspects of investigation and trial. While conversations with the trial counsel are not privileged and can be disclosed to other parties, the legal office can also assist with providing a legal assistance attorney. Any conversations with a legal assistance attorney are private and protected by a legal privilege. (803) 895-1560.

**Mental Health Clinic:** Provides supportive counseling and psychiatric services to overcome trauma. Counseling is generally limited to active duty members, but others are seen on a case-by-case basis. Communications with FAP personnel are treated as private and are protected by a legal privilege (*See* MRE 513). (803) 895-6199.

**Sexual Assault Response Coordinator (SARC):** Provides restricted, unrestricted and independent reporting of sexual assaults. Provides victims with the support of a Victim's Advocate. All communications with a SARC are private and covered by a legal privilege. (803) 895-7292.

**Special Victim's Counsel (SVC):** Provides legal counsel to qualifying victims of sexual assault. Any conversations with an SVC are private and protected by a legal privilege. Office number (803-895-9350) Duty Cell (240-374-9755).

**Please see your Victim/Witness Liaison for local civilian agencies.**

## **FREQUENTLY ASKED QUESTIONS**

**Q:** How do I find out whether the accused has been placed in pretrial confinement?

**A:** At the time you report the offense and provide the investigators with information, ask to be notified of the offender's apprehension and the type of pretrial restraint imposed upon the offender. You can also call the legal office and make your desires known.

**Q:** How do I notify the confinement facility that I want to be given notice about the accused's parole hearing?

**A:** You should try to complete the necessary application at the time of the court-martial (DD 2704). Contact your Victim and Witness Liaison ("Liaison").

**Q:** The investigators took some of my personal property as evidence...how and when can I get it back?

**A:** Your property is often returned to you shortly after trial, although there are exceptional cases in which evidence may need to be retained. If you fall in the latter category, your Liaison can explain the reasons for the delay. If retention of your property is causing you hardship, please notify your Liaison. Additionally, should you not want any or all of your property returned to you, please let your Liaison know.

**Q:** If I take time from work (I'm a civilian), I will lose a day's pay. Am I expected to bear the financial burden of testifying?

**A:** Not entirely. Civilian witnesses are entitled to a witness fee for testifying. Other expenses may be covered as well – lodging, travel expenses, and meals – depending on if you are coming from out of town and how long you are required to spend. Contact your Liaison.

**Q:** My boss is going to give me a hard time about taking off work to testify....what should I do?

**A:** Tell your Liaison or the trial counsel. While we cannot guarantee that your boss will be cooperative, we will do our best to help your boss understand how important it is that you testify.

**Q:** I may have trouble getting a babysitter, can you help?

**A:** Tell your Liaison about any childcare concerns and they may be able to help make the proper arrangements.

**Q:** When it comes time for the court-martial, will I have to sit in the same area as the defense witnesses?

**A:** No, you will be provided with a separate waiting area. If anyone tries to intimidate you or otherwise bother you while you are waiting to testify, you should tell your Liaison.



**Q:** If I have suffered some personal injury or property damage/loss as a result of what the accused did, am I entitled to any compensation for that loss?

**A:** Maybe. There are several avenues available to you. If the taking or damage to your personal property occurred by force, violence, riotous, or disorderly conduct, you might be entitled to reimbursement for the damage under Article 139, UCMJ. Contact the Claims Office for more information. You might also be entitled to some financial assistance through various victim compensation programs. Contact your Liaison for more information.

**Q:** I am very nervous about talking with the Defense Counsel or any of the defense investigators. Do I have to talk with them prior to testifying at the court-martial?

**A:** No one can make you talk to the defense prior to your actually taking the witness stand; but you are encouraged to cooperate with them. You can always have someone with you during the interviews. If you refuse to be interviewed by the defense, they may be given greater leeway in asking questions at trial or the judge could halt the proceedings. While discussing the case with the defense can be uncomfortable, it is better than being faced with the questions for the first time on the witness stand. If you are apprehensive about an interview, call the Legal Office. We will do our best to coordinate the attendance of a liaison with you if you'd like.

**Q:** Can I provide an unsworn statement to a court-martial during the sentencing phase?

**A:** Yes. If you choose to make an unsworn statement you will not be cross-examined by the defense counsel. Your unsworn statement will describe the impact the crime has had on you. You may make the statement orally to the court or submit it in writing. If you wish to make an unsworn statement you must inform the trial counsel after the announcement of findings. If you are going to submit a written statement, it will be provided to the judge and defense counsel and the judge will determine if the statement is admissible.

We hope we have answered many of your questions and hopefully put you more at ease. As always, if you have any questions, please do not hesitate to contact your Liaison or trial counsel.

## DEFINITIONS

**Military Judge** – A federal judge, the military judge rules on questions of law and motions, hears evidence and testimony, decides on the issue of guilt or innocence and imposes sentence in a trial before military judge alone. In a trial before members, the military judge advises the members on their duties in the court-martial, instructs the members on the law, and rules on questions of law and motions.

**Panel Members** – In a trial before members, either officer or officer and enlisted members, the members hear testimony, review evidence in the form of exhibits, and vote and decide on the issues of guilt or innocence; and if a finding of guilty vote and decide on sentence. An enlisted member can choose to be tried by military judge alone, a panel consisting of officer and enlisted members, or a panel consisting of officers only.

**Trial Counsel** – Serves as the prosecutor in the case against the accused. You may use the trial counsel, in addition to the Victim-Witness Liaison, as a point of contact throughout the proceedings.

**Assistant Trial Counsel** - Assists the trial counsel in the prosecution of the case against the accused.

**Senior Trial Counsel** - Senior Trial Counsel travel from base to base to assist local counsel with the prosecution of the more serious and complex court cases.

**Case Paralegal** – Assists the trial team in the prosecution of the case against the accused. The case paralegal may work to coordinate witness travel.

**Investigator(s)** - Investigators gather information and evidence surrounding the offense. This usually includes taking both verbal and written statements from witnesses and victims. Official Air Force investigators carry badges and credentials (with picture) that identify them as either a Special Agent with the Air Force Office of Special Investigations (AFOSI) or a Security Forces Office of Investigation (SFOI). Your initial contact with an Air Force investigator will likely be in person.

**Defense Counsel** - This individual is a lawyer, either active duty military or civilian, who acts as counsel for the accused. There may also be a Senior Defense Counsel appointed to represent the accused along with Defense Counsel.

**Special Court-Martial (SPCM)** - The maximum punishment for this type of court includes a Bad Conduct Discharge (BCD), twelve (12) months confinement, 2/3 forfeiture of pay for six (6) months, and reduction to Airman Basic (E-1), in the case of enlisted members.

**General Court-Martial (GCM)** - The punishment for this type of court is the maximum penalty provided by law. The maximum penalty varies from offense to offense, and the trial counsel can help you understand the maximum penalty.

**Convening Authority** - Persons empowered by statute to initiate court-martial action against military members.

a. **Special Court-Martial Convening Authority (SPCMCA)** - This individual is the 20th Fighter Wing Commander, Shaw AFB.

b. **General Court-Martial Convening Authority (GCMCA)** - This individual is the 9th Air Force Commander, Shaw AFB.

**Victim** - A person who suffers direct physical, emotional, or financial harm as a result of an offense.

**Victim Liaison** - An individual appointed to assist a victim during the military justice process. The liaison may be a medical or mental health care provider, judge advocate, paralegal, or other designated individual.

**Witness** - A person who has information or evidence of a crime and provides that information or evidence to an Air Force official. When a witness is a minor, the term includes an appropriate family member. The term “witness” does not include an individual allegedly involved in a criminal offense as a conspirator, accomplice, or the alleged perpetrator.

**Special Victims’ Counsel** – Special Victims’ Counsel are legal assistance attorneys who have received special training and are designated by The Judge Advocate General to serve as a SVC. Special Victim Counsel will provide zealous representation to clients. Constrained only by ethical limits, SVCs shall represent the best interests of their clients as appropriate even when their client’s interest do not align with those of the government of the United States. An SVC’s primary duty is to his/her client and no other person, organization or entity. SVCs will empower victims, fostering victims’ understanding of the military justice process and aiding each victim with the legal assistance needed to allow full participation in applicable programs and services and the military justice process. This will be accomplished by providing effective and timely advice, being available to assist throughout the full spectrum of the military justice practice from initial investigation to convening authority action, and providing appropriate advocacy to assure rights afforded are fully realized.

**Sexual Assault Response Coordinator (SARC)** – The SARC is considered the center of gravity when it comes to ensuring that victims of sexual assault receive appropriate and responsive care. They serve as the single point of contact to coordinate sexual assault victim care. What does the SARC do for a victim?

- The SARC ensures there is 24/7 response capability
- Ensures appropriate care is coordinated and provided to victims
- Tracks the services provided from initial report through final disposition
- Advocates to ensure the views of the victim are considered in the decision-making process
- Reports directly to a senior installation or geographic commander
- Provides commander with broader understanding of command climate in regards to sexual assault

- Manages victim advocates during the performance of advocacy duties
- Oversight of all sexual assault cases
- Assigns a Victim Advocate to a case
- Conducts sexual assault case management
- Chairs monthly case management meeting
- Tracks and reports sexual assault numbers
- Tracks the dispositions of all military sexual assault cases monthly, quarterly, and annual reports

**Victim Advocate (VA)** – VAs provide direct assistance to victims. They listen to victims' needs and then connect them with appropriate resources, including medical care, mental health care, legal advice and spiritual support. VAs work with victims to help them make informed choices and then support them every step of the way. What do VAs do for the victim?

- Reports directly to the Sexual Assault Response Coordinator (SARC) for Victim Advocate duties
- Available to respond 24 hours a day, 7 days a week
- Provides ongoing nonclinical support
- Facilitates care for the victim
- Provides information on options and resources
- Assists victim with accessing resources
- Accompanies victim to appointments, if desired
- Provides monthly case status updates to the victim

**Staff Judge Advocate (SJA)** - The SJA is the head of the legal office and serves primarily as legal advisor to the command to which they are assigned. The SJA can also serve as the personal legal advisor to their commander. Their advice may cover a wide range of issues dealing with administrative law, government contracting, civilian and military personnel law, law of war and international relations, environmental law, etc. The judge advocates that work for the SJA provide legal assistance to members of the command and their dependents and also serve as prosecutors for the military in courts-martial.