

ABOUT US

The Appellate Defense Division (AF/JAJA) represents Air Force appellants before the Air Force Court of Criminal Appeals, the U.S. Court of Appeals for the Armed Forces, and the U.S. Supreme Court. Appellate Defense prepares quality appellate briefs. Additionally, Appellate Defense attorneys present oral arguments to appellate courts and work closely with trial defense counsel in developing motions to preserve issues for appeal.

All Appellate Defense attorneys have previously served as base level Assistant Staff Judge Advocates and as Area Defense Counsel. All Appellate Defense paralegals have also previously served at the base legal office and most have served in the Area Defense Counsel office. This gives all members of Appellate Defense the experience of having worked on both prosecution and defense - giving staff members a unique perspective and ability to identify issues to raise on appeal.

If you are represented by the Appellate Defense Division, it is critical that you stay in touch with the office and that we have your most up-to-date contact information, to include address, phone number, and e-mail. Our office seeks to make contact with our clients as soon as we are notified that your case is under appeal. Therefore, if your case is being appealed and you have not been contacted by the Appellate Defense Division it is because we do not have your correct contact information, please contact us immediately.

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USEFUL WEBSITES

Courts:

Air Force Court of Criminal Appeals

<http://afcca.law.af.mil/>

U.S. Court of Appeals for the Armed Forces

<http://www.armfor.uscourts.gov/newcaaf/home.htm>

U.S. Supreme Court

<http://www.supremecourt.gov/>

Documents:

Manual for Courts-Martial (2016 ed.)

<http://www.apd.army.mil/pdf/mcm.pdf>

Air Force Instruction (AFI) 51-201, Administration of Military Justice

http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf

DoD Electronic Reading Room

<http://boards.law.af.mil/>

DoD publications link

<http://www.dtic.mil/whs/directives/index.html>

Air Force e-Publishing

<http://www.e-publishing.af.mil/>

Offices:

Air Force Personnel Center

<http://www.afpc.af.mil/>

Air Force Board of Correction of Military Records (AFBCMR)

<http://www.afpc.af.mil/board-for-correction-of-military-records>

Military Medical Support Office (MMSO)

<http://www.tricare.mil/tma/MMSO/>

Military Personnel Records

<http://www.archives.gov/st-louis/military-personnel/>

GENERAL INFORMATION

This information was prepared by Appellate Defense Division, in an effort to assist defense counsel and their clients during the appellate process. If any errors or omissions are noted, please contact Appellate Defense through DSN 612-4770 or Comm 1-800-414-8847. Official Disclaimer: Since policies and procedures change without notice, clients should consult with local offices and OPRs for verification of this information.

Your appeal to the Air Force Court of Criminal Appeals (AFCCA)

Pursuant to your request after your trial, appellate defense counsel has been assigned. This attorney will carefully review your record of trial to ascertain whether errors or other matters exist which may be beneficial to your appeal. Your appeal is generally limited to matters indicated in the record of trial and related papers which have already been sent to this office. It is not necessary that you provide your appellate defense attorney with additional information; however, if you do have information relating to your appeal which you desire to discuss with counsel you may contact your appellate counsel by phone or by written correspondence (see phone number and address on the [Contact Us](#) page).

DO NOT DELAY. Court rules at each appellate level require the prompt filing of any pleadings for consideration on your behalf. Personal statements that you want to submit to the court should be sworn to before a notary public or include the language "I, (NAME), (SOCIAL SECURITY NUMBER), do hereby make the following declaration under penalty of perjury pursuant to 28 U.S.C. Section 1746." Any additional matter must be sent to your appellate counsel early enough to ensure court-filing deadlines can be met. Your failure to expeditiously communicate with your appellate counsel could result in your appellate counsel being unable to include such matters before the court's deadline. Time suspension's are strictly enforced by the court.

Appellate defense counsel will read your entire record of trial and research any applicable law. If any issues are discovered in your case, then a written brief will be submitted to AFCCA. If your appellate defense counsel cannot find any matters upon which to raise issues to the court, your case will still be forwarded to AFCCA so that the court may consider your case on its merits. Even when a case is submitted on its "merits," AFCCA independently reads the entire record of trial. If they identify any issues, they may decide those matters and may even specify issues back to be briefed.

AFCCA is composed of active duty Air Force officers. The Court will ultimately make a decision in your case. It may reverse a portion of the trial court's decision. Alternatively, AFCCA may uphold or affirm the trial court's verdict and sentence in part or total.

Appealing to the U.S. Court of Appeals for the Armed Forces (CAAF)

Any petition to appeal AFCCA's decision must be filed with CAAF (a group of civilian judges) no later than 60 days from the earlier date of: a) the date on which you are notified of the decision of AFCCA or b) the date on which a copy of the decision of the AFCCA after being served on appellate counsel of record is deposited in the United States mail for delivery by first-class mail to you at the address you provided. (If you have not provided an address, then it is sent to the latest address shown in your official service record.) Typically, therefore, the petition is due 60 days after your Air Force Court opinion is issued.

Unlike review before the AFCCA, review before the CAAF, the next-higher level appellate court, is discretionary. This means that the CAAF reviews only those cases they select for their consideration. Only a small percentage of the cases presented by appellants for review by the CAAF are actually selected for review, and those selected cases

involve an assertion of legal error. Therefore, if your case was submitted to the AFCCA on its "merits," it will not be submitted to the CAAF on its merits, unless you let us know of your desire to the contrary. This will result in the end of your appellate review. However, if your case was submitted to the AFCCA alleging a legal error which is reviewable by CAAF, we will automatically petition your case to them if the AFCCA decides against you, unless you tell us you do not want your case appealed to CAAF. (Note: issues regarding the factual sufficiency of the evidence or the severity of your sentence cannot be raised to CAAF.)

Thirty days after the petition is filed, our office will file a "supplement to petition for grant of review." This brief will raise legal issues reviewable by CAAF (or we will file a "merits" brief at your request). CAAF will generally take several months to decide if they are going to grant review of your case. If they deny your petition for grant of review, the appeal of your case is concluded and there is no further appellate review. (You cannot petition the U.S. Supreme Court if your petition is denied by CAAF.) If CAAF grants your petition, additional briefs will again be filed on the legal issues identified in your case and oral argument will probably be ordered. CAAF will issue an opinion in your case some months after the oral argument. They can reverse or affirm your case in part or in total.

Supreme Court Review

If your conviction is affirmed by CAAF, you have 90 days from the date of the decision to submit a Petition for a Writ of Certiorari to the U.S. Supreme Court. The U.S. Supreme Court normally denies Petitions for Writs of Certiorari. This is because the criteria for the types of cases they review are not as broad as the lower courts. The U.S. Supreme Court generally looks to review issues of widespread, national applicability, such as those which deal with matters of constitutional law. Just as the Supreme Court defers to state courts in the interpretation of their own state law, the Supreme Court also defers to the CAAF in the interpretation of military law. Because Supreme Court review of military cases is highly unlikely, it is our division's policy to request review in only those cases that most clearly meet the Supreme Court's criteria. In order to determine which cases meet this criteria, we have established a Supreme Court Committee. The committee reviews unfavorable decisions by the CAAF for possible presentation to the Supreme Court. The committee is composed of three experienced appellate defense counsel from the Appellate Defense Division. By applying the Supreme Court's criteria for granting review, the committee determines whether we should request review from the Supreme Court. The committee's decisions are then approved or disapproved by the Chief of the Appellate Defense Division, who is the final approval authority. You still have the right to retain civilian counsel or to represent yourself before the Supreme Court. (Our office has a handout on the procedures.)

It is clearly critical that you keep us informed of your current address/phone number and how to contact you swiftly so your deadline to appeal can be met, if you desire to appeal. As you can see, your case on appeal can take different routes, depending on rulings which begin with the AFCCA. Our ability to represent you most effectively is dependent on you keeping in contact with your appellate defense counsel so you may remain current on the status of your case and your options for appeal.

INFORMATION ON UPGRADING YOUR DISCHARGE

This information was prepared by Appellate Defense Division, in an effort to assist defense counsel and their clients during the appellate process. If any errors or omissions are noted, please contact Appellate Defense through DSN 612-4770 or 800-414-8847. Official Disclaimer: Since policies and procedures change without notice, clients should consult with local offices and OPRs for verification of this information.

- [1. Upgrading Administrative or Punitive Discharges](#)
- [2. Applying to the Air Force Discharge Review Board](#)
- [3. Applying to the Board of Corrections for Military Records](#)

UPGRADING ADMINISTRATIVE OR PUNITIVE DISCHARGES

This fact sheet is designed to familiarize you with the procedures for upgrading Under Other Than Honorable Conditions (UOTHC) and General (Under Honorable Conditions) administrative discharges, as well as upgrading punitive discharges (bad conduct, dishonorable or dismissals). It should not be used as a substitute for consulting private counsel and/or the Air Force Personnel Center, as well as reviewing applicable regulations.

It is important to understand that punitive discharges are upgraded only on the basis of clemency, whereas administrative discharges are upgraded based on standards of equity or propriety. This handout was originally developed primarily for use by clients trying to upgrade administrative discharges, however, the language and ideas are often equally applicable to court-martial clients.

NOTE: A GENERAL DISCHARGE DOES NOT AUTOMATICALLY BECOME AN HONORABLE AFTER 6 MONTHS. This is a widely circulated rumor that is untrue. You must apply for an upgrade and the Discharge Review Board (DRB) or BCMR must grant the upgrade.

1. Who can apply? A former member of the Regular Air Force and the Air Force Reserve Armed Forces who has been discharged or dismissed administratively in accordance with AF instructions or a court-martial can apply to the Discharge Review Board (DRB). A former member of the Air National Guard must apply to the Board of Corrections for Military Records (BCMR). If the member is deceased or incompetent, the surviving spouse, next-of-kin or legal representative can act on the member's behalf before either the DRB or the BCMR.

2. Who do I apply to?

a. If you have an administrative discharge less than 15 years old or a BCD received from a special court-martial, you should first apply to the Discharge Review Board.

b. If you went to a general court-martial and received a BCD, DD or dismissal, or if your discharge is over 15 years old, or if you have already been denied an upgrade by the Discharge Review Board, you must apply to the Board of Correction of Military Records.

3. What are the DRB and BCMR?

a. The Air Force Discharge Review Board (DRB) is appointed by the Secretary of the Air Force and given discretionary authority to review administrative discharges. A DRB Panel is an element of the DRB and consists of 5 active duty Air Force officer and senior enlisted personnel, authorized to review discharges and dismissals. The DRB Traveling or Regional Panel is a DRB Panel that conducts its reviews in locations outside the Washington, D.C. area. Each member casts one vote and the majority rules.

b. The Air Force Board of Corrections for Military Records (BCMR) is the highest level of administrative review within the Department of the Air Force. Unless procured by fraud, its decisions are final and binding on all Air Force officials and other government agencies.

This page includes sections on both the DRB and the BCMR. See the Corrections Board section of the Air Force Personnel Center homepage (<http://www.afpc.af.mil/>) and the DoD Electronic Reading Room website (<http://boards.law.af.mil/>) for more information. It is highly recommended that you review the information available through these websites before attempting to upgrade your discharge!

Applying to the Air Force Discharge Review Board
Starting Point for All Administrative Discharges,
as well as BCDs from special courts-martial

1. Form for Application. Use DD Form 293, Application for the Review of Discharge or Dismissal from the Armed Forces of the United States, along with other statements or documentation as needed. This form is available for downloading through the Corrections Board section of the Air Force Personnel Center homepage (<http://www.afpc.af.mil/>) and the DoD Electronic Reading Room website (<http://boards.law.af.mil/>), at most bases, at regional offices of the Veterans Administration or by writing to:

SAF/MIBR
550 C Street West, Suite 40
Randolph AFB, TX 78150-4742

Or

AFDRB
1535 Command Drive, EE Wing
3rd Floor
JB Andrews NAF, MD 20762-7002

2. What publications are relevant to my application? DoD Directive 1332.28 and AFR 20-10 (currently under revision) are the relevant publications. The entire DoD Directive can be downloaded through the Corrections Board section of the Air Force Personnel Center homepage (www.afpc.af.mil/) or through the DoD publications link (<http://www.dtic.mil/whs/directives/index.html>). Also, copies of both regulations can be obtained (for a fee) from National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161, (703) 487-4650.

3. Time of Application. You may apply for an upgrade immediately upon discharge and up to 15 years after the date of the discharge or dismissal.

4. Who can apply and how do I apply? Former members of the Regular Air Force and Air Force Reserve are eligible to apply. Former members of an Air National Guard unit must submit an application to the Board of Corrections for Military Records. If the former member is deceased or incompetent, a surviving spouse, next of kin or legal representative may apply with supporting documentation (i.e. marriage license, death certificate or power of attorney.) There are essentially three ways to apply for an upgrade:

(1) Applicant appears personally before the Board, with or without counsel;

(2) Counsel appears on applicant's behalf; or

(3) The Board evaluates the case based on documentation in the military record and additional evidence provided by the applicant.

5. Assistance of Counsel. You may and should seek counsel in making your application, even if you do not intend to have counsel appear for you. Experience has shown that assistance of counsel increases your chances for an upgrade. You may seek assistance from the Veterans' Administration, American Red Cross, American Legion, Disabled American Veterans, Jewish War Veterans of the USA, and the Veterans of Foreign Wars (all of which regularly provide free counseling for upgrade applicants, see list on www.afpc.af.mil) or from a private attorney. Military attorneys cannot provide assistance to you.

6. What changes can I ask for? An application may request a change in the character of or reason for discharge or both, and a change in your reenlistment code:

a. Character of discharge: Block 3 of DD Form 293 provides you with a chance to request a specific change in the character of your discharge. A request from an applicant who does not have an Honorable Discharge will be treated as a request for a change to Honorable unless the applicant specifically requests another character of discharge.

b. Reason for discharge: Block 3 of DD Form 293 provides an opportunity to request a change in the reason for discharge. If you do not request a change in the reason, the Board will presume that you do not want the reason changed.

7. What are the standards for upgrade? The DRB will upgrade an administrative discharge only for the reasons of "equity" and/or "propriety" and a punitive discharge on the basis of clemency (which will often incorporate equity and propriety principles). See DoD Directive 1322.28 for guidance. (www.afpc.af.mil or <http://www.dtic.mil/whs/directives/index.html>).

a. "Equity" concerns three general areas: whether service members (at the applicant's base and at other installations) with a similar record to the applicant received a more favorable type of discharge than the applicant, whether the discharge was inconsistent with standards of discipline in the Air Force or based on other factors such as quality of service (service history, decorations, promotions, responsibility level, length of service, disciplinary actions, court-martial) and/or capability of service (total capabilities per education and military record, family and personal problems that may have affected ability to serve, arbitrary or capricious action by commander, or discrimination). See DoD Directive 1322.28 for guidance.

b. "Propriety" generally involves an inquiry into whether all the applicable Air Force regulations were properly followed in the applicant's discharge proceedings (i.e. an error of fact, law or procedure occurred or a change in policy has been retroactively made to this type of discharge). If the Air Force did not follow its directives, including affording the applicant the opportunity to provide rebuttal at the time of the action, it may be proper to upgrade the applicant's discharge. See DoD Directive 1322.28 for guidance.

c. Note that both reasons for upgrade involve the applicant's military service, not post- or pre-service accomplishments or difficulties caused by the discharge characterization. However, these aspects should be included in the application along with the basis for discharge (either equity or propriety) because they may shed some light on, at least, the equity basis. For example, did other service members with a similar record have the same difficulty getting civilian employment? Also, was the service record as reflected in the discharge documentation an inaccurate reflection of the applicant's complete service, as evidenced by other documents (including statements of military

supervisors and co-workers) relating to the service and similar post-service documentation of such a glowing nature to cast doubt on the accuracy of the service record (on the theory that "a leopard doesn't change its spots")?

d. You can review previous decisions by the DRB by reviewing an index of these decisions and seeing if any appear applicable to your case. The Electronic Reading Room contains the decisional documents for each of the services' Boards from October 1998. (<http://boards.law.af.mil/>). Prior decisional documents can be viewed by contacting the Army Review Board Agency at 703-607-3566 or by writing to DA Military Review Boards Agency, ATTN: SFBA (Reading Room), Room 1E520, The Pentagon, Washington DC 20310.

8. Steps in Requesting Upgrade.

a. Request a copy of your military records.

(1) The best time to get copies of your records is before you separate. Keep your copy of the discharge paperwork in a safe location, where you can find it when and if you decide to apply for an upgrade. Also make copies of your MPF personnel file and squadron Personal Information File. Many of these documents will not become part of your permanent file and will be lost if you don't copy them before you out-process.

(2) Request a copy of your permanent military records using the Standard Form 180 (check with an orderly room or MPF) and following its instructions. In Section II, number 1, write "complete service and medical records." In Section II, number 4, write "discharge review." Make sure you send this form before you file your application for upgrade. Otherwise, your records will not be available for copying as they will be sent to the DRB once they receive your application. See the National Personnel Records Center in St Louis, Missouri home page for further information (<http://www.archives.gov/st-louis/military-personnel/>).

b. Gather supporting documentation.

(1) Again, the best time to do this is before you outprocess. Ask co-workers and supervisors to provide you reference letters concerning your duty performance and skills. You can submit these letters not only to the DRB if you apply for an upgrade, but also to potential civilian employers. If you don't intend to offer these letters during the discharge process itself (i.e. if you do not intend to submit them to your commander as part of a rebuttal to the discharge), tell your co-workers and supervisors. You will probably get more letters if the authors do not feel like they have to "fight" the commander in order to help you.

(2) If you did not get them before, track down your coworkers and supervisors, and get statements. Also get letters from your civilian employers; certificates from schools, civic organizations, and churches; a letter reflecting a clean record from your local police department; college transcripts; a copy of your credit report (if debts were a problem that contributed to your discharge); documents reflecting alcohol or drug treatment and attendance at AA and similar organizations (if alcohol or drugs were factors in your discharge); birth certificates from your children; and any other document which supports your argument that you have been a good citizen during and since your discharge and/or that you have had difficulty finding employment due to your discharge and/or that your discharge was "unfair".

(3) Be sure to list all documents in block 7 of the DD Form 293.

c. Decide why your discharge should be upgraded and carefully explain it to the DRB. These reasons are your "issues." The package should be put into a format that is easily read by the Board members.

(1) Remember that for your discharge to be upgraded, your reason must be based on equity, propriety and/or

clemency. (Court-martial clients can only be upgraded on the basis of clemency). What it boils down to is that your discharge was "unfair" for some reason or that you deserve to be granted relief or clemency through this process. Be sure you understand why you feel it was unfair. If you are not sure, don't count on the DRB figuring it out for you; chances are you will just be wasting your time.

(2) List each issue for the DRB's consideration in block 8 of the DD Form 293. Unless you specifically list the issue, the DRB does not have to address it in the decision of your case.

(3) See DoD Directive 1322.8 for further guidance.

d. Personal appearance (at your own expense).

(1) If you choose to make a personal appearance, you may make the appearance before the DRB at Washington DC or before one of the traveling panels. Depending on the number of requests for personal appearance in the various locations, the DRB will usually travel to the following cities: Atlanta, Chicago, San Antonio, Colorado Springs, Los Angeles or San Francisco, New York City and Tampa.

(2) Prepare yourself for the personal appearance by having a friend question you about your reasons for upgrade. The DRB will want to know why you got into trouble in the service. Explain it as best you can without trying to bad-mouth the service. (It's unlikely that such a tactic will win you favor with the military members of the DRB.) Dress conservatively; a business suit or equivalent is appropriate.

(3) Character witnesses can testify or observe your personal appearance but you will be responsible for the costs of their attendance.

(4) You can remain silent at the hearing, give sworn or unsworn testimony.

(5) Very detailed information regarding the personal appearance procedures are available through the Corrections Board program on the AF Personnel Center home page (<http://www.afpc.af.mil/afveteraninformation/afbcmr.asp>)

9. How long does it take? Normally you will receive a letter from the DRB within a month telling you that your application has been received. If the DRB asks for any additional information, send it as quickly as possible. The DRB estimates that a records review decision will take 6-12 months, a personal appearance decision at Andrews AFB will take 6-12 months and a personal appearance before a regional traveling board will take about 18-24 months. (The difference between the personal appearance decisions is because boards are held twice per week at JB Andrews NAF as opposed to once a year at a regional location.) If you attended a personal appearance board, you should have a decision within 6 weeks after the hearing. If you did not request a personal hearing and you have not received a decision within 6 months, send a follow-up letter. Make sure to keep the DRB informed of your current address by sending any changes to AFDRB, 1535 Command Drive, EE Wing, 3rd Floor, JB Andrews NAF, MD 20762-7002 (include your SSN).

10. Chances of an Upgrade. Each decision is made on a case-by-case basis. Generally, support from supervisors and commanders at the time of discharge will greatly enhance your chances as will valiant attempts to correct problems during service (such as alcohol rehabilitation). In 1989, roughly 16% of applications to the DRB with personal appearances and roughly 6% without were upgraded. The assistance of counsel in preparing and presenting the request for upgrade seemed to improve applicants' chances. Upgrading punitive discharges is probably more difficult than upgrading administrative discharges, though each case will be judged on its own merits.

11. **Appealing the DRB Decision.** After you have exhausted your chances with the DRB, you may apply to the Air Force Board for Correction of Military Records (BCMR) using DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552 and AFI 36-2607. See that section of this handout for further information.

Applying to the Board of Corrections of Military Records
When appealing DRB decision or
if you have a BCD, DD or dismissal from a general court-martial

1. When should I apply? The time limits for an application to the BCMR are different from the DRB. To apply to the BCMR, you must normally apply within 3 years after discovering the error or injustice to be corrected. Generally, this means within 3 years of your discharge. If you are applying more than three years after the discharge, explain why it is in the interests of justice that your application be considered. If you first applied to the DRB and the length of that process caused you to apply after the 3 year limit, explain in block 11b. of the DD Form 149 that "in the interest of justice" the BCMR should consider your case because you have diligently appealed your case before the DRB within the DRB time limits (a necessary first step before appealing to the BCMR in the case of administrative discharges or special court-martial BCDs).

2. Form for Application. Use DD Form 149, Application for Correction of Military Record, along with other statements or documentation as needed. This form is available for downloading through the Corrections Board section of the Air Force Personnel Center homepage (located at <http://www.afpc.af.mil/>), through the DoD Electronic Reading Room (<http://boards.law.af.mil/>) or at most base MPFs.

3. Regulations that apply to this process. AFI 36-2603 (Air Force Board for Correction of Military Records) provides procedures for correcting military records due to injustice or error. AFPam 36-2607 is the Applicants' Guide to the Air Force Board for Correction of Military Records and provides information on how to apply to the BCMR. These regulations are attached to this handout. They can also be downloaded through the Corrections Board section of the Air Force Personnel Center homepage (<http://www.afpc.af.mil/>) or through Air Force E-Publishing (<http://www.e-publishing.af.mil/>).

4. How should I apply? Prior to applying to the BCMR, you must exhaust all other administrative remedies available to you. For all administrative discharges as well as special court-martial BCDs, this means applying to the DRB and being denied relief. Review the applicable regulations for guidance in completing your application and gathering supporting documentation. This page's section on applying to the DRB also has guidance that is equally applicable to applying to the BCMR. See the Air Force Personnel Center home page for detailed information on the process.

5. What happens after I apply? Once your application and all applicable records have been obtained, your application will be screened to determine if there is an administrative disposition possible without formal BCMR consideration. This involves sending the material to the office of primary responsibility (OPR). If the request cannot be resolved administratively by the OPR for that area, it will be sent to the BCMR. A copy of any advisory opinion prepared by the OPR that does not fully support the requested relief will be referred to you or your counsel for response (within 30 days, you can provide any new statements or documents relating to this opinion). Once your case is referred to the BCMR, it is almost always decided based on the evidence contained in the case file (your military records, an advisory opinion by the OPR, and statements, arguments and documents provided by you). In very rare cases, the BCMR may grant a personal appearance. The BCMR is not an investigative body and will not contact witnesses, nor will it release information about your application to outsiders, based on the Privacy Act.

6. How long will it take to get a decision after I apply? Administrative applications take about 3 months to complete.

Cases involving formal BCMR consideration take an average of 12 months. Only you or your counsel will receive a copy of the record of proceedings, unless a correction is ordered and then the OPR will receive a copy in order to make necessary corrections.

FREQUENTLY ASKED QUESTIONS

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[1. I received a punitive discharge and/or confinement for one year or more. What are the appeal procedures for my case?](#)

[2. I did not receive a punitive discharge or confinement for one year or more or I am waiving my appellate review. What are the appeal procedures for my case?](#)

[3. How long will my appeal take?](#)

[4. What can I do to assist in my appeal?](#)

[5. Am I still in the Air Force while my appeal is pending but I am out of confinement? What do I tell employers about my military status while I am on appellate leave? When and](#)
[6. What happens with my accrued leave? how will I receive my DD Form 214? What will my DD Form 214 say?](#)

[6. What happens with my accrued leave?](#)

[7. Can I use my tuition assistance or GI Bill benefits while on appellate leave? What about VA benefits I have accrued based on prior enlistments?](#)

[8. Can I get a copy of my record of trial from the military? What about my military personnel and medical records?](#)

[9. If I was close to or past retirement eligibility when I was court-martialed, what effect does my appeal have on my ability to submit a retirement application? How can I ask for an administrative separation instead of my punitive discharge being approved?](#)

[10. Have I been convicted of a misdemeanor or a felony? Where is my conviction documented?](#)

[11. What about my security clearance?](#)

[12. Can my appellate or trial defense counsel help me with getting parole?](#)

[13. What avenues are available to me for clemency, now that action has been taken in my case?](#)

[14. OSI/SFS/JA has some of my property. When and how can I get it back?](#)

[15. My family relies on me for financial support. How can they receive money after my court-martial?](#)

[16. How will I get a copy of my W-2 to file taxes? Where will my Leave and Earning Statements be sent?](#)

[17. Will I do my whole sentence in the military confinement system or will I switch to the federal system?](#)

[18. Do I have to register as a sex offender?](#)

[19. Will my DNA be entered into the FBI database?](#)

[20. Will the military pay to move household goods and my dependents after my trial?](#)

ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT THE COURT-MARTIAL AND APPELLATE PROCESS

1. I received a punitive discharge and/or confinement for one year or more. What are the appeal procedures for my case?

If a client receives a punitive discharge or confinement for 12 months or more, his/her case is automatically appealed to the Air Force Court of Criminal Appeals (AFCCA), unless the client withdraws his case from appellate review. The client will be assigned appellate defense counsel to represent the client during this appellate process (and can hire civilian counsel at his/her own expense). Under Article 66, UCMJ, the AFCCA must review the case to determine if the findings and sentence are correct in fact and in law, and that they should be approved. Once the AFCCA issues its opinion, the client has the option of petitioning his/her case to the Court of Appeals for the Armed Forces (CAAF). This is a discretionary review under Article 67, UCMJ. Thus, the CAAF does not have to review the client's case and can deny the petition. Per Article 67a, UCMJ, the United States Supreme Court only has the power to review military cases decided by the CAAF (not those in which the CAAF declines to grant review).

2. I did not receive a punitive discharge or confinement for one year or more or I am waiving my appellate review. What are the appeal procedures for my case?

For clients who do not receive a punitive discharge or at least 12 months confinement or if the client waives or withdraws his/her case from appellate review, there is no automatic appeal through the court system but there is a legal review done of the case. Clients should consult with their trial defense counsel before or immediately after trial for questions on these procedures, as appellate defense counsel will not be appointed to represent the client and because some of the appeal procedures require timely action by the client and counsel. In general, the post-trial processing of this type of case depends on the type of court-martial and the sentence the client received. (See Articles 64 and 69 of the UCMJ, R.C.M. 1112 and 1201 and AFI 51-201 for further guidance).

3. How long will my appeal take?

Of course, the answer to this question is not very helpful - "it depends." It can take anywhere from several months to several years, depending on the case and the Court's docket. However, a quick look at the processing of a record of trial on appeal will give you an indication of what to expect.

Our office and the Air Force Court of Criminal Appeals (AFCCA) receive the record at the same time, usually within 1-2 months after action is taken by the convening authority. At that time, the AFCCA will set a 180 day suspense for the appellant's brief to be filed, and any delays thereafter are for 30 days at a time. Most cases are filed by our office within the first 180 days after we receive the record, though that can vary depending on the complexity of the case. If the case is straightforward and no appellate issues are identified, our office will file the case with the AFCCA on its

"merits," which means we are asking the Court to conduct their Article 66, UCMJ, review but that we have not discovered any specific appealable errors. Appellate government will not respond to this type of case. Usually, the AFCCA will review the case (it may identify errors on its own) and publish its decision within several weeks of our filing of the case. At that point, the client will need to make a decision about whether to appeal to the Court of Appeals for the Armed Forces (CAAF)(see below).

If issues are identified and briefed to the AFCCA, Appellate Government will typically respond within their allocated 30 days. We then have 7 days to respond to their brief, if necessary. These briefs will be mailed to the client.

Then comes the wait. It is hard to speculate on how long the AFCCA will take to rule on a particular case. A client's case may be decided before cases filed which are older than his/hers, since this is dependent on the AFCCA's schedule and its own determination of what cases it works on. However, clients should be aware that they may wait many months before hearing the AFCCA's decision, especially if his/her case was filed with specific issues briefed. Once the AFCCA opinion comes out (whether on a "merits" or "issues" case) and is served on appellate defense counsel, the client has 60 days to petition the CAAF, if he/she wants to. This petition is essentially a request to file a brief with the CAAF. (NOTE: Our office will not file a petition in a "merits" case unless the client specifically requests that we do so.) Thirty days after the petition is filed, a "supplement" (or "supp") brief will be filed with the CAAF, either as a "merits" brief (only at the client's request) or raising some or all of the issues the AFCCA ruled on. (NOTE: The CAAF cannot review issues regarding factual sufficiency and sentence severity.) The CAAF typically makes its decision on whether to grant review of the case within several months of the filing of the "supp" brief. If review is denied, the appellate review process will end (see below for subsequent DD Form 214 procedures). If review is granted, another round of briefs will be filed, oral argument will be heard and an opinion from the CAAF will be issued, a process that takes about a year. After that, in some limited circumstances, you may have the right to petition the U.S. Supreme Court for further review of your case.

4. What can I do to assist in my appeal?

The most important thing a client can do is to stay in touch with our office. Clients are informed of the need to keep our office informed (and how to do so) when they are given their post-trial and appellate rights advisement by trial defense counsel and the military judge. Also, when we receive the record of trial and a counsel is assigned, an introductory letter and handout are sent to the client in confinement or at the address the client gave right after trial or when he/she was placed on appellate leave. This letter will give the client a suspense for contacting our office, as well as information on how to keep our office advised of his/her whereabouts. To make it easier for clients, we have a toll-free number for them to call (800-414-8847). It is extremely rare for a client to disappear before the AFCCA brief is filed but it appears to become difficult for some clients to keep us updated as their case sits at the AFCCA awaiting a decision and they get on with their lives. However, it is extremely important that clients tell us where they are and how we can reach them, so they can be advised of the status of their appeal and any relief they may receive from it. Clients must also follow the instructions in their appellate leave letter regarding updating their address. This procedure is separate from keeping our office informed of the client's whereabouts. The appellate leave instructions need to be followed to ensure that the DD Form 214 and other paperwork is mailed to the proper address during and after the appeal.

5. Am I still in the Air Force while my appeal is pending but I am out of confinement? What do I tell employers about my military status while I am on appellate leave? When and how will I receive my DD Form 214? What will my DD Form 214 say?

If the case is still being appealed through the court system and the member has a pending punitive discharge, a member who is released from confinement (due to parole or minimum/maximum release date) is put on appellate

leave. This is an excess leave status (leave of absence without pay). (See AFI 51-201, paragraph 9.12). This status continues until the appellate review of the court-martial is over and the punitive discharge is executed. During this time, the member is still subject to UCMJ action for any criminal difficulty encountered while on appellate leave. It also means that the client and his/her dependents retain their military ID cards and military benefits (medical, BX/commissary, etc) during that time. The ID cards may have an expiration date on them, however the cards will be renewable through the time period of appellate leave (clients should consult with their servicing MPF before trial about how to get the cards renewed when the time comes).

Clients should contact Tricare and Delta Dental directly for information about the client's access to those programs (we have heard that appellate leave clients are being told they are not eligible for the dental program. If this happens, contact the AF liaison at the Military Medical Support Office (MMSO). Clients who live and work more than 50 miles from a military medical facility should ask about Tricare Prime Remote, a program that allows military members to receive free medical care from civilian providers in their area. (Dependents would use Tricare Prime or Standard). The office in charge of this program is the MMSO in Minnesota (<http://www.tricare.mil/tma/MMSO/> or (888) 647-6676). The office has an AF liaison.

By not having a DD Form 214, some clients find it difficult to explain their status to prospective employers. They will also find it almost impossible to receive government benefits (i.e. unemployment (though some states will deny you unemployment anyway if you did not receive an honorable discharge - check with your state for details)) and some loans. However, until the appeal is over, the DD Form 214 will not be issued. The larger confinement facilities have the capability, upon request of the inmate, to prepare a "Statement of Service," a letter which summarizes your military record. It will list each period of honorable service, how it ended and whether any days were lost during that enlistment. It will also state that you have a punitive discharge which is unexecuted but which is pending. The letter is completed by confinement personnel after they review your personnel records. It is unclear who would complete these forms at a smaller facility, perhaps the servicing MPF at that base. In such a situation, inmates should inquire about getting such a statement of service and can discuss this issue with their appellate counsel if they encounter difficulty.

If the client is an enlisted member, after the appeal is over (either because he/she elected not to petition the CAAF, because the CAAF denied their petition or after the CAAF decides their case), the military justice division at Bolling AFB will direct that final orders be cut in the case. (See question #9 below for procedures on how enlisted personnel can ask that their punitive discharge be changed to an administrative discharge, or that they be allowed to retire). The base and convening authority who serviced the court-martial are responsible for processing these orders. The separations branch at the base will then prepare the DD Form 214. This process usually takes several months. If the client is in confinement, the DD Form 214 will be mailed there. If the client is on appellate leave, the DD Form 214 will be mailed to the address the client gave when he/she was put on appellate leave. Thus, it is very important that the clients follow the instructions on the appellate leave paperwork on keeping that address current, as changing the address with our office does not mean that the DD Form 214 will be sent to that address. (If the client will be somewhat transient, he/she should list a family member or members who will be at a stable address and who will know how to reach the client). At this time, the base will also remove the member from the local MPF computer system. The local base will hold the client's file for 90 days and then forward it to Randolph AFB. After approximately 90 days, the file is sent to the National Personnel Records Center in Saint Louis. However, Randolph AFB has the ability to retrieve an electronic copy of the DD Form 214 within two years after the discharge. To request this, send an SF 180 to HQ AFPC/DPSAMP, 550 C Street West, Suite 19, Randolph AFB, TX, 78150. (The SF 180 is available through the St Louis website listed below). For information on how to obtain the DD Form 214 and other military records from St Louis, see their website (<http://www.archives.gov/st-louis/military-personnel/>).

Officer cases follow the same procedure as listed above. However, once the appeal is over but before the final orders

are cut, the Secretary of the Air Force has to order the dismissal executed, based on federal law. As part of this process, the Air Force Clemency, Corrections and Officer Review Division will review the officer's case (as well as any materials submitted by the client and/or his counsel (AFLSA/JAJR, 112 Luke Ave, Ste 343, Bolling AFB, DC 20332) and will make a recommendation to the Secretary of the Air Force regarding the dismissal. This can include a recommendation that a retirement eligible officer be allowed to retire, or that an officer client receive an administrative discharge instead of a dismissal. (See question #9 below). Once the Secretary elects to execute the dismissal, final orders will be cut and the DD Form 214 will be processed.

Once the DD Form 214 is prepared and mailed, a client is no longer subject to the UCMJ. However, a client in military confinement even with a DD Form 214 is still subject to UCMJ action as a military prisoner.

The DD Form 214 will reflect the punitive discharge, as well as other information about overall military service. Consult AFI 36-3202 (available on-line through <http://www.e-publishing.af.mil/>) for specific information.

6. What happens with my accrued leave?

Many clients enter confinement with accrued leave. If the client is released from confinement (via parole, maximum or minimum release date) before their appeal is over (i.e. before their punitive discharge is executed), he/she will go on appellate leave. As part of this process, the client can elect to sell the leave or use it, similar to a terminal leave situation. (Obviously, most clients elect to "use" the leave because they will receive pay and allowances during this time period, whereas they will only receive money for their pay (and not allowances) if they sell the leave.)

However, clients whose appeal ends while they are in confinement will forfeit the accrued leave. Thus, if a client is facing lengthy confinement, it may be to his/her benefit to attempt to use the leave well before his/her trial. Once the client has an appellate defense counsel assigned to represent him/her, that counsel can discuss the probable timing of the appellate process.

7. Can I use my tuition assistance or GI Bill benefits while on appellate leave? What about VA benefits I have accrued based on prior enlistments?

According to an 8 Jan 98 Opinion of the Air Force Judge Advocate General and a subsequent 11 Feb 98 Education and Training Division order, people on appellate leave cannot use the tuition assistance benefits. However, we have been informed that clients are eligible to use GI Bill benefits during this time, if they meet the criteria for the program and have an honorable discharge from a prior enlistment. Call the VA itself at 800-827-1000 (or consult their home page at www.va.gov) to inquire about what benefits the client may retain from prior enlistments. For questions regarding the GI Bill, call 888-442-4551.

8. Can I get a copy of my record of trial from the military? What about my military personnel and medical records?

Clients are served with a copy of their record of trial before the convening authority's action. It is highly recommended that clients hold onto that copy. Our office destroys our copy of the record after the appeal is over. Your ADC office may keep a copy for some period of time. The Air Force keeps them in storage for 50 years after the trial, but a FOIA request is needed to retrieve them and that can be a lengthy and expensive process, plus part of the record will be redacted before it is given to you. Reference both FOIA and the Privacy Act in your request, to ensure that you get the most complete copy possible. You can also request a waiver of the fees. The office to contact for FOIA requests is AFLSA/JAJM, 112 Luke Ave, Ste 343, Bolling AFB, DC 20332.

Personnel records from active duty service can be retrieved through the National Personnel Records Center in St

Louis, Missouri. Their address is NPRC, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132-5100, (314) 538-4142 (see <http://www.archives.gov/st-louis/military-personnel/>). Personnel records for reserve duty can be obtained through Air Reserve Personnel Center/DSMR, 6760 E. Irvington Place, #4600, Denver, CO 80280-4600. For members separated after 1 May 1994, medical records are maintained at the Department of Veterans Affairs (VA), Records Management Center, 4360 Goodfellow Blvd. Bldg. 104, St. Louis, Mo. 63120-8950. Inpatient records may be located at the National Personnel Records Center, see their website for further information.

Getting medical and personnel records from these organizations can be a lengthy process. Clients thus often find it helpful to get copies of these records before they are court-martialed.

9. If I was close to or past retirement eligibility when I was court-martialed, what effect does my appeal have on my ability to submit a retirement application? How can I ask for an administrative separation instead of my punitive discharge being approved?

Regarding retirement:

Confinement time for officers and enlisted members is bad time, not creditable towards retirement. However, time on appellate leave does count towards retirement. Thus, if a client passes 20 years of good time either before or while on appellate leave, he/she is eligible to submit a retirement application. The procedures vary slightly between officers and enlisted members. Clients should be aware that such retirements are rarely approved, especially in cases where the misconduct and/or trial occurred before the member became retirement eligible. Part of this process includes a "grade determination". (For officers, this determines the grade in which the member will receive retirement pay. For enlisted members, this determines the grade to which the member will be advanced when he/she reaches 30 years of creditable service. See Chapter 7 of AFI 36-3203 available on-line through <http://www.e-publishing.af.mil/>) For both officers and enlisted members, the retirement application (AF Form 1160, available through base personnel offices or on-line at <http://www.e-publishing.af.mil/>) must be submitted to the member's servicing MPF. Members who were sentenced to a punitive discharge and confinement for six months or more have often been transferred to the Security Forces Squadron for personnel purposes (applications would be accepted by HQ AFSFC/SFCI, Attn: SSgt Trabue, 1517 Billy Mitchell Drive, Lackland AFB, TX 78326-0119, (210) 925-5622 or DSN 945-5605). Please also fax SSgt Trabue an advance copy of the your retirement application at 210-925-5411. For all others, the servicing MPF is the base they were assigned to when they were court-martialed, unless they were PCSd to a CONUS base as part of their return from overseas. (A client's appellate defense counsel can assist a client in determining who the servicing personnel office is.) The application can technically be submitted any time after the convening authority takes action on the case but most MPFs will require the member to wait until he/she is within six months of the retirement eligibility date.

On the AF 1160, the member needs to request a waiver of the restriction in the retirement AFI which prohibits the retirement of members who have been subject to UCMJ action. (See Chapter 2 and Table 2.2 of AFI 36-3203 available on-line through <http://www.e-publishing.af.mil/>.) To support this waiver request, the member should submit documentation justifying the request, including a personal letter from the member, character letters, performance reports, confinement and treatment records, etc.

Once the application is submitted (especially if it is submitted to a base MPF), the member should follow up to ensure that the package is being processed. Always keep a complete copy of the package and document the names of personnel who you speak to about your package. These packages are notorious for getting lost because most MPFs do not know how to handle them. If you mail it, send it certified mail/return receipt so you have proof that someone signed for it. If you drop it off in person, have an MPF personnel officer sign a document affirming the date and place of application. You can provide them with a copy of this handout to assist them.

In order for you to be able to retire, the retirement application must be acted on before your punitive discharge is executed at the end of your appellate process. If the punitive discharge is executed before the retirement application is considered, you will have to petition the Board for Correction of Military Records for possible relief. Thus, in order to prevent the premature execution of the discharge, you must submit the retirement application to the proper MPF immediately after you become eligible for retirement and you must provide the Air Force Clemency, Corrections and Officer Review Division (AFLOA/JAJR, 1500 W. Perimeter Rd, Ste 1170, JBANAF, MD 20762, (240) 612-4840) with a copy of the retirement application and the documentation regarding the submission of the application (i.e. the certified mail receipt or MPF signature reflecting where and when you submitted your application). You should also send a copy to your appellate counsel. Upon receipt of that documentation, your discharge will not be executed until after the retirement application is considered. Failure to follow these procedures will result in your punitive discharge being executed upon the completion of your appellate review.

The retirement package will be staffed from the MPF through command channels and the MAJCOM (with recommendations) and will end up at the Air Force Personnel Council's office at JB Andrews NAF, MD. The Personnel Board there will review each application and will make a recommendation regarding the retirement request and the grade determination. For information on the Personnel Council, see AFI 36-2023, available on-line through <http://www.e-publishing.af.mil/>. (Since the appeal of a member's court-martial can often take months or even years, you can supplement your retirement application later with additional relevant materials by submitting those materials directly to the Personnel Council for inclusion in your file. The Personnel Council's address is Secretary of the Air Force Personnel Council (SAFPC), 1535 Command Drive, EE-Wing 3rd Floor, Joint Base Andrews, MD 20762-7002. Include a cover letter explaining where and when you submitted the original application, and why these new materials were not submitted with the original application.)

The Director of the Air Force Review Boards Agency oversees the Personnel Council and the Personnel Board. The Director has been delegated the power to make retirement and grade determination decisions for enlisted members by the Secretary of the Air Force. That decision is final and the member will be notified of the results. For officers with approved dismissals, the Director makes a recommendation on the retirement request and the grade determination. Officer cases are then forwarded to the Clemency, Corrections and Officer Review Division for further review and another recommendation, and forwarding through The Judge Advocate General to the Secretary of the Air Force for final action. For both officer and enlisted members who are pending a punitive discharge, the decision is between the retirement and the punitive discharge. Thus, this decision will not usually be made until appellate review through the court system is final (but before the punitive discharge is executed). For members who are not facing a punitive discharge, the decision will be whether to grant the waiver request and allow the member to retire.

Regarding administrative discharge requests:

For all officer clients, the Secretary of the Air Force has to personally act on the dismissal before it will be executed. As part of that process, the Secretary will normally be advised to consider whether to substitute an administrative discharge for the dismissal. As noted under the retirement section above, officer clients can provide information to assist the Secretary in making that decision. If a client is asking the Secretary to retire him/her (see above), the Secretary will automatically be considering the case for administrative discharge substitution.

For enlisted clients, there is a separate procedure. Clients should write to the Clemency, Corrections and Officer Review Division, 1500 W. Perimeter Rd, Ste 1170, JBANAF, MD 20762, to request that their case be considered for administrative discharge substitution. This is a separate procedure than the one detailed above for retirement applications, so if the client is retirement eligible, he/she should send two requests—one for retirement consideration (as detailed in prior section) and one for administrative discharge substitution. A client can submit additional material to the Division, to support their request for administrative discharge in lieu of a punitive discharge. (For retirement eligible individuals, the packages can essentially be the same.) These materials should be sent to the JAJR address

above around the time you are petitioning the Court of Appeals in your case. It must be done before your appeal is final, as final orders will otherwise be cut in the case soon after the appeal is over. If you have additional materials to submit after you turn in the original package, simply mail the new materials to the above address and ask that it be included in your file. Your request will be reviewed by the Division to decide whether it is appropriate for substitution. If the Division determines that substitution is appropriate, it will forward the case to the Secretary of the Air Force. If the Division determines that substitution is not appropriate, you will be notified.

If the above processes are not successful, members can go to the Air Force Board of Corrections for Military Records (AFBCMR) and request retirement or administrative discharge substitution. (Clients who went to a special court-martial must first ask for relief from the Discharge Review Board). Appellate defense has a handout on these procedures. Also see the Corrections Board section of the Air Force Personnel Center homepage (<http://www.afpc.af.mil/afveteraninformation/afbcmr.asp>) and the DoD Electronic Reading Room website (<http://boards.law.af.mil/>) for more information.

10. Have I been convicted of a misdemeanor or a felony? Where is my conviction documented?

The military does not distinguish between a misdemeanor and a felony. Some people believe that a special court-martial is equivalent to a misdemeanor and a general court-martial to a felony. However, that is not an accurate generalization. For example, officers always go to general courts-martial, though their offense may be a classic misdemeanor type offense. The classification is determined by state law. In deciding how to classify a client, some states look at what he/she was convicted of, some look at the maximum the client faced for each offense (i.e., if less than one year, many states will classify the offense as a misdemeanor; a year or more as a felony) and some look at what the client got as a sentence. In short, there is no set answer to this question and clients should contact a civilian attorney, public defender or the state attorney general for their state of residence.

If proper procedures were followed by the military, your court-martial conviction will be recorded in the National Crime Information Center (NCIC). See DoD Instructions 5505.7 and 5505.11. This database was created by the FBI in the 1960s to collect criminal justice information and distribute it to state and local law enforcement agencies. OSI and SFS are responsible for entering your case into the NCIC database. It will typically include your offenses, conviction, sentence and information to inform the user about who ran the case and how to get the case file. Once you are in this system, any law enforcement agency will be able to review this information, as well as any employer with access to the system as part of a background check. (For information on this system, search the FBI's webpage (fbi.gov) for "NCIC.") In the FY 2001 Defense Authorization Act, Congress ordered the DoD to establish a policy which allows any individual who is designated by name or other identifying information as a suspect in any official investigative report or central indexing system to obtain a review of that designation, and it also requires the expungement of the name and identifying information in any case where it is determined that the entry of that person was made contrary to DoD requirements (which are listed in the DoD instructions above). The specifics of this program have not been released yet.

To get a copy of your NCIC criminal history, send a certified check or money order for \$18.00 made payable to the National Criminal History Information Center; 100 Custer Hollow Road, Clarksburg, WV 26306, Phone 304-625-2000.

If you want to correct an erroneous NCIC entry, you need to go through AFOSI, if they were the agency who investigated your case and made the entry. If you contact NCIC directly for a correction, they will simply refer you back to the agency who made the entry (i.e., AFOSI). It is best if you request a copy of your NCIC criminal history (see above) before asking for corrections, to ensure that you make an accurate request. The correction request should be sent to HQ AFOSI/SCR; Post Office Box 2218; Waldorf, MD 20604-2218; Attention Division Chief. It would be helpful if the requester provided his or her full name, social security number, if known the AFOSI Report of Investigation Number, and a brief description of the portion of the NCIC record they are seeking a correction or

amendment to. This office tracks such requests as Privacy Act Amendment requests and forwards the requests to OSI/JA for coordination and action .

Your fingerprints are also probably on record with the FBI. Also, your court-martial proceedings are public record, available to the public through FOIA requests (subject to certain redactions).

11. What about my security clearance?

The loss or retention of a security clearance is not directly linked to your conviction or appeal. Instead, it is determined after an assessment of your conduct by the appropriate agencies. Any explanation of the standards and procedures for suspending and revoking clearances and/or access to classified material is outside the scope of this memorandum. However, the regulations which cover these procedures are available on-line (AFPD 31-5 and AFI 31-501 which are available through <http://www.e-publishing.af.mil/>; and DoD Regulation 5200.2-R which is available through <http://www.defenselink.mil/pubs>). Clients can also consult with their security managers.

The FY 2001 DoD Authorization Bill as signed into law on 30 Oct 2000 will also affect a person's future ability to gain a security clearance. Section 1074 of that act added 10 U.S.C. § 986 which:

Prohibits any DOD officer, employee, or contractor from being granted a security clearance if such person: (1) has been convicted of a crime which includes a prison sentence exceeding one year; (2) is an unlawful user of or addicted to any controlled substance; (3) is currently mentally incompetent; or (4) has been discharged from the armed forces under dishonorable conditions. (<http://www4.law.cornell.edu/uscode/>)

The Secretary of Defense or of a military department may authorize an exception for paragraphs (1) and (4), but must submit a report to Congress each year identifying the waiver and explaining why it was granted.

12. Can my appellate or trial defense counsel help me with getting parole?

No, because this is outside our charter, as well as our area of expertise. Appellate defense has a handout on parole procedures that we can provide upon your request. Clients are eligible for parole if their approved sentence includes 12 months or more confinement and an unsuspended punitive discharge (or an approved retirement or administrative discharge). The confinement facility will have counselors to assist clients in preparing a parole plan, applying for parole and dealing with parole revocation. Our handout also references regulations clients may find helpful and which are available on-line or from our office. The parole approval will contain information on what conditions are required for your parole, which often include sex offender treatment, drug testing and other restrictions. You will be on parole until your maximum release date, so you will have to comply with those conditions until that date.

Clients should also be aware that the Department of Defense has ordered mandatory supervision for all military inmates upon their release from confinement. (See DoD Instruction 1325.7, paragraph 6.20). This "SAIOP" (supervision as if on parole) program is only applicable to inmates who committed their crimes after 17 August 2001. Service specific implementing procedures are currently being coordinated and an interim change to AFI 31-205 is expected soon. For Air Force inmates, it appears that the Clemency and Parole Board will review each case to determine if the inmate should be placed into this mandatory supervision program. The Board will consider the types of offenses and the length of time remaining until the maximum release date. It appears likely that Air Force prisoners who have less than 180 days remaining to their maximum release date will not be released under mandatory supervision, although that has not been finally decided by Air Force authorities. If an inmate is released on mandatory supervision, he/she can be subject to parole-like conditions for the time between their minimum release date and their maximum release date. An inmate released at his/her minimum release date will have to report to a parole officer, possibly take drug or polygraph tests, and comply with various other requirements until the maximum release date.

Violations of mandatory supervision will be processed in the same manner as parole violations. Military inmates in the Federal Bureau of Prisons who are given early release through good time credits may also be placed under mandatory supervision "as if on parole."

13. What avenues are available to me for clemency, now that action has been taken in my case?

Regarding remitting or suspending unexecuted parts of your sentence:

Under Article 74(a), UCMJ, the Secretary of the Air Force has the power to remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures. (For confinement, this includes the power to remit or suspend any unserved confinement). Only the Secretary has this power in certain cases, including the following:

- Any sentence resulting from the President's commutation of a sentence of death to a lesser punishment;
- For punitive discharges imposed in cases wherein the accused is convicted of murder, rape, carnal knowledge, sodomy, arson, robbery or burglary;
- Sentences in which there is substantiated evidence of the accused's homosexuality, chronic alcoholism, severe psychoneurotic disorder, or involvement in most drug offenses.

(AFI 51-201, paragraph 11.18, available on-line through <http://www.e-publishing.af.mil/>). Under AFI 31-205, the Air Force Clemency and Parole Board makes these decisions on behalf of the Secretary (paragraph 75, available on-line through <http://www.e-publishing.af.mil/>).

For all other cases, The Judge Advocate General of the Air Force also has the power to make the Article 74(a) changes to your sentence.

Additionally, in all other cases, your convening authority has the power to make those changes. (There is an exception to the convening authority's power - a SPCM convening authority cannot remit a BCD but may suspend a BCD only in the initial action). For people with punitive discharges who have transferred to a Level II RCF, a long-term corrections facility or the Federal Bureau of Prisons, this convening authority power rests with the 11th Wing Commander at Bolling AFB, DC, as he has become your convening authority.

Regarding substitution of an admin discharge for your punitive discharge:

Under Article 74(b), UCMJ, the Secretary has the power to substitute an administrative discharge for a bad conduct discharge, a dishonorable discharge or a dismissal. This substitution process will not occur until all appeals are final. Per AFI 31-205, paragraph 75, available on-line through <http://www.e-publishing.af.mil/>, the Air Force Clemency and Parole Board may make a recommendation on this issue to the Secretary. See answer to question #9 above for procedures on how to request this. This is possible even after your DD Form 214 has been issued.

Presidential Pardon

You may also apply for a pardon under the authority granted the President by Article II, Section 2 of the Constitution. Title 28 of the Code of Federal Regulations, Section 1.1, provides guidance on format and eligibility requirements. A pardon expresses forgiveness by the United States at the highest level and in some states restores civil rights forfeited by a criminal conviction. It can also be highly significant to prospective employers. Generally, such

applications are considered only if at least five or seven years have elapsed (as determined by the Department of Justice) since the trial or completion of sentence, whichever is later. The decision to grant or withhold such pardons is made primarily on the basis of post-trial conduct and citizenship, although the nature of the offense plays a part. For more information, see the website of the United States Pardon Attorney at www.usdoj.gov/opa/opa.html. You can contact AFLSA/JAJR, 112 Luke Avenue, Suite 343, Bolling AFB, DC 20332-8000, for the necessary forms and instructions.

Discharge Review Board/Board of Corrections for Military Records

If you received a bad conduct discharge from a special court-martial, your first avenue of relief is to petition the Discharge Review Board (DRB). If you received a bad conduct discharge from a general court-martial, a dismissal/dishonorable discharge from a general court-martial or if your request to the DRB is unsuccessful, you can petition the Board of Corrections of Military Records (BCMR). There are specific time and procedural requirements for both processes. Our office has a separate handout on discharge upgrading, available on request. Also, it is vital that you review the Corrections Board section of the Air Force Personnel Center homepage (<http://www.afpc.af.mil/afveteraninformation/afbcmr.asp>) and the DoD Electronic Reading Room website (<http://boards.law.af.mil/>) prior to filing a petition.

The discharge review board has the power to upgrade your punitive discharge. The BCMR has the power to do that and also the power to disapprove/change any unexecuted part of your sentence and to change your military record (including retiring you). They cannot eliminate or disapprove your conviction.

14. OSI/SFS/JA has some of my property. When and how can I get it back?

After the entire appellate process is over, these agencies should return all non-contraband property they seized from subjects (as well as that they seized from victims or other witnesses). Since it may be several years between your court-martial and the release of your property, the client should provide those offices with a specific request for the return of that property. This letter should be sent shortly after the court-martial is over. The letter should describe the property and give an address and phone number on how and where the client can be contacted when the property is ready to be released. Send it certified mail/return receipt requested if you want to have proof the office received it. (Note that computers which are seized as part of a case will typically be wiped clean of all programs when they are returned, to remove any pornography or other contraband located in them.)

15. My family relies on me for financial support. How can they receive money after my court-martial?

There are several procedures you can try. Your trial defense counsel can provide specific details. It is very important that you fully investigate this possibility before you are court-martialed because some of the procedures are not available to members after the convening authority takes action on the case.

If your family members were victims of your crimes (i.e., spousal or child abuse), they may be eligible for money through the Transitional Compensation for Abused Dependents Program (see AFI 36-3024, available through <http://www.e-publishing.af.mil/>). Also, if you are retirement eligible but have lost your retirement eligibility due to a court-martial for dependent abuse, it is possible under some circumstances for your former spouse to receive the same rights and benefits that he/she would have received if you had retired under normal circumstances. This requires a court to order the payment of an amount from your retired pay (in the manner applicable to a division of property). See 10 U.S.C. § 1408(h), at <http://www.law.cornell.edu/uscode/text>. Information on both of these programs is also found in Chapter 59 of Volume 7B of the DoD Financial Management Regulation, available through the DFAS web site at <http://comptroller.defense.gov/fmr/>. There may also be state victim compensation programs available. The

victim-witness advocate appointed to assist your family members will have information on these programs.

Whether or not your family members were victims of your crimes, you can request that the forfeitures of your pay in a special court and of pay and allowances in a general court and any adjudged reduction in rank be deferred until the convening authority takes action on your case. If this request is granted, this money will go directly into your pay account (which is why the requests are rarely granted). You can also ask for a waiver of the forfeitures while you are in confinement, for up to six months. This requires that your dependents have a bank account that you do not have access to, since the money will go directly from the military to them. Discuss this issue with your trial defense counsel well in advance of trial since the procedures to apply for these provisions are somewhat complicated. The convening authority actually has the power to order the waiver of your pay to your dependents without your request or "permission" so you may discover that your dependents are receiving this money even if you do not want them to. Note that Federal law (10 U.S.C. §1059(h)) states that transitional compensation (see above) cannot be paid for any period where an order either suspends, in whole or part, that part of a sentence that includes forfeiture of the member's pay and allowance; or otherwise results in continuation, in whole or in part, of the member's pay and allowances. Thus, it appears that a dependent cannot receive transitional compensation payments at the same time the dependent is receiving the member's pay, in whole or in part, as the result of a deferment or waiver of forfeitures adjudged at trial.

However, it is vital for clients to be aware that neither a deferment nor a waiver is available to a client whose ETS has expired, as you are not entitled to any pay or allowances after that time. Once your ETS has passed, any waiver or deferment will automatically end, regardless of the convening authority's declaration that the money will flow for a certain length of time. Thus, if your ETS is approaching as you face your court-martial, discuss this issue with your trial defense counsel.

16. How will I get a copy of my W-2 to file taxes? Where will my Leave and Earning Statements be sent?

Before a client is court-martialed, he/she should speak to his/her orderly room and/or MPF about how to forward LES and W-2 information for the coming months. Most clients don't think about this and their LESs (and then their W-2s) go to their prior duty station or orderly room and are never seen again. It is especially important for clients to receive their LESs while in confinement since inevitably there is a pay problem after the client enters confinement. If you do not get your W-2 in a timely manner, contact our office for assistance.

You need to get copies of your LESs as they are issued. When DFAS or the base does their final accounting, they will say the client owes a debt (usually because the client is paid past the 14 day cutoff for automatic forfeitures) and it's a big mess if the client has not stayed on top of his/her pay enough to have an intelligent conversation about this issue. On a related note, clients should be wary of ignoring DFAS letters stating they owe a debt. Eventually, DFAS will treat that silence as an admission of liability and will garnish tax refunds and other property to get their money. There are recission and waiver provisions available to try to escape this liability but not if clients ignore DFAS.

17. Will I do my whole sentence in the military confinement system or will I switch to the federal system?

There are many military prisoners confined in the Bureau of Prisons, all of whom were previously serving lengthy sentences at the USDB at Leavenworth. The USDB commandant selects certain prisoners for transfer to this system. The names are sent to the Air Force Clemency and Parole Board, who approves or disapproves the transfer on behalf of the Secretary of the Air Force, based on a variety of factors. On average, the prisoners who have been transferred to the federal system served less than 15 years of their sentence at the USDB before the transfer occurred.

In order to be eligible for the transfer, the inmate must have an executed DD Form 214 (thus the appeal will be over). Once in the federal system, inmates are considered for parole by the US Parole Commission within 90-120 days of their arrival. (Civilians currently being prosecuted through the federal system are no longer eligible for parole, but cases from before 1987 are grandfathered into the previous parole system. Military members are considered through this system also, regardless of their conviction date). If denied for parole at this first opportunity (which is likely), the member will then be considered again at the discretion of the US Parole Commission, often years in the future (unlike the military system which requires annual review).

Interestingly, since these inmates are still considered military prisoners, they continue to fall under the Secretary of the Air Force for clemency purposes pursuant to Article 74, UCMJ (see question #13 above). The Bureau of Prisons will periodically forward files to the Air Force Clemency and Parole Board for clemency review on an annual basis. Members can submit material to the Executive Secretary, Air Force Clemency and Parole Board, 1535 Command Drive, EE Wing, 3d Floor, JBANAF, MD 20762-7002.

18. Do I have to register as a sex offender?

An amendment to an Appropriations Act required the Secretary of Defense to establish procedures for providing information to state and local officials upon the release of people convicted of sexually violent offenses and offenses against minors. These offenses include obvious ones such as rape and forcible sodomy, but offenses like carnal knowledge, indecent acts with a minor, indecent language to a minor and child pornography offenses are also included.

Effective on 23 December 1998, prison officials at each facility are responsible for notifying prisoners about their state's reporting requirements (the SJA assumes this responsibility for people who are not sentenced to any confinement). The facility will also notify the chief state and local law enforcement officers of the state, as well as the state or local agency responsible for maintenance of sex offender registration information. This notice will be made on a DD Form 2791 at least 5 days before the inmate is released. Notice will also be provided for paroled prisoners who change addresses during their parole. These procedures have been included in AFI 31-205, available on-line through <http://www.e-publishing.af.mil/>.

Regardless of the above procedures, clients should investigate their individual state requirements for reporting themselves, especially if such a requirement is part of a parole agreement. Incident to their outprocessing from confinement, offenders will sign an agreement documenting their understanding of the requirements to register themselves and to keep law enforcement informed when they move.

Clients should also be aware that some states have found their reporting systems unconstitutional, since people do not get any due process before they are listed as sex offenders in the state. In March 2003, the U.S. Supreme Court upheld challenges to two of those statutes. (See <http://www.supremecourtus.gov/opinions/02slipopinion.html> for the opinions). Clients should check with civilian attorneys or public defenders in their state of residence to see the status of this litigation.

An excellent summary of state reporting requirements as of 10/97 is found in "Megan's Law: A Review of State and Federal Legislation," available through the publications link at www.wa.gov/wsipp. A more current version is available through <http://www.klaaskids.org>. Clients can also research specific state statutes through the FindLaw.com homepage. An attachment to AFI 31-205 lists the responsible agency for each state's reporting program (<http://www.e-publishing.af.mil/>)

19. Will my DNA be entered into the FBI database?

On 16 May 2001, the DOD issued a memo establishing a DoD policy for implementing Section 5 of the DNA Analysis Backlog Elimination Act of 2000, 10 U.S.C. 1565 (see <http://www.law.cornell.edu/uscode/text> for text of that act). DNA samples must now be collected from all armed forces members convicted of a qualifying offense (listed below), except for those currently in Federal BOP or on parole under supervision of a Federal Probation Officer. Collection began in June 2001. This program covers all military prisoners, people who are not confined but who are still under military jurisdiction (i.e. people on appellate leave) and people convicted in the future. It applies to both general and special courts-martial. The samples will be analyzed by the US Army Criminal Investigation Lab (USACIL) and sent to the FBI for inclusion in their database. There are procedures listed for expungement if the conviction is overturned.

Qualifying offenses include: Murder, voluntary manslaughter, rape, carnal knowledge, forcible sodomy, sodomy with a child, aggravated assault (either with a dangerous weapon or other means likely to produce grievous bodily harm, or in which such harm was intentionally inflicted), indecent assault, indecent acts with another, indecent acts with a child, indecent language to a child, pandering, prostitution involving a minor, kidnapping, robbery, burglary, housebreaking, maiming, arson, assault with intent to commit one of the following (murder, rape, involuntary manslaughter, robbery, sodomy, arson, burglary, housebreaking or any other qualifying offense), attempts to commit any of the above, conviction for any conduct similar to those above, any conduct which involves sexual abuse or any sexual conduct which involves a minor when charged under Art 134 or 133, conviction for various federal statutes under title 18 (2421, 2422, 2423, 2425, 2251, 2251A, 2252).

20. Will the military pay to move household goods and my dependents after my trial?

It appears that the answer to the question is dependent on where you are stationed (CONUS vs. OCONUS), whether you have dependents and what type of sentence you receive. These procedures are governed by the Joint Federal Travel Regulations, a huge and complex document and it impossible to cover each variation of the complex rules and procedures. Instead, members should contact the appropriate office at their base well before they are court-martialed, to determine their eligibility for the shipment and/or travel and the procedures to implement it.

There are procedures to ask the base command for an exception if you are deemed ineligible for the benefit, however it will be very difficult for you to make this request and work out the logistics from your confinement facility. Also, you may need to get powers of attorney completed to effectuate the shipment and/or travel. All these details should be worked out by the client well before the trial.