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THIS SECOND VOLUME of CDC M6AKL5J051 0P5A, *Paralegal Journeyman*, will extend your knowledge in the paralegal career field. It includes an extensive review of general background information on general law as well as international and operations law.

This volume has five units, which cover general law or matters related to general law. Unit 1 includes information on the administrative separation of enlisted and officer personnel. In addition, there is a discussion of quality force actions such as enlisted demotions, administrative reprimands and admonitions, control rosters, unfavorable information files, and the Drug Demand Reduction Program. Unit 2 covers legal assistance and preventive law programs. Unit 3 covers a wide range of other administrative/general law actions including various types of complaints and investigations, rules for the release of information, and several types of general law documents. Unit 4 covers the Federal Magistrate Court System, host-tenant support agreements, and contract, labor, and fiscal law. Unit 5 concludes this volume with an overview of international and operational law. It begins with international matters that include international law and agreements, Status of Forces Agreements, and Foreign Criminal Jurisdiction program. Finally, we conclude with operational law that includes the fundamentals of joint operations, Rules of Engagement, Law of Armed Conflict, detainee operations, Noncombatant Evacuation Operations, Military Operations Other Than War, deployed fiscal law, force protection, and Homeland Security.

A glossary of abbreviations and acronyms used in this course is included at the end of this volume.

Code numbers on figures are for preparing agency identification only.

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To get a response to your questions concerning subject matter in this course, or to point out technical errors in the text, unit review exercises, or course examination, e-mail Mr Gordon Morrison at afjags.registrar@us.af.mil. Be sure your request includes your name, address, and course/volume number and the course edit code.

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Unit 1. Adverse Actions

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THE LEGAL OFFICE is responsible for reviewing actions related to administrative separations, which must be legally sufficient. Although the personnel in your military personnel section (MPS) have primary responsibility in processing these cases, your office will be consulted for advice. The Air Force has always placed emphasis on its “number one” resource—its people. We all have unique differences; therefore, we have various reasons for choosing the Air Force as our profession. However, it is no secret that some members have difficulty adjusting to the military environment.

1–1. Enlisted Separations

It is with this in mind that the Air Force developed a separation policy made to strengthen the concept of military service as a calling different from any civilian occupation. The Air Force has provided a means for members to apply for voluntary separation, as well as a tool for commanders to use in initiating involuntary separation action for personnel assigned to their units.

Separation actions are not punitive in nature, but depending on the circumstances, they may have adverse effects on an individual. Because of this, all Airmen must receive a periodic explanation of how they may be separated, the basis of characterizations of service, and the consequences of each type of separation. They also must be informed they could lose certain benefits if they fail to complete at least two years of their original enlistment. A judge advocate, a Department of the Air Force civilian attorney, or a 5-level or higher paralegal (including civilian paralegals who carry a 5-level paralegal certification as a Reservist, or prior to entering civilian service, served as a Regular Air Force paralegal with a 5-level or higher certification gives the briefing as required by Article 137, Uniform Code of Military Justice (UCMJ) that details this information as well as other articles of the UCMJ individuals need to be aware of. The failure to receive or understand this briefing will not be considered as a defense in or a bar to an administrative discharge action.

Air Force Instruction (AFI) 36–3208, *Administrative Separation of Airmen*, is the authority for separating Airmen for all reasons except physical disability or by sentence of court-martial. It contains standards and procedures for implementing Air Force policy concerning voluntary and involuntary separations. It governs service characterizations for administrative separations and

prescribes procedures for the probation and rehabilitation program for Airmen subject to administrative discharge for cause. Separations under AFI 36-3208 are classified into two categories, voluntary separation prior to expiration of term of service (PETS) or involuntary.

201. Voluntary separations prior to expiration of term of service

The statutory authority for all separations lies with applicable laws, Department of Defense (DOD) directives, and policies announced by the Secretary of the Air Force (SAF). No member may be discharged or released before their expiration of term of service (ETS) except as prescribed by the SAF, sentence of court-martial, or as otherwise prescribed by law. Our governing instruction is AFI 36-3208, chapter 3, *Voluntary Separation Prior to Expiration of Term of Service (PETS)*, which provides the guidance and circumstances for voluntary separations.

Requests for voluntary separation

General requests for voluntary separation are considered for the convenience of the government (COG). Examples of these requests are:

- Entering an officer training program.
- Early release to further education.
- Early release to obtain a medical education.
- Elimination from Officer Training School (OTS).
- Air Force nonfulfillment of enlistment or reenlistment agreement.
- Sole surviving son or daughter.
- Early release from extension of enlistment.
- Accepting public office.
- Miscellaneous reasons (example: Palace Chase).
- Conscientious objection.
- Pregnancy or childbirth.
- Early release for Christmas.
- Medal of Honor recipient.

In addition to these, Air Force members may request discharge when a genuine dependency or hardship exists. AFI 36-3208 specifically outlines the criteria under which each of these separations may apply.

Processing voluntary discharge requests

PETS requires all Airmen who want to leave the active service of the Air Force, to submit his or her separation request using the virtual MPF (military personnel flight) (vMPF). The Airman can receive assistance from the MPS personnel relocation element in applying. The enlisted Prior to Expiration of Term of Service (PETS) voluntary separation program is designed to assist in voluntarily applying for a separation date prior to the Airman's expiration term of service. The vMPF provides the capability for Airmen to apply and submit a request for PETS separation on-line. This electronic application replaces the AF Form 31, Airman's Request for Early Separation/Separation Based on Change in Service Obligation.

EXCEPTION: Airmen assigned to basic military training (BMT), or students (non-prior service) assigned to technical training school (TTS) are not required to utilize the vMPF unless AFPC is the approval authority.

The request and all applicable documentation are sent to the unit commander and separation authority for action. The unit commander will first examine the case file and make a recommendation for approval or disapproval. If the commander recommends disapproval, he or she must give reasons for

their determination then forward to the separation authority. The MPS separations unit is the liaison between the airman, unit commander, and the separation authority.

Commanders who may exercise separation/approval authority include general officers who command units, commanders of divisions or wings, commanders who exercise special or general court-martial jurisdiction, and others specifically designated by Headquarters Air Force Personnel Center/Separations Section (HQ AFPC/DPMARS2). Depending upon the reason for separation, the separation authority may have the authority to either approve or disapprove the request. However, certain separation requests require final action be taken by other agencies; for example, only the SAF may disapprove a conscientious objector case. The options of the separation authority are provided in AFI 36-3208, table 3.1, *Options of The Separation Authority*.

Once the separation authority reaches a final decision, the member is notified.

202. Involuntary separations

One of the many duties you will have as a paralegal includes administrative support to command teams and judge advocates during the processing of involuntary discharge actions. For example, a first sergeant could request help in determining whether enough evidence exists to support a recommendation for discharge. In addition, you could be asked to draft a legal review for a particular case file, or even be detailed as a reporter for an administrative discharge board hearing.

Preprocessing considerations

The Air Force makes a substantial investment in recruiting, training, and equipping Airman. Separation prior to the completion of the obligated period of service results in the loss of this investment. Commanders and supervisors should identify Airmen who show likelihood for early separation and make every effort to help these Airmen meet Air Force standards. A commander's efforts to rehabilitate an Airman may include, but are not limited to the following:

- Formal or informal counseling.
- Control roster action.
- Punishment under Article 15, UCMJ.
- A change in duty assignment.
- Demotion.
- Additional training or duty.
- Retraining.
- Other administrative actions.

Airmen must be formally counseled concerning their deficiencies and given an opportunity to overcome them before the commander recommends discharge for parenthood, conditions that interfere with military service, entry-level performance and conduct, unsatisfactory performance, minor disciplinary infractions, or a pattern of misconduct. For information about drug or alcohol abuse rehabilitation, see AFI 44-121, *Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program*. All these actions should, of course, be documented.

Involuntary separation is not a substitute for disciplinary action. If violations of the UCMJ are involved, commanders must consult the staff judge advocate (SJA) for advice. If administrative discharge is the best course of action, consult the SJA and MPS personnel. They can ensure the action is initiated and processed under the correct section of AFI 36-3208, chapter 5, *Reasons for Involuntary Separation*.

Airmen being recommended for administrative discharge for cause do not have a right to be tried by courts-martial in lieu of involuntary separation. They also may not ask for discharge processing

according to a specific provision of AFI 36-3208, chapter 5. The commander chooses the course of action to be pursued subject to the concurrence of the separation authority.

Once the commander decides on an involuntary discharge, he or she must look carefully at all the facts to be sure the recommendation for discharge is for the right reason(s).

Reasons

The following information covers the reasons for involuntary separation listed within the appropriate section of AFI 36-3208, chapter 5.

Section B – Involuntary Convenience of the Government Discharge

This category of discharge is appropriate when the discharge is in the best interest of the Air Force. Before commanders can recommend discharge, he or she must ensure all rehabilitation requirements under AFI 36-3208 have been met, and the circumstances do not warrant discharge for cause. The separation of an Airman in entry-level status will be described as an entry-level separation. The service of Airmen separated under this section will be characterized as honorable. The following table summarizes the reasons for discharge under this section.

Section B – Involuntary Convenience of the Government Discharge	
Reason	Explanation
Parenthood	Airmen may be discharged under this provision if, because of parental responsibilities, they fail to meet their military obligations. For additional guidance see Department of Defense Instruction (DODI) 1342.19_AFI 36-2908, <i>Family Care Plans</i> .
Insufficient retainability for required retraining	The cost of retraining Airmen for a brief period of service may not warrant their retention. Airmen should be considered for discharge if they have been disqualified for duty in all awarded Air Force specialty codes (AFSC) or if they are serving overseas in a skill that is imbalanced either in the continental United States (CONUS) or overseas and are not qualified for duty in another AFSC on return to CONUS.

Section B – Involuntary Convenience of the Government Discharge	
Reason	Explanation
Conditions that interfere with military service	<p>Airmen may be discharged for one of the physical or mental conditions listed below when a commander determines that the condition interferes with assignment or duty performance. Discharge under this provision is not appropriate if the Airman's record would support discharge for another reason, such as misconduct or unsatisfactory performance. A recommendation for discharge must be supported by documents confirming the existence of the condition or disorder and the adverse effect on assignment or duty performance must be explained (except enuresis or sleepwalking).</p> <ul style="list-style-type: none"> • Enuresis (bedwetting), if there is no underlying pathology. • Sleepwalking and/or severe nightmares. • Dyslexia (a reading disability) and other learning disorders. • Attention Deficit Hyperactivity Disorder (ADHD). • Stammering or stuttering of such a degree that the Airman is normally unable to communicate adequately. • Incapacitating fear of flying confirmed by a psychiatric evaluation or phobic fear of air, sea, and submarine modes of transportation. • airsickness, motion, or travel sickness. • Other conditions as outlined in DODI 1332.18, <i>Disability Evaluation System (DES)</i>, that interfere with duty performance and not within the purview of AFI 36-3212, <i>Physical Evaluation for Retention, Retirement, and Separation</i>, disability evaluation system and provided a basis for separation is not addressed elsewhere in AFI 36-3208. • Mental disorders.

Section C – Defective Enlistments

Defective enlistments fall into general groups (shown in the following table). The action authorized or required for each depends on the nature of the defect.

Section C – Defective Enlistments	
Type	Explanation
Enlistment of minors	Federal law bars a person under 17 years of age from enlistment. The parent or guardian of an Airman who is 17, at the time the facts became known, may apply for discharge if they did not give written consent to the enlistment. The parent or guardian must apply for the discharge within 90 days of enlistment.
Void enlistments	A person whose status or condition barred creation of a valid enlistment may be found to be serving in a void enlistment, if the condition still exists. An enlistment may be void if the member is under age, legally insane, or a deserter from another service. For example, a soldier deserted from the Army and enlisted in the Air Force. Under these circumstances, the Air Force enlistment is void.
Erroneous enlistments	Errors in the enlistment process occur when the Air Force does not have the true facts or does not take the appropriate action. The Air Force should not have accepted the enlistment, but it does not involve fraud. For example, an individual improperly reported a condition on his or her application for enlistment and the Air Force enlisted that individual. If there was no fraud and the enlistment should never have occurred, this provision would apply.

Section C – Defective Enlistments	
Type	Explanation
Fraudulent entry	Involves deliberate deception on the part of the member. An Airman may be discharged for fraudulent entry based on the procurement of a fraudulent enlistment or period of military service through any deliberate material misrepresentation, omission, or concealment that, if known at the time of enlistment or entry into a period of military service, might have resulted in rejection. The option to discharge for fraud administratively does not preclude action under the UCMJ based on the fraudulent entry or other violations.
Waiver of discharge for erroneous enlistment or fraudulent entry	Airmen found to be subject to discharge under erroneous enlistment or fraudulent entry, except for reasons of alienage (enters the Air Force by claiming to be a citizen of the US or claiming to be lawfully admitted to the US for permanent residence), may be granted waivers to stay in the Air Force. If they seem to be good risks, their retention may serve the best interest of the Air Force.
Constructive waiver	An Airman may become a recipient of a constructive waiver if a commander has the facts of the case indicating possible fraud or error and fails to act. Failure to exercise the option to discharge when facts are known tends to show intent to retain the Airman.

Section D – Entry-level Performance or Conduct

Before considering this type of separation, commanders must counsel and attempt to rehabilitate the Airman who is new to the service. Since the military is not like any civilian occupation, the military way of life must be taught to young Airmen. However, Airmen in entry-level status should be discharged when their unsatisfactory performance or conduct shows they are not qualified to be productive members of the Air Force. Airmen may be discharged under this provision only if the discharge processing starts during the first 180 days of continuous active military service, or the first 180 days of continuous active military service after a break of more than 92 days of active service. Unsatisfactory performance or conduct may be shown in a number of ways. They may include, but are not limited to:

- Lack of aptitude for military service.
- Failure to adapt to the military environment.
- Failure to make satisfactory progress in a required training program.
- Reluctance to make the effort necessary to meet Air Force standards of conduct and duty performance.
- Lack of self-discipline.
- Minor disciplinary infractions.
- Failure to meet fitness standards.

Eligibility for discharge under this section does not preclude separation for another reason when the separation is authorized and warranted by the circumstances of the case. For example, if a member fails in drug abuse rehabilitation, discharge action under substance abuse treatment failure may be more appropriate.

Section E – Unsatisfactory Performance

Airmen are subject to discharge for unsatisfactory performance based on documented failure to meet Air Force standards. Commanders must weigh an Airman's conduct, military deportment, and duty performance against those of other Airmen of like grade, age, and length of service. The recommendation for discharge for unsatisfactory performance should cite all the deficiencies that were not overcome by counseling and rehabilitation. Evidence of unsatisfactory performance may be shown by one or more of the following:

- Failure to properly perform assigned duties.

- A progressively downward trend in performance ratings.
- Failure to demonstrate the qualities of leadership required by the member's grade.
- Failure to maintain standards of dress and personal appearance (other than fitness standards) or military deportment.
- Failure to progress in military training required to be qualified for service with the Air Force or for performance of primary duties.
- Personal financial irresponsibility.
- Unsanitary habits such as repeated infection of venereal disease, persistent refusal to bathe, and similar refusal to observe personal hygiene.
- Failure to meet minimum fitness standards in accordance with AFI 36-2905, *Fitness Program*.

Section F – Substance Abuse Treatment Failure

Successful treatment and return to duty is the objective of the substance abuse control program. Before commanders initiate action to discharge Airmen under this provision, they must be sure to comply with Air Force policy for the evaluation, treatment, and disposition of Airmen who abuse alcohol and drugs; evaluate evidence of the Airman's failure to meet other Air Force standards; and differentiate between the member who should be discharged under this section and one who should be discharged for misconduct or unsatisfactory performance. If the individual's current records would support discharge for another reason, it may be appropriate to process the separation under another section of AFI 36-3208, chapter 5. Entry into a rehabilitation program does not bar discharge for other reasons.

Airmen are subject to discharge under this provision if they have been referred to a program of rehabilitation for personal drug or alcohol abuse and failed to successfully complete the program due to one of the following reasons:

- Inability.
- Refusal to participate in the program.
- Unwillingness to cooperate.

These Airmen should be separated if they lack the potential for continued military service or need long-term rehabilitation and are transferred to a civilian medical facility for rehabilitation.

Section H – Misconduct

All Airmen are required to maintain the high standards of personal conduct prescribed for Air Force members both on and off duty. Airmen are subject to discharge for misconduct when there is evidence of one or more of the acts or patterns of misconduct described in the following table. If requirements are met, the entire military record may be considered in deciding whether to discharge or retain the member.

Section H – Misconduct	
Misconduct	Discussion
Minor disciplinary infractions	Misconduct consisting solely of minor disciplinary infractions in the current enlistment makes an Airman subject to discharge. They may involve failure to comply with nonpunitive regulations or minor offenses under the UCMJ. Infractions of this type generally result in verbal (reduced to writing) or written counselings, letters of reprimand (LOR), or nonjudicial punishment (NJP).

Section H – Misconduct	
Misconduct	Discussion
A pattern of misconduct	<p>A pattern of misconduct in the current enlistment consisting wholly or in part of misconduct more serious than that considered under minor disciplinary infractions makes an Airman subject to discharge. The specific pattern(s) of misconduct should be cited in the separation case. The pattern may consist of:</p> <ul style="list-style-type: none"> • Discreditable involvement with military or civil authorities. UCMJ jurisdiction over the offense is irrelevant. Civil offenses that, in and of themselves, are not a basis for discharge may also be cited to show a pattern of misconduct. • Conduct prejudicial to good order and discipline. This includes conduct of a nature that tends to disrupt order, discipline, or morale within the military community. It also includes conduct of a nature that tends to bring discredit on the Air Force in the view of the civilian community. • Failure to support dependents. • Dishonorable failure to pay just debts.
Civilian conviction	<p>Airmen are subject to discharge for misconduct based on conviction by civilian authorities or action equivalent to a finding of guilty, including similar judicial decisions in juvenile proceedings when:</p> <ul style="list-style-type: none"> • A punitive discharge would be authorized for the same or a closely related offense under the <i>Manual for Courts-Martial</i> (MCM). • The sentence by civilian authorities includes confinement for six months or more without regard to suspension or probation.
Commission of a serious offense	<p>Airmen are subject to discharge for misconduct based on the commission of a serious offense if a punitive discharge would be authorized for the same or a closely related offense under the MCM. This would include, but is not limited to, the following types of serious offenses:</p> <ul style="list-style-type: none"> • Sexual perversion. • Prolonged unauthorized absence (one year or more). • Unprofessional relationship by person serving in special position of trust as recruiter, faculty or staff. • Other serious offenses.
Human immunodeficiency virus (HIV)	<p>An Airman with serologic evidence of HIV infection may be discharged when he or she is found not to have complied with lawfully ordered preventive medicine procedures.</p>
Drug abuse	<p>Airmen may be discharged for misconduct based on drug abuse. Drug abuse is defined here as the illegal, wrongful, or improper use, possession, sale, transfer, or introduction onto a military installation of any drug; to include improper use of prescription medication. The term “drug” includes any controlled substance in schedules I, II, III, IV, or V of Title 21 U.S.C.(United States Code) § 812, <i>Schedules of Controlled Substances</i>. In addition, it includes anabolic steroids/androgenic steroids, and any intoxicating substance, other than alcohol, that is inhaled, injected, consumed, or introduced into the body in any manner for purposes of altering mood or function.</p> <p>For more information about Air Force policy concerning the disposition of drug abusers, see AFI 44-121. Evidence obtained through urinalysis or furnished by the member in connection with initial entry in rehabilitation and treatment may be used to establish a basis for discharge.</p>
Sexual assault	<p>Airmen may be discharged for sexual assault and sexual assault of a child. Sexual assault includes rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy or attempts to commit these offenses. Sexual assault of a child includes rape of child, sexual assault of a child, and sexual abuse of a child.</p>

Section I – Discharge in the Interest of National Security

Discharge of Airmen according to this section will be initiated when all the actions required by DODI 5200.02, *DOD Personnel Security Program (PSP)* and DOD Manual (DODMAN) 5200.02_AFM 16-

1405, *Air Force Personnel Security Program*, are complete, and the Air Force Security Clearance Office (AFSCO) has recommended discharge processing. A recommendation for discharge in the interest of national security is processed by a board hearing, unless the board is waived by the member.

Section J – Failure in Prisoner Retraining or Rehabilitation

An Airman in correction or rehabilitation programs conducted in the facilities at Kirtland AFB, New Mexico, Fort Leavenworth, Kansas, Miramar Naval Brig, California, or Charleston Naval Brig, South Carolina, is eligible under this section for discharge if either situation applies:

- The Airman has less than six years of total military service and if, through inability or unwillingness to cooperate, the Airman fails to satisfactorily progress in or complete a prisoner retraining or rehabilitation program and is not selected for a retraining or rehabilitation program.
- An Airman has less than 20 years of active military service and is confined at the 3320th Correction and Rehabilitation Squadron with a sentence that, as finally approved, includes confinement for two years or more, but does not include a punitive discharge, and has been twice considered, but not selected for rehabilitation training at the 3320th Correction and Rehabilitation Squadron.

Airmen will not be discharged under this provision if they are subject to an approved punitive discharge, whether suspended or not, or when other administrative or punitive action is more appropriate

Section K – Failure in Fitness Program

Airmen who do not meet fitness standards in AFI 36-2905, may be discharged when the failure in the fitness program resulted from a cause which was within their control. Follow the procedures for failure in the fitness program according to AFI 36-2905 before starting action to discharge.

Initiating discharge action

With the reasons for involuntary separation behind us, let's now consider whether the commander should or should not initiate discharge action. The decision to discharge or retain a member should be consistent with Air Force policy explained in AFI 36-3208. If processing is not mandatory, initiating commanders and separation authorities must consider the member's potential for future useful service. That decision should be made only after a full consideration of all the facts and circumstances that make the member subject to discharge, together with a complete and detailed evaluation of the member's military record.

The mere fact there is a reason for discharge action does not make discharge processing mandatory unless the reason is for any of the following:

- Sexual assault or sexual assault of a child (unless there is an approved waiver under the provisions of AFI 36-3208, Section 6L, *Waiver Processing Requirements in Sexual Assault Cases*).
- Fraudulent or erroneous enlistment (unless there is an approved waiver under the provisions of AFI 36-3208, Section 6C, *Board Hearing or Board Waiver*).
- Civil court conviction (unless there is an approved waiver under the provisions of AFI 36-3208, Section 6H, *Joint Processing*).
- Drug abuse (unless there is an approved waiver under the provisions of AFI 36-3208, Section 6K, *Waiver Processing Requirements in Drug Abuse Cases*).

Administrative separations are characterized as:

- Honorable.
- General (under honorable conditions).

- Under other than honorable conditions (UOTHC).

If separation under one of these is not authorized, the separation will be described as:

- Entry-level separation.
- Release from the custody and control of the Air Force by reason of void enlistment.
- Dropped from the rolls of the Air Force.

Characterization of service at separation is based on the quality of the member's service as reflected in the member's military record in the current enlistment. In estimating the quality of service, we look at personal conduct and duty performance of Airmen. Conduct in the civilian community may also be considered. Usually service characterization is based on a pattern of behavior rather than an isolated incident; however, the frequency and seriousness of any infractions must also be evaluated.

Keep in mind; the reasons for discharge as described above have their own separate criteria, requirements, and processing actions. You must be sure you are separating the member under the proper section and following the processing guidelines within the appropriate area of AFI 36-3208.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

201. Voluntary separations

1. How must Airmen who want to voluntarily leave the active service PETS, request his/her separation?
2. What agency helps Airmen apply for voluntary separation?
3. Who may exercise separation authority?
4. Who has the authority to disapprove a separation for a conscientious objector case?

202. Involuntary separations

1. What must commanders ensure has been done before recommending an involuntary convenience of the government discharge?

2. Match the appropriate section of AFI 36–3208, chapter 5 listed in column B with the basis for discharge in column A. Items in column B may be used once, more than once, or not at all.

<i>Column A</i>	<i>Column B</i>
____ (1) Section 5B, <i>Involuntary Convenience of the Government</i> .	a. Parenthood.
____ (2) Section 5C, <i>Defective Enlistment</i> .	b. Drug abuse.
____ (3) Section 5D, <i>EntryLevel Performance or Conduct</i> .	c. Alcohol abuse.
____ (4) Section 5E, <i>Unsatisfactory Performance</i> .	d. Civil court conviction.
____ (5) Section 5F, <i>Substance Abuse Treatment Failure</i> .	e. Underage enlistment.
____ (6) Section 5H, <i>Misconduct</i> .	

3. What type of separation allows the parent or guardian apply for a discharge of an Airman who was 17 at the time the facts became known?
4. If an Airman with less than 180 days of service is documented as lacking aptitude for military service, what type of separation is appropriate for this Airman?

1–2. Discharges

The first lesson in this section presents the basic information about discharge procedures applicable under AFI 36–3208. We then move into the function and duty of an administrative discharge board. Finally, we will take a look at your responsibilities as an assistant to the recorder in an administrative discharge board hearing.

203. Discharge procedures

Two methods are used by the Air Force to process discharges under AFI 36–3208—notification procedure and board hearing or board waiver procedure. Airmen not entitled to a board hearing, and recommended for separation are processed by the notification procedure.

An Airman recommended for discharge, known as the respondent, must be offered an opportunity for a hearing by an administrative discharge board if one or more of the following conditions apply:

- The respondent is an NCO at the time discharge processing starts.
- The respondent has six years or more total active and inactive military service at the time the discharge processing starts, including service in the Delayed Enlistment Program (DEP).
- An UOTHC discharge is recommended.
- Discharge in the interest of national security is recommended.
- The respondent is a commissioned or warrant officer of the United States Air Force Reserve (USAFR).

Airmen recommended for involuntary discharge are given a comprehensive medical examination as soon as possible after the case is initiated. The report of examination must be part of the case file when referred to the separation authority.

An Enlisted Performance Report (EPR) is required for separation cases involving parenthood, conditions that interfere with military service, unsatisfactory performance or failure in the fitness program. For Airman First Class (A1C) (E-3) and below with less than 20 months total active federal military service (TAFMS), AFI 36-2406, *Officer and Enlisted Evaluation Systems*, requires a mandatory letter of evaluation (LOE) in lieu of an EPR. Ensure an EPR or LOE has been completed if the Airman has not had one closing in the 90 days before the day discharge action starts, and the period of supervision has been 60 days or more. If it is less than 60 days, the commander will have to explain the absence of the EPR in their recommendation. The EPR or LOE must close out within 90 days before the discharge action starts. The initiating commander is required to notify the MPS if an EPR or LOE is required.

Web-based Administrative Separation Program

The Web-based Administrative Separation Program (WASP) is a web-based application used to draft, track, and report all enlisted administrative discharge cases. WASP assists offices from the base level to Air Force headquarters level in managing and processing administrative discharge actions. The program also produces standardized monthly reports that are available to your office and Judge Advocate General's Corps (JAGC) leadership. As a paralegal, you will be required to input and update mandated information in WASP throughout the discharge process.

Folders

For each discharge you process, there are requirements for specific information that must be included in the discharge package. Most of this information comes from the member's squadron, usually from the first sergeant. The most common documents are the records review RIP (record on individual person), personal information file (PIF), unfavorable information file (UIF), weight management folder (if needed), and on-the-job training (OJT) records. With these documents, the discharge package can be built. The minimum required documents in the discharge package include the commander's recommendation with attachments, notification letter with attachments, addendum to the notification letter (if applicable), the Airman's receipt of notification letter, the Airman's statement with or without attachments, the medical examination (if available), and other documents as applicable. These documents must be included because the convening authority, when deciding whether to discharge the member or not, must consider:

- The seriousness of the circumstances that make the Airman subject to discharge and how the Airman's retention might affect military discipline, good order, and morale.
- Whether the circumstances that are the basis of the discharge action will continue or recur.
- The likelihood the member will be a disruptive or undesirable influence in present or future duty assignments.
- The member's ability to perform duties effectively in the present and in the future.
- The member's potential for advancement and leadership.

Evaluation of the member's military record must include, but need not be limited to:

- Records of NJP.
- Records of counseling
- LORs or letters of admonition (LOA).
- Records of conviction by courts-martial.
- Records of involvement with civilian authorities.
- Past contributions to the Air Force.
- Duty assignments and EPRs.
- Awards, decorations, and letters of commendation.
- The effectiveness of preprocessing rehabilitation.

The above items will be included in the recommendation letter, as well as copies in the discharge package itself, tabbed for ease of reading.

Notification procedure

Under this procedure, the member has the right to the following:

- Receive written notice of the reason(s) for discharge (including circumstances upon which the action is based) and of the least favorable characterization of separation authorized (this is the commander's notification letter).
- Receive copies of the documents forwarded to the separation authority in support of the recommendation.
- Consult counsel.
- Submit statements in rebuttal.
- Waive the rights to consult counsel and submit statements in rebuttal.

The procedure starts when the initiating commander serves the discharge notification letter, with all supporting documents, on the member. The member then acknowledges receipt of the notice of the recommendation for discharge and reports for a medical examination as directed. The individual may consult with appointed military legal counsel and submit statements in rebuttal or decline the opportunity to do so. The member is allowed three duty days to submit these matters; however, the commander may give an extension if there is good reason for the request.

Once all matters are received from the member, the initiating commander prepares his/her recommendation to the convening authority and then sends the case file to your office in order to prepare a review for legal sufficiency (SJA's legal review). (Exception: The SJA's legal review is not required if the reason for discharge is an entry-level separation under AFI 36-3208, chapter 5, section 5D, *Entry Level Performance or Conduct*). Once found legally sufficient, the case file is forwarded to the separation authority for action. The special court-martial convening authority (SPCMCA) is the separation authority for cases processed by notification. However, the general court-martial convening authority (GCMCA) is the approval authority when an honorable discharge is recommended for misconduct, when an Airman who has made an unrestricted report of a sexual assault requests review of the discharge or when the SPCMCA wants to retain an Airman recommended for discharge for drug abuse or sexual assault. The SPCMCA decides whether separation is warranted and approves discharge or disapproves and directs retention. If discharge is approved, the SPCMCA also decides:

- The characterization of the discharge if the reason for discharge permits a general discharge.
- Whether the member should be offered probation and rehabilitation (P&R).
- Which reason will be cited as the primary reason for discharge if more than one reason is involved (dual processing).

If the separation authority approves a discharge less favorable than that of the initiating commander, the approval letter must cite the specific aspects of the military record that warrant the lesser characterization. For example, if the initiating commander recommends an honorable discharge and the separation authority approves a general discharge.

The approved discharge and case file is returned to your office for processing and the original case file, including the SJA legal review, is forwarded to the career development element for their action. MPS will in-turn, contact Headquarters Air Force Personnel Center (HQ AFPC) for a date of separation (DOS), separation order, and Department of Defense (DD) Form 214, Certificate of Release or Discharge from Active Duty.

Board hearing procedures

An Airman recommended for discharge and entitled to a board hearing has the right to:

- Receive written notice of the reasons for discharge, including the circumstances upon which each reason is based, and the least favorable type of separation authorized.
- Receive copies of the documents to be forwarded to the separation authority in support of the recommendation for discharge.
- Consult counsel.
- Request a hearing before an administrative discharge board.
- Present written statements in addition to, or in lieu of, the board proceedings.
- Be represented before the board by an area defense counsel or military counsel of the member's choice (if the counsel of choice is reasonably available), but not by both. The availability of counsel of choice is determined according to AFI 51-201, *Administration of Military Justice*.
- Be represented before the board by civilian counsel at the member's expense.
- Waive any of the above rights.

The Airman must be given written notice of these rights and is required to respond, within seven duty days, indicating which rights will be exercised and which, if any, will be waived. A member's failure to respond after being given a reasonable opportunity to consult counsel constitutes a waiver of the rights listed above, with the exception of the first two. The failure to respond is noted in the correspondence forwarded to the separation authority for decision.

A board must be convened to hear the case when the member requests the hearing, the convening authority declines to accept a conditional or unconditional waiver of the hearing, the member is a Reserve commissioned officer on active duty as an enlisted member of the Regular Air Force, or the member is absent in civil confinement and does not submit a written waiver of the board hearing.

The beginning stages of a board hearing case are much the same as the notification process. The initiating commander is still required to serve the notification letter with all applicable documents on the member and the member acknowledges receipt of the notification. The member is still required to report for a medical examination and has the right to consult military legal counsel and submit a response to the discharge notification. One difference to note here; is the member has seven duty days to consult with legal counsel and submit matters. The member's matters will include whether or not he or she want a hearing before an administrative discharge board or waive his or her right to the board.

Once the initiating commander receives all documentation from the member, the commander will prepare his or her recommendation to the convening authority and send the case file to your office. At this point, the case file should contain the following:

- Commander's recommendation with attachments.
- Notification letter with attachments.
- Addendum to the notification letter (if applicable).
- Airman's statement, with or without attachments; or Airman's statement of conditional waiver with or without attachments; or application for retirement.
- Medical examination.
- Other documents (if applicable).

Your office will ensure the case file has all required documents, to include the medical examination when it is completed and will complete the SJA's legal review before forwarding the case file to the

SPCMCA for action. Upon receipt of the case file, the SPCMCA will examine the file and, if the recommendation for discharge is proper and fully documented, will do one of the following:

- Order a board to be convened to hear the case when a board hearing is requested; or
- Forward the case file to the separation authority with comments and recommendations for disposition when the board hearing is waived, or refuse to accept the waiver and order a board to be convened.

After the administrative discharge has been completed, and upon receipt of administrative discharge board proceedings, the SPCMCA reviews the report and makes sure the findings and recommendations are appropriate and then takes final action on the case, unless required to forward the case to the GCMCA for final action. For example, when the board recommends a discharge characterization of UOTHC, the GCMCA is the only authority who may approve discharge under UOTHC. It is important to note here, the SPCMCA will act as both the convening authority and separation authority, unless prevented by regulation, as described in the example above.

Waiver of board hearing

A member entitled to a board hearing has an option to request a conditional waiver. A conditional waiver is a statement waiving the administrative discharge board proceedings. It is contingent on the receipt of a characterization of separation more favorable than the least favorable authorized. For example, in a misconduct case, the respondent could be discharged UOTHC. The waiver might be contingent on the receipt of an honorable or a general discharge. It must specify one or the other. The separation authority is the final approval for such conditional waivers.

Probation and rehabilitation

The initiating commander, the board members (if taken before a board hearing), and the separation authority must consider the member's potential for future useful service. The Air Force Probation and Rehabilitation Program for Airmen subject to administrative discharge gives an Airman an opportunity to stay in the Air Force and receive help so he/she may be able to serve until his or her expiration of term of service (ETS). The rehabilitation concept is based on the principle of a conditional suspension of an approved discharge for cause in deserving cases. The basic premise of the program is that in the right circumstances an Airman can, with help, change a pattern of behavior. This assumption is consistent with the principles applied in the retraining program for Airmen sentenced to confinement by courts-martial. Consideration of P&R is automatic and based on the member's potential for rehabilitation and further useful service.

Airmen are not eligible for P&R if the reason for discharge is any of those listed here:

- Failure to comply with preventive medicine counseling.
- Fraudulent entry.
- Entry-level performance or conduct.
- Sexual assault
- In the interest of national security.
- In lieu of trial by courts-martial.
- Drug abuse.

The P&R period may not be less than six months nor more than 12 months. As a rule, a member placed on P&R must serve the full probationary period set by the separation authority. The suspended discharge is canceled when the P&R is successfully completed. Members who fail to meet the terms of the P&R usually are separated by execution of the suspended discharge.

However, there may be cases where the probationary period should be changed. This is done when the member's good conduct clearly shows the goals of the P&R have been met. The separation authority may direct the probation be ended and the remaining portion or period be canceled. If, on the other hand, at the end of a probationary period, the Airman has made progress, but the commander is not sure that rehabilitation is complete, the period may be extended with the Airman's consent. The original probationary period and the proposed extension together must not exceed one year, which is the maximum for any probationary period.

204. Administrative discharge board

The function and duty of a board to consider an administrative discharge case is purely administrative, not judicial. On the basis of its findings, the board recommends action or actions to be taken in the case.

Purpose and basic policies

An administrative discharge board is a fact finding and recommending board. An administrative discharge board has four basic decisions and recommendations to make:

1. Is there a reason for discharge?
2. Should the member be discharged?
3. What service characterization should the respondent receive for the current enlistment?
4. Should the respondent be given an opportunity for P&R?

In reaching an answer to these questions, the board's first duty is to develop and review all the evidence in the case and, from this evidence, must decide if the facts alleged by the commander are correct. It must reach clear, logical findings of fact as to each allegation set out in the notification letter. If the board finds facts which are a reason for discharge, then the board must decide whether to discharge or retain, what service characterization the member should receive, and whether to afford the member an opportunity for P & R. It does not make a finding concerning the member's medical qualification for worldwide duty.

While AFI 36-3208 provides the substantive guidance for enlisted administrative discharge boards, AFMAN 51-507, *Enlisted Discharge Boards and Boards of Officers*, provides suggested procedural guidance for conducting orderly and efficient discharge board hearings.

Remember, AFMAN 51-507 is only a guide, and any deviation from its suggested format may require reference to AFI 36-3208, or other instructions or sources of authority. A failure to follow the guidelines in AFMAN 51-507 does not constitute an error and provides no grounds to set aside or modify a discharge proceeding

Members

The special order convening the board states that the board is appointed by authority of the SAF. The SPCMCA is the appointing authority for discharge board members and must ensure the opportunity to serve is given to all personnel.

There are two categories of members for a board hearing: voting and nonvoting. In addition to the voting and nonvoting members, a reporter is also part of the board hearing. A competent reporter or stenographer records the proceedings verbatim. You could be called on to be the reporter, as well as the assistant recorder or, if you are a defense paralegal, the assistant to the respondent's (member's) counsel. Transcribing the record of board proceedings is done as specified in AFI 36-3208 and AFMAN 51-507.

Administrative Discharge Board Members		
Type Member	Explanation	
Voting	There must be at least three voting members who are experienced, unbiased persons of mature judgment. They must understand the regulation and policies pertaining to the case. Usually, all board members are commissioned officers. However, upon the written request of the respondent, NCOs may serve as board members. The majority of the board members must be commissioned officers, and at least one must be a field grade officer (major, lieutenant colonel, or colonel). The officer making the commander's recommendation may not serve as a board member. No officer or NCO having direct knowledge of the case may serve on the board.	
Nonvoting	Two nonvoting members are appointed:	
	Recorder	Assists the board and presents the government's case against the respondent. The recorder is a designated judge advocate, a paralegal under the direct supervision of a judge advocate, or with the approval of the local SJA, an officer of The Judge Advocate General's Corps Reserve (TJAGCR) or another officer assigned full time legal duties in The Judge Advocate General's Corps (TJAGC).
	Legal advisor	A designated judge advocate certified under Article 27(b), UCMJ, and presides in all open sessions of the board. The legal advisor consults, as necessary, with the recorder and respondent's counsel to prepare for the hearing, clarifies any issues to be raised by both side, and rules on admissibility of evidence when the presence of the voting members is not required. The legal advisor, in open session, instructs the board on its functions and duties, advises them at any and all stages of the proceedings, as appropriate, and rules with finality on the admissibility of evidence and procedural matters. In addition, the legal advisor authenticates the record of the board proceedings.

Challenges

The respondent and the recorder may only challenge a voting member or the legal advisor for cause. The legal advisor rules on all challenges except challenges to the legal advisor. The board hears evidence on a challenge to the legal advisor and then, in closed session, the president of the board announces his or her ruling on the challenge. The president then polls the other voting members to see if they object to the president's ruling, and unless a majority of the voting members object, the president's ruling is final. The president announces the ruling on the challenge to the legal advisor in open session.

Consultations prior to board proceedings

The legal advisor may consult with the recorder and the respondent's counsel at any time prior to the convening of the board to prepare for the hearing and clarify issues. The recorder and the respondent's counsel may also consult with each other, as necessary. Counsel advises the legal advisor and opposing counsel of the names of their prospective witnesses and proposed exhibits. Counsel also states all objections they anticipate making in the board proceedings. This allows the legal advisor and opposing counsel to prepare for the issues and eliminate unnecessary delays. During these consultations, the counsel makes every effort to narrow and define the areas of disagreement. These consultations are not part of the board proceedings and are not recorded or transcribed as part of the proceedings. The respondent does not have a right to be present during these consultations.

Discharge board hearing procedure

The discharge board hearing is convened pursuant to a special order under the provisions of AFI 36-3208. At the beginning of the proceeding, the recorder will convene the hearing with the special order number and offer a copy into evidence. The recorder will also name the persons in the convening order that are present, and if the voting members are absent, states so for the record. The recorder names the respondent and whether he or she is present or absent, swears in the court reporter

(reporters who have been administered one-time oaths for courts-martial need not be sworn in again), interpreter (if one is used), and the legal advisor. The legal advisor will then swear in the recorder. Once this is complete, the recorder announces the board is convened, the purpose of the board, and when the respondent was notified of the hearing. From this point forward, the legal advisor controls the script and the proceeding. The legal advisor will explain to the respondent the reason why the board is being convened and the rights afforded to him or her. The legal advisor will ensure the respondent understands the purpose of the board and his or her rights before proceeding.

When the hearing is convened with voting members, the recorder recites the names and grades of all voting and nonvoting members who are present. The respondent and the respondent's counsel are not members of the board and are not identified. The recorder administers the oath to the board's voting members.

The recorder may make an opening statement, and the respondent's counsel may choose to make his or her opening statement after the government's opening statement or after the close of the government's case. In open session, in the presence of the respondent and his/her counsel, the legal advisor must give introductory instructions to the board member's before taking of the evidence begins. These introductory instructions include the responsibilities of the board members, recorder, and legal advisor. The recorder then presents evidence, followed by respondent's counsel. When all available evidence has been presented, the recorder announces that there is no further evidence to present to the board.

When the respondent's counsel presents his or her case, the recorder calls witnesses in the order specified by the respondent's counsel, administers oaths, and asks preliminary identifying questions of the witnesses. After questioning by the respondent's counsel, the recorder, members of the board and the legal advisor will have an opportunity to cross-examine each witness. The legal advisor excuses the witness following completion of each witness' testimony. If the respondent elects to testify under oath, the recorder administers the oath. The recorder may present evidence to rebut matters presented by the respondent. If the recorder has nothing in rebuttal or has finished the presentation of rebuttal evidence, the evidentiary portion of the hearing is over.

The recorder and respondent's counsel should be provided with the opportunity to submit requests for instructions. The legal advisor must give closing instructions to the board members before the board goes into closed session to arrive at findings and recommendations. Additionally, the legal advisor needs to examine the findings and recommendations worksheet for adequacy and admit them as a board exhibit. Before the board goes into closed session, the recorder and respondent's counsel may make final closing arguments. The recorder may also make a rebuttal argument.

NOTE: The respondent may not be cross-examined by the recorder, the board members, or legal advisor on an unsworn statement, but the recorder may offer evidence to rebut statements of fact contained in it.

Once the legal advisor instructs the voting members on findings and recommendations, the board is closed and all persons except the voting members are excused.

Findings and recommendations of the board

The board is limited to making recommendations concerning separation or retention, the type of separation, and/or suspension of the discharge. After considering and evaluating all the evidence, the board arrives at findings and recommendations through secret written ballot. A majority vote determines each issue. Tie votes will result in findings and recommendations favorable to the respondent. The board records the findings and recommendations in writing.

After the board has reached its findings and recommendations, the legal advisor reopens the board. The recorder takes the findings and recommendations worksheet from the president and gives it to the legal advisor for examination. Once examined by the legal advisor, the recorder hands the worksheet

back to the president of the board, who reads the findings and recommendations in its entirety to the respondent and counsel. The board is then adjourned.

Authentication of board proceedings

Board proceedings are generally summarized, but parts of the proceedings must be verbatim. For example, if the board recommends retention, then the board's findings and recommendations must be transcribed verbatim. As another example, the entire board proceeding must be transcribed verbatim when the board recommends an UOTHC discharge. The legal advisor authenticates the record of the proceedings. If, after the hearing, the legal advisor is not reasonably available, the president and the recorder authenticate the record, and the reason for the substitution is stated on the authentication page. The reporter must retain all notes of the hearing until all the action in the case is final. The original record is sent to the convening authority for action and copies are sent to both the MPS career development element and the respondent.

Processing time goals

It is in the best interest of the member and the Air Force to process involuntary discharge cases without delay. Processing times may vary depending upon local circumstances, such as the availability of counsel, court reporting availability, or processing a referral EPR. Average processing times are as shown in the following table:

Processing Method	Average number of workdays between date action starts and date of separation or date of departure from the overseas area
Notification Procedure	15
Board Hearing	50
Board Hearing Waiver	25

Keep in mind these processing days are only an average and many variables within the discharge process can extend the processing time. Failure to meet the suggested time standards does not affect the validity of the action.

205. Assistant to the recorder

As a paralegal in a base legal office or a defense paralegal, you may be asked to assist in the board proceedings and take an active role throughout the process. In acting as assistant to the recorder or assistant to respondent's counsel for enlisted discharge board hearings, your duties are the same as the recorder's or respondent's counsel's. As such, you will perform many of the duties assigned to the recorder or counsel. AFMAN 51-507 is your governing directive. Let's take a look at what some of your responsibilities may be:

The recorder, at a reasonable time before convening the board, notifies the respondent in writing of the following:

- The time and place the board convenes.
- The specific allegations to be investigated, in sufficient detail to enable a respondent to answer. Do not use generalized statements, unless applicable security regulations or directives require it to protect classified information.
- The name, organization, and station (if civilian, the address) of any witness the recorder expects to call.

- If the respondent requests them, arrangements will be made for military witnesses to be present (or invitational travel orders issued to civilian witnesses who are not federal employees). Approval of such requests are contingent upon:
 - The request being made with enough time to make the arrangements, and
 - The witnesses, in the opinion of the legal advisor, being able to present relevant and material evidence.
- Respondent's right to be represented before the board, free of charge, by either a detailed military counsel or a military counsel of their own choosing if reasonably available. Civilian counsel may represent respondents at the respondent's own expense.

In addition, the recorder and the respondent's counsel may consult with each other as necessary. During the board proceeding, the recorder will make an opening statement, present evidence, and make a closing statement. The rules of evidence for a board proceeding are not as rigorous; as the standard of proof is not "beyond a reasonable doubt", but "a preponderance of the evidence."

When you are acting as the assistant to either the recorder or the respondent's counsel, you will be under the direct supervision of an attorney at all times during the proceeding. You may be called upon to present the opening statement, conduct voir dire, examine witnesses, make and respond to objections, or make the closing argument. Acting as an assistant to the recorder or respondent's counsel is a wonderful opportunity to expand your paralegal skills and allows a perfect "partnership" opportunity between you and your attorney.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

203. Discharge procedures

1. What two procedures are used for processing discharge actions under AFI 36-3208?
2. Which situation requires a discharge board hearing?
 - ☐ a. Respondent is a senior airman (SrA) with five years of service.
 - ☐ b. Respondent is a staff sergeant (SSgt) with eight years of service.
 - ☐ c. A SrA has eight years of service.
 - ☐ d. Respondent is an A1C with two years of service.
 - ☐ e. A SSgt with less than six years of service.
 - ☐ f. A SrA with five years of service and is recommended for honorable discharge.
 - ☐ g. An Airman with three years of service is recommended for a UOTH discharge.
 - ☐ h. An Airman has less than 180 days of service and an honorable discharge is warranted.
3. List the minimum required documents to be included in a discharge folder.
4. What are the three subsequent decisions the SPCMCA must make if he or she decides a notification procedure case warrants a discharge?

5. What is the maximum number of days a member has to respond to a discharge notification when he or she is entitled to a board hearing?
6. What document is considered a statement waiving the administrative discharge board proceedings?
7. What program provides Airmen subject to administrative discharge an opportunity to stay in the Air Force and receive help so he/she may be able to serve until his or her ETS?

204. Administrative discharge board

1. What are the four basic decisions and recommendations an administrative discharge board must make?
2. What is the *minimum* number of voting members for an administrative discharge board?
3. Which options properly constitute a discharge board hearing panel?
 - ___ a. A board of one major and two master sergeants (MSgt).
 - ___ b. A board of one major, one captain, and one MSgt.
 - ___ c. A board of three captains.
 - ___ d. A board of one lieutenant colonel, one major, and one technical sergeant (TSgt).
4. Who swears in the recorder at an administrative discharge board hearing?
5. Who is responsible for authenticating the report of the discharge board?

205. Assistant to the recorder

1. Under what circumstance may a civilian attorney represent a respondent during a discharge board?
2. What is the standard of evidence for a board procedure?

1-3. Officer Separation Actions

Air Force officers do not have an inherent right to remain in the Air Force once they have been commissioned. You might say that each of us, officer and enlisted, is subject to being “fired.” By virtue of their appointment, officers enjoy a position of trust, assume a continuing responsibility for leadership, and must conduct themselves in an exemplary manner at all times. Those personnel who demonstrate their unworthiness of such status must be identified and processed for separation if deemed appropriate.

206. Officer discharges and separations

There are several methods by which officers can have their commissions terminated. An officer’s status dictates the procedures to be used in processing separation case files. For example, the SAF is authorized to discharge any regular probationary commissioned officer, provided the officer has less than five years of total active federal commissioned service in the Regular Air Force. The SAF or delegee may direct an officer’s reclassification or separation when the officer does not complete initial skills training and there is no requirement for the officer’s continued service. These cases do not normally involve a personal hearing. An Air Force personnel board normally handles them. On the other hand, the SAF would remove a nonprobationary Regular Air Force officer from the active list for cause if this action is recommended by a series of boards as covered later. These are complex cases and require full attention to the governing directives.

Governing directives

There are two governing directives for officer separations:

Governing Directives for Officer Separations		
Directive	Title	Explanation
AFI 36-3206	<i>Administrative Discharge Procedures for Commissioned Officers.</i>	Explains how Air Force officers on active duty may be administratively discharged for: <ul style="list-style-type: none"> • Substandard performance of duty. • Misconduct or moral or professional dereliction. • Fear of flying. • HIV-related reasons. • In the interests of national security Prescribes procedures for disposing of cases involving officers and for processing cases approved under DODMAN 5200.02 AFM 16-1405. It also contains guidance for conducting boards of inquiry.
AFI 36-3207	<i>Separating Commissioned Officers</i>	Establishes procedures and is the authority for administratively separating officers serving in the active military service.

Reasons for separation

The reasons given for officer discharges are somewhat similar to the discharge provisions for enlisted personnel:

1. Substandard performance of duty such as:
 - Failure to show acceptable qualities of leadership for grade held.
 - Failure to achieve acceptable standards of proficiency required for grade held.
 - Failure to discharge duties equal to grade and experience.
 - Substandard duty performance resulting in an unacceptable record of effectiveness.
 - A record of marginal service over an extended period of time.
 - Apathy or defective attitude when the officer is unable or unwilling to expend effort.

- Mental disorders that interfere with the officer's performance of duty and do not fall within the purview of the medical disability process. An evaluation must be conducted by a psychiatrist or clinical psychologist.
 - Failure in the fitness program as specified in AFI 36-2905.
 - Failure to conform to prescribed standards of dress, physical fitness, or personal appearance.
 - Inability to perform duties or meet military commitments as a result of family care responsibilities.
 - Failure to maintain satisfactory progress while in an active student officer program.
2. Misconduct or moral or professional dereliction such as:
 - Failure to meet financial obligations.
 - Intentional or discreditable mismanagement of personal affairs.
 - Drug abuse as defined in AFI 44-121.
 - Serious or recurring misconduct punishable by military or civilian authorities.
 - Intentional neglect or intentional failure to perform assigned duties or complete required training.
 - Misconduct resulting in the loss of professional status necessary to performance of military duties (i.e., physician, lawyer, or chaplain).
 - Intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.
 - Sexual assault or sexual assault of a child.
 - Sexual perversion, including aberrant sexual behavior or acts of sexual misconduct.
 - Sexual deviation as defined in the *Diagnostic and Statistical Manual of Mental Disorders (DSM5)*.
 3. Aircrew officers with a professed fear of flying.
 4. Retention is not consistent with the interests of national security.
 5. Commissioned officers with serologic evidence of HIV infection found not to have complied with lawfully ordered preventive medicine procedures for individual patients to prevent transmission of HIV infection.
 6. An officer who is sentenced by court-martial to a period of confinement for more than six months and not sentenced to a dismissal may be separated at any time after the sentence to confinement has become final and the person has served in confinement for a period of six months.
 7. Unprofessional relationship by person serving in special position of trust as recruiter, faculty or staff.

Do these reasons sound familiar? As you can see, enlisted and officer members may be separated for many of the same reasons. However, due to an officer's position within the Air Force, they are also subject to separation for many additional reasons.

Voluntary separations

AFI 36-3207, chapter 2, *Voluntary Separations*, sets forth specific reasons for applying for resignation or requesting release from the Air Force. The reasons are too numerous to list here, but a few common reasons are:

- Personal or family hardship. (**NOTE:** Normal inconvenience caused by military service, such as living away from family members doesn't in itself constitute hardship.)
- Election or appointment to a civil office.

- Completion of active duty service commitment.
- Attending school.
- Pregnancy.

Involuntary separations

AFI 36–3207, chapter 3, *Involuntary Separations*, prescribes reasons for discharge or release from active duty. Some reasons may include:

- Reserve officers attaining the maximum age for service.
- Failing to be selected for promotion the second time for captain, major, or lieutenant colonel.
- Second lieutenants not qualified for promotion.
- Officers who lose their ecclesiastical indorsements (chaplains).
- Reaching the maximum time in commissioned service or years in grade.

Many other reasons exist in AFI 36–3207. (**NOTE:** The SAF is the final separation authority for all officer cases.)

Processing requirements

Now that you understand the basic reason for separation, we will review the actual procedures. Keep in mind that eligible officers may retire voluntarily, resign, or request discharge in lieu of administrative actions against them. If these actions are not requested or do not occur, the following process begins (excluding any courts-martial action).

Initiating the action

The first step is for the member's unit commander to evaluate information and consult with the SJA and the MPS. Any case that involves violations under the UCMJ must be referred to the SJA for advice concerning appropriate disciplinary action. The unit commander must ensure the case is properly documented. This includes confirming the appropriate military authorities complete all inquiries and investigations and consulting with the SJA. Upon compiling and reviewing all evidence supporting discharge, the commander may recommend discharge to the show-cause authority (SCA). If the unit commander is below wing level, the commander will draft a memorandum to the wing commander or other cognizant authority recommending initiation of discharge action; who will, in turn, forward the case to the SCA.

The unit commander is required to notify the SCA when he/she is aware, or made aware by the officer or others, that the officer is alleged to have been the victim of a sexual assault. In the recommending action memorandum, the commander should include a statement indicating that the officer has reported being a past victim of sexual assault. The commander must provide sufficient information concerning the alleged assault and the respondent's status to ensure a full and fair consideration of the officer's military service and particular situation. Commanders should consult with the Air Force Office of Special Investigations (AFOSI) and the servicing SJA for guidance on the level of information that may be applicable.

The show-cause authority (SCA) is a major command (MAJCOM) commander or equivalent commander to whom the officer is assigned. The MAJCOM commander will delegate SCAs to wing commanders who are general officer or general court-martial convening authorities for wings not commanded by general officers, unless he or she personally determine that specific delegations cannot be made because of unusual circumstances.

The SCA is responsible for reviewing the discharge action against an officer within his/her command and determining whether to retain or recommend the officer for discharge. Before making his/her decision; however, the SCA must ensure the SJA completes a legal review which will be included in

the case file. Again, this is where your expertise will come in to play. You may not be processing the actual discharge package, but will most likely have a hand in drafting the legal review.

The SCA may determine that no further action is warranted under AFI 36-3206 and return the file to the initiating commander. Of course, reasons for this action would be included within the correspondence returning the case. If the SCA determines discharge is appropriate, the officer is notified of pending discharge action through a show cause notification memorandum personally signed by the SCA. The memorandum includes:

- The reason for the action.
- Advisement of the least favorable characterization of discharge the SAF may approve.
- The rights afforded to the member, along with the right to legal counsel.
- Notification that a board (Air Force Personnel Board (AFPB) or Board of Inquiry (BOI), as applicable) will convene unless the member applies for retirement or resignation.

Within ten calendar days of receipt of the letter of notification, the officer has the right to submit evidence on his or her behalf, apply for voluntary retirement, if eligible, tender a resignation, or request a delay to respond.

Upon receipt of the officer's response, the SCA will then determine whether to retain the officer on active duty or continue separation action and convene a BOI or forward the case to the AFBP, as applicable. Depending on the officer's status (nonprobationary or probationary) and/or the type of discharge recommended, the SCA determines the type of board to which the officer is entitled. As noted earlier, the SAF is the final approval authority.

The SCA *must* refer a nonprobationary officer's case and a probationary officer's case, when a UOTH discharge is recommended, to a BOI. In addition, the SCA *may* refer a probationary officer's case to the AFBP when recommending an honorable or general discharge or to a BOI when the SCA determines it would be appropriate.

When a BOI is to be convened, the officer is notified in writing at least 30 days before the BOI hearing. The notification will explain the date and time the board is to convene, with an attached copy of the special order convening the board. The notification will explain the rights of the officer, to include the right to request the presence of witnesses and the right to be represented by detailed military counsel or civilian counsel at the officer's own expense, and the right to request postponement in convening the board.

The officer has five calendar days from receipt of the notification memorandum to acknowledge receipt, including in the memorandum of acknowledgement the following:

- Date and time the notification memorandum was received.
- Names and addresses of any witnesses to appear before the BOI.
- The request to postpone the BOI hearing with statements to substantiate the request, if applicable.
- A statement of whether or not the respondent will appear before the BOI.

Board of inquiry

The purpose of a BOI is to give respondents who face discharge proceedings a fair and impartial hearing, make case findings, and recommend whether the Air Force should retain or discharge officers. The term "respondent" refers to an officer who appears before a BOI, the same as you learned for enlisted members entitled to a discharge board. To someone unfamiliar with boards, this may appear to be a court, even though it is not a judicial action. The duties of the BOI are to:

- Receive evidence presented during the board's proceedings.
- Develop additional information to create a record on which to base a proper decision.

- Evaluate all the evidence to reach findings and recommendations consistent with evidence presented.

The BOI is conducted in much the same way as an enlisted discharge board and consists of three voting members, a legal advisor, a recorder, an interpreter (if applicable), and a reporter. The BOI may recommend retention of the officer or removal from active duty or discharge. If discharge is recommended, the board will also recommend the service characterization. Characterizations for officers are the same as for enlisted personnel; honorable, general (under honorable conditions), or UOTHC.

Recording the proceedings

A hearing before a BOI is transcribed verbatim unless the BOI retains the respondent on active duty, in which case, only the findings and recommendations are transcribed verbatim with the rest of the board proceedings summarized. The reporter normally completes the report within 30 calendar days after the BOI adjourns. The legal advisor authenticates the BOI report. When the advisor is not available, the board president and recorder authenticate the report. The legal office gives an authenticated copy to the respondent. Once the legal office receives a signed and dated receipt for the BOI report from the respondent, the BOI report is sent to the SCA. The original and two copies are sent if the board recommends discharge or the original and one copy are sent when the BOI recommends retention.

Action by show-cause authority on board of inquiry report

The SCA sends the BOI report to Headquarters Air Force Personnel Center/Separations Branch (HQ AFPC/DPSOS) 20 calendar days after receiving it. The SCA sends the original copy when the BOI recommends retention or the original and one copy when the board recommends discharge. When a BOI recommends discharge, HQ AFPC/DPSOS sends the BOI case to AFPC through Headquarters United States Air Force/Administrative Law Directorate (HQ USAF/JAA) within five calendar days after receiving it. After completing a legal review, HQ USAF/JAA sends the BOI case to the Secretary of the Air Force Personnel Council (SAFPC) for referral to the AFPB.

The purpose of the AFPB is to review officer discharge cases and make recommendations to the SAF. The AFPB can make a decision to retain the officer, which terminates the action, or they can recommend removal from active duty, discharge, or other action and send the case to the SAF for final action. The SCA advises the respondent in writing that he or she may request excess leave pending final decision in the case until the SAF makes a final decision.

Keep in mind; this is just a brief synopsis of the officer discharge process. There are many other actions and variables that may take place throughout this process. Ensure you are following the guidance in AFI 36-3206 and 36-3207.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

206. Officer discharges and separations

1. What category of officers can be discharged by the Secretary of the Air Force without a personal hearing?
2. What directive covers administrative discharge procedures for officers having substandard duty performance?

3. What is the authority for officer administrative separations?
4. List the reasons for separation of officers under AFI 36-3206.
5. What regulation provides for voluntary separation of officers?
6. What is the purpose of a board of inquiry?
7. What characterization of discharge may officers receive?
8. When a BOI recommends discharge, what is the maximum number of days HQ AFPC/DPSOS has to send the BOI case to HQ USAF/JAA?

1-4. Quality Force Actions

As a paralegal, you have no doubt found the administrative and general law aspects of your job to be quite substantial. This unit further acquaints you with these areas, beginning with the guidelines for administrative demotions. The Air Force expects its members to execute their responsibilities in a manner suitable to their rank. When members do not live up to this expectation, administrative action may be taken. This section will cover various administrative actions taken against Air Force members, including demotions, boards of officers, reprimands, admonitions, control rosters, and unfavorable information files.

207. Enlisted demotions

AFI 36-2502, *Airman Promotion/Demotion Programs*, chapter 6, *Administrative Demotion of Active Duty Airmen* is the governing directive for demotion of Airmen and specifies demotion policies. The following guidelines are set out under this instruction:

1. Demotions under this instruction are administrative and apply to Airmen in grades of E-2 through E-9. AFI 36-2502 will not be used in lieu of UCMJ action.
2. Airmen separated from service before demotion action is completed cannot be demoted after separation. If Airmen reenlist, demotion procedures cannot be based on incidents that

occurred before reenlistment unless the facts and circumstances were not known by the commander until after reenlistment.

3. In instances where the Air Force must significantly reduce its strength and/or grade levels, the SAF may direct demotions, as necessary, to achieve these reductions.
4. Airmen should be given an opportunity to overcome their deficiencies before demotion action is initiated. Commanders need to maintain supporting documentation of all rehabilitation and probationary actions.

Suspended demotions are not authorized. Once demoted, that action reflects the Airman's appropriate grade under the circumstances and may not be suspended, conditional on future conduct. The demotion authority can restore the individual's original grade with administrative jurisdiction. If the demotion authority restores the Airman's original grade following a demotion, he or she must do so between the third (no earlier than) and sixth month (no later than) after the effective demotion. This should not be a common occurrence.

Since processing administrative demotions is primarily the responsibility of your local MPS, your responsibilities are limited in these types of actions. However, you could be asked to monitor the process to ensure the instruction is complied with. Also, questions may arise that hinge on a legal issue, and you may be called on to research that particular issue for the attorneys in your office or draft a legal review. For these reasons, it's important that you become familiar with the provisions and requirements of AFI 36-2502 and the demotion process.

Reasons for demotion

Like any other action the Air Force takes, there are specific reasons for administratively demoting an Airman. They are listed in the following table, though the discussion is brief due to space limitations. For more detailed information, review AFI 36-2502, chapter 6.

Reasons for Administratively Demoting an Airman	
Reason for Demotion	Discussion/Amplification
Student status termination	<p>Airmen are demoted to his or her former grade when his or her student status ends if he or she was promoted in anticipation of completing additional training or to obtain a commission.</p> <ul style="list-style-type: none"> * Demote officer trainees or pipeline students to his or her former grade if he or she is eliminated from training. * Demote Airmen attending temporary duty (TDY) Air Force schools to his or her former grade when the school commandant informs the base that his or her student status is terminated. * Demote a member to his or her former grade when promoted to staff sergeant (SSgt), master sergeant (MSgt), or senior master sergeant (SMSgt) with an approved slot to attend Enlisted Professional Military Education (EPME) and is later dismissed from EPME for cause. <p>NOTE: When an individual loses authorization for shipment of household goods and/or movement of dependents as a consequence of administrative demotion, the demotion action will be delayed until the Airman's arrival at the new duty station (permanent change of station [PCS]). The gaining commander will promptly complete the appropriate administrative demotion action. The losing MPS will flag the Airman's records of the appropriate demotion action, either by a cover letter or by annotating the PCS orders. The effective date of the demotion will be the date the Airman arrives at the new duty station.</p>

Reasons for Administratively Demoting an Airman	
Reason for Demotion	Discussion/Amplification
Demotion based on skill levels	<p>Airman in this category may be demoted to a grade that corresponds with his/her skill level.</p> <ul style="list-style-type: none"> * Demote Airmen, including Airmen promoted with a primary Air Force specialty code (PAFSC) waiver, if he or she cannot achieve a skill level appropriate to his or her grade. * Demote Airmen to the highest possible grade allowed for the skills he or she has if his or her Air Force specialty (AFS) is downgraded for substandard performance. Use the date on which his or her skill level was reduced as the effective date of demotion.
Failure to fulfill NCO responsibilities	Airmen may be demoted who do not fulfill NCO responsibilities under Air Force Handbook (AFH) 36-2618, <i>The Enlisted Force Structure</i> .
Failure to keep fit	Airmen may be demoted for failing to maintain or demonstrate the ability or willingness to attain physical standards in accordance with AFI 36-2905.
Failure to perform	Demote Airmen under the policies of Air Force District of Washington (AFDW/A1K), and AFI 36-2502, if he or she does not perform at United States Air Force (USAF) or USAF Space Command band standards (applies to AFSC 3N2X1, Premier Band).
Voluntary reassignment or reclassification	Demote Airmen under the policies and procedures established by AFDW/A1P if he or she volunteers for reassignment or reclassification out of AFSC 3N2X1.

Demotion authority

The group commander, or equivalent level commander, may demote MSgts and below. MAJCOM, field operating agency (FOA), or direct reporting unit (DRU) commanders may demote SMSgts and chief master sergeants (CMSgt). They may delegate this authority to the MAJCOM vice commander, deputy chief of staff of Manpower, Personnel and Services, Numbered Air Forces (NAF), or equivalent level commanders, but may not be further delegated. Deployed commanders must send demotion actions to the home station unit commander for action. The home station commander will complete coordination with the appropriate demotion authority. The appellate authority handles demotion appeals and is the next higher level commander.

Demotion notification procedures

After consulting with the SJA, the unit commander informs the Airman (E-2 through E-9), in writing, of the intention to recommend demotion (or to demote, if the commander is also the demotion authority). The letter contains:

- The AFI and specific paragraph forming basis of demotion.
- The demotion authority if other than the initiating commander.
- The specific reasons for the recommended action and recommended grade of demotion.
- A complete summary of the supporting facts.
- The right to seek legal counsel, including the name and number of the local area defense counsel (ADC).
- A statement that the member may retire in lieu of demotion, if eligible for retirement. If retirement is elected, the effective date of retirement must be no later than the first day of the fourth month after the member is initially notified of the demotion action. Application for retirement in lieu of demotion must be made no later than three working days after the member acknowledges the initial demotion notification memorandum.

- A statement that the member must agree or disagree with the demotion action and, if he or she does not agree, statements may be presented orally or in writing within three duty days after the member acknowledges the initial demotion notification memorandum.

An Airman may consult with military counsel (at no cost) or civilian counsel (at the Airman's expense) before electing to concur or nonconcur with the proposed action. If the Airman nonconcurs, counsel may assist in preparing any response by the individual.

Action by the immediate commander

If the Airman concurs with the demotion action, the immediate commander forwards the demotion action to the servicing MPS for further processing to the appropriate demotion authority. If the Airman nonconcurs and submits matters in his or her behalf, requests a personal hearing, or both, the immediate commander must consider all matters presented by the Airman before recommending further action to the demotion authority. After considering the matters presented by the Airman, the immediate commander notifies the Airman in writing of his or her decision to either terminate the action or to continue processing the action. If the immediate commander determines that further processing is appropriate, he or she prepares a written summary of the personal hearing (if any), which becomes part of the case file, and then forwards the entire case file through the MPS to the demotion authority for action.

Action by the demotion authority

Before acting on the demotion action, the demotion authority must obtain a legal review from the SJA. The SJA will review the case file to ensure the demotion action is warranted and legal per applicable instructions.

If the demotion authority disapproves the demotion, the entire case file is returned to the Airman's servicing MPS for continued processing. MPS then notifies the Airman's unit commander, in writing, of the demotion authority's decision. The unit commander notifies the Airman of the decision and obtains the Airman's written acknowledgement. If the demotion authority approves the demotion action, the same procedures above apply, except the Airman must acknowledge receipt of the decision within three working days and must also indicate whether he or she intends to appeal the decision or retire in lieu of demotion.

Action on appeals

Appeals must be in writing and submitted to the MPS within three working days of the Airman's acknowledgement of the final demotion decision, unless the immediate commander grants an extension. The MPS processes the appeal to the demotion authority for review. The demotion authority may restore the Airman's original grade or forward the case to the appellate authority without comment. The appellate authority for active duty Airmen is the next-level commander.

If the appellate authority approves the appeal, he or she directs MPS to restore the Airman's grade and to revoke the demotion orders. MPS notifies the Airman, in writing, through the Airman's immediate commander. If the appellate authority disapproves the Airman's appeal, he or she will notify the Airman's servicing MPS of the decision. MPS notifies the Airman, in writing, through the Airman's immediate commander.

Dates of rank

The effective date of rank (DOR) for an Airman demoted as a result of termination of student status is the date on which the Airman first performed service in the reduced grade (original date of rank). The effective DOR for other administrative demotions is the same date as the effective date of the demotion action (the date the demotion authority approves the demotion), except for demotion actions for failure to keep fit and failure to perform at USAF or USAF Space Command band standards. HQ Air Force District of Washington (AFDW) will determine the DOR for these two reasons.

Announcing and revoking demotions

The procedures related to announcing and revoking demotions are covered in the following table:

Announcing and Revoking Demotions	
Procedure	Description
Announcing a demotion	The MPS publishes orders after the demotion authority approves the demotion, but not earlier than four working days after the Airman acknowledges it. One copy of the demotion order is sent to Headquarters Air Force Personnel Center/Enlisted Promotions Branch (HQ AFPC/DPSOE).
Revoking a demotion	Revokes demotion order and restore the Airman's grade if the demotion authority determines the order was published without basis of authority.

Documenting demotion action

If an Airman is demoted under AFI 36-2502, the MPS will:

- Update demotion in the Military Personnel Data System (MilPDS) immediately after the demotion authority approves the demotion, except when an Airman applies for retirement in lieu of demotion.
- Send a copy of the entire case file to Headquarters Air Force Personnel Center/Master Personnel Records Branch (HQ AFPC/DPSIR).

As a paralegal, you may be involved in various stages of an administrative demotion action, from researching the issues, suspending the case file, and even performing a legal review. If the opportunity arises for you to draft the legal review of a pending demotion action, you are now equipped with a good understanding of the process.

208. Administrative counselings, admonitions, reprimands, and control rosters

In the administration of justice, commanders, first sergeants, and supervisors seek advice on actions they may take in both disciplinary and administrative matters. AFI 36-2907, *Unfavorable Information File (UIF) Program*, gives guidance for the effective use of:

- UIFs.
- Control rosters.
- Administrative counselings, admonitions, and reprimands.

Collectively these are considered quality force actions intended to improve the quality of individuals within the active duty force. As such, they are different from the actions we have previously discussed, which were intended to remove individuals from the Air Force.

It is extremely important you become familiar with what can and cannot be done with regard to UIFs, control rosters, and administrative counselings, admonitions, and reprimands. In this lesson we discuss each of these actions including when they may be used, how long they may be used, and some of the agencies involved in processing these actions.

Administrative counseling, admonitions, and reprimands

These actions are intended to improve, correct, and instruct subordinates who depart from standards of performance, conduct, bearing, and integrity (on or off duty), and whose actions degrade the individual and unit's mission. Commanders, supervisors, and other persons in authority may issue these actions. As a general rule, supervisors should utilize these tools in a manner of progressive discipline. A record of individual counseling (RIC) is the lowest form of written counseling followed by (in order of severity from lowest to most severe) LOC, LOA, and LOR. In other words, an LOC/RIC may be the first step to correct behavior for a first time offender and, if continued disciplinary problems occur, an LOA or LOR may then be appropriate. Keep in mind, depending on

the nature of the offense, this type of progressive discipline may not be appropriate. LOCs, LOAs, and LORs are administered verbally or in writing, as considered appropriate by the initiating authority.

Record of individual counseling

Counseling helps people use good judgment, assume responsibility, and face and solve problems. The RIC/LOC is considered the least severe form of administrative discipline and is a form of counseling used to correct behavior and assist subordinates in developing skills, attitudes, and behaviors consistent with maintaining Air Force standards.

When not given verbally, the AF Form 174, Record of Individual Counseling, is used to document the counseling. This form may be used to document both positive and negative behavior and is useful when completing performance reports. Documenting counseling sessions on bond paper or letterhead constitutes an LOC and may be used if access to an AF Form 174 is not available or preferred. Supervisors and first sergeants may recommend the commander file negative RICs or LOCs in the UIF. For an officer, if the LOC is not filed in the UIF, it must be filed in the individual's PIF.

Letters of admonishment and reprimand

LOAs are used to document an infraction serious enough to warrant this type of action; however, must not be used when an LOR is more appropriate. For officer personnel, if the LOA is not filed in the UIF, it must be filed in the individual's PIF.

LORs are reserved for the most serious infractions and carry a stronger degree of discipline. Commanders may elect to file an LOR in a UIF for enlisted personnel; however, filing in the UIF is mandatory for officers. For officers, if a person other than the unit commander issues an LOR, it is sent to the unit commander for acknowledgement and endorsement using AF Form 1058, Unfavorable Information File Action, for establishment and filing in a UIF. This includes the officer's written acknowledgment and any documents submitted by the officer.

Administering RICs, LOCs, LOAs, or LORs

If written, the letter must clearly state the following:

- The subject of the letter will clearly state it is a "letter of counseling," "letter of admonishment," or a "letter of reprimand."
- The body of the letter begins with and clearly identifies the basis for the letter (what the member did or failed to do). It is not necessary to specify an article of the UCMJ was violated. At a minimum, cite the date(s), (on or about date(s), or inclusive dates) of the identified deficiencies, acts, or events, as appropriate.
- Include a paragraph using words that indicate the member was counseled, admonished or reprimanded (i.e., "you are hereby reprimanded"). In the paragraph, state what improvement is expected and that further deviation of established standards may result in other more severe action.
- The body of the letter includes the following Privacy Act statement:

<p>AUTHORITY: 10 U.S.C. 8013. PURPOSE: To obtain any comments or documents you desire to submit (on a voluntary basis) for consideration concerning this action. ROUTINE USES: Provides you an opportunity to submit comments or documents for consideration. If provided, the comments and documents you submit become a part of the action. DISCLOSURE: Your written acknowledgement of receipt and signature are mandatory. Any other comment or document you provide is voluntary.</p>

The last paragraph should require that the member sign and date the letter in acknowledgment and the letter be returned to the initiator within three duty days (30 calendar days from the date of receipt of the certified letter for non-extended active duty reservists). Include the statement, "Any comments or

documents you wish to be considered concerning this letter of counseling, admonishment, or reprimand will be included with your response.”

If the recipient refuses to provide written acknowledgement of receipt, the issuing authority documents refusal in the presence of a witness by annotating “member refused to sign acknowledgement” and signs and dates it.

The person who initiates an RIC/LOC, LOA, or LOR has three duty days (30 calendar days for non-extended active duty reservists) to advise the individual of his/her final decision regarding any comments submitted by the individual. In addition, he/she may send the action to the member’s commander or superiors for information, action, or for their approval for file in the UIF and PIF. The member’s written acknowledgment and any documents submitted will be included.

The person who initiates an LOA or LOR for general officers or selects will forward the original document and attachments to Air Force General Officer Management (AF/A1LG), AFR Senior Leader Management (AF/REG) or the National Guard Bureau Senior Leader Management Office (NGB-SL) for distribution to the commander.

Control roster

While your office does not have primary responsibility for actions concerning control rosters, you should be familiar with the process. Commanders frequently seek advice from the legal office concerning the proper use of control rosters. The control roster is an administrative and rehabilitative tool, not a punitive one. The control roster was created to reflect the names of Airmen, officer and enlisted; whose substandard conduct or duty performances require special observation. Placing a member on a control roster gives the member a chance to improve his or her conduct. Placing a person on the control roster is not intended to preclude or serve as a substitute for punitive or other administrative action.

When an Air Force member’s conduct or duty performance requires special attention, he or she may be placed on the control roster. A brief incident of substandard duty performance or an isolated breach of other standards, not likely to be repeated, should not result in placement on the control roster. Consideration is given to prior incidents, actions and failures, and prior counseling and rehabilitation efforts. Commanders at all levels can place the members of their command on the control roster. A commander can place a person on a control roster for observation for a maximum of six months (12 months for reserve personnel with permission from HQ Air Force Reserve Command (AFRC) or HQ Air Reserve Personnel Center (ARPC)). Commanders will inform members on the control roster their performance and behavior must improve or more severe administrative action or punishment may occur. Commanders should periodically counsel his/her members on the control roster about their improvement or failure to improve.

A commander initiates the control roster action on an AF Form 1058. Individuals must acknowledge the action and have three duty days (30 calendar days from the date of receipt of the certified letter for non-extended active duty reservists) to submit a statement on the individual’s behalf before the AF Form 1058 is finalized. Once all statements are received, the commander will advise the member of his/her final action. The six-month time period begins the day the AF Form 1058 is finalized and ends at 2400 hours on the last day of the observation period. An individual’s time does not stop and start for periods of TDY, ordinary leave, or change in immediate supervisor. The following individuals have authority to add or remove any assigned or attached enlisted member and add any assigned or attached officers. Authority for removal of officers is initiated upon receipt of an AF Form 1058, or memorandum signed by the officer’s wing commander (or equivalent), or issuing authority, whichever is higher.

- Commanders on G-series orders at all levels for members assigned or attached to their units. Commanders must be senior to the member. Qualified civilian directors may also add or remove individuals to/from control rosters.

- The commander, vice commander, staff director and directors at MAJCOMs, FOAs, and DRUs.
- Chief, deputy, or assistant chiefs of staff; other heads of staff agencies; and directors assigned to HQ USAF.
- The senior Air Force officer assigned to a joint command.
- The program manager for Civil Air Patrol (CAP) Reserve Assistance Program and Admissions Liaison Officer Program.

Early removal from the control roster applies regardless of how long the action was on file. Placement on the control roster is a mandatory UIF entry.

209. Unfavorable information files

The purpose of a UIF is to provide an official record of unfavorable information about an individual. The file documents administrative, judicial, or nonjudicial proceedings concerning the member's performance, responsibility and behavior. For example, documentation concerning writing checks without sufficient funds or failure to provide reasonable support for dependents could be placed in a UIF. Unit commanders and SJAs must review UIFs annually and you may be tasked to assist with the review.

Contents of a unfavorable information files

Two types of information are kept in a UIF—mandatory and optional. Certain categories *must* be placed in a UIF:

- For enlisted members: Article 15s with punishment (suspended or unsuspended) exceeding one month (31 days or more), court-martial, civilian court convictions, and control roster action.
- For officers: LORs, Article 15s, court-martial, civilian court convictions, and control roster action.

All other documents the commander wishes to place in a UIF are considered optional.

Initiating UIF actions

Before getting into the actual procedures for initiating a UIF, you must understand which individuals have the authority to establish, remove, or destroy UIFs. These individuals have authority:

- Commanders at all levels for members assigned or attached to their units. Commanders must be senior to the member.
- The commander, vice commander, staff director and directors at MAJCOMs, FOAs, and DRUs.
- Chief, deputy, or assistant chiefs of staff; other heads of staff agencies; and directors assigned to HQ USAF.
- Civilian leaders and comparable officers within the Office of the Secretary of the Air Force, Office of the Joint Chiefs of Staff, and Office of the Secretary of Defense.
- The senior Air Force officer assigned to a joint command.
- The program manager for CAP Reserve Assistance Program and Admissions Liaison Officer Program.

For enlisted members, the above individual(s) may remove a UIF upon receipt of an AF Form 1058, or memorandum signed by the wing commander (or equivalent) or the convening authority, whichever is higher. For both officer and enlisted members, if a commander in a joint command, assigned to a different service, imposes nonjudicial punishment on an Air Force member, the Air Force must decide whether to establish a UIF.

Before an optional document can be placed in a UIF, the decision authority or commander must first notify the member of the intent to file the unfavorable information. The AF Form 1058 is used to notify the member of the intent to file the optional information in his or her UIF. Instructions for completing the form are contained on the form itself. The member has three duty days (30 calendar days from the date of receipt of the certified letter for non-extended active duty reservists) to acknowledge the intended actions and provide pertinent information before the commander makes the final decision on placing the documents in the UIF. If the member fails to reply to the notification of intent to file within the time allowed, the decision authority can file the information without the member's response.

After considering the member's response, if provided, the decision authority can elect to do any of these:

- File the unfavorable information in the UIF.
- Destroy it.
- Return the unfavorable information to the originator.
- Place it in the member's unit assigned PIF located in the office of the commander's support staff.

Optional UIF documents for administrative actions may be included in the UIF as long as the date of the action or document is within six months, and the member has not reenlisted since the date of the document.

Whenever unfavorable information is placed into, withdrawn from, or extended beyond the normal disposition time, an annotation reflecting these actions is made on the AF Form 1137, Unfavorable Information File Summary. This concise summary of all actions on a member's UIF is provided to the member's immediate commander or the appropriate decision authority. Additional distribution requirements are listed in AFI 36-2907, table 2.3., *Annotating and Disposing of UIF Summary (AF 1137)*. The original is maintained in the member's UIF.

Access to unfavorable information files

When shown proper identification, the UIF monitor may allow these individuals access to UIFs:

- The person on whom a UIF is established.
- All individuals who have authority to establish, remove, or destroy UIFs.
- First sergeants may access files on any enlisted personnel assigned or attached to their unit.
- Any rater or endorser may see the files of his or her subordinates when they are preparing to write or indorse an officer performance report (OPR), EPR, promotion recommendation form (PRF), or recommending an enlisted member for reenlistment, extension, or a career job reservation (CJR).
- The senior AF officer or commander of an AF element in a joint command may review the file on members in that element.
- An AF element's section commander may *only* see the file on enlisted members if granted approval from the senior AF officer or commander in that element.
- MPS personnel, inspector general, inspection team members, judge advocates, paralegals, Office of Special Investigations (OSI) personnel, security forces, other investigators, military equal opportunity personnel, and substance abuse counselors authorized by the commander of the member with the UIF, may review UIFs in the course of their official AF duties.
- Program managers for USAF Reserve programs.

Air Force Senior Leader Management Office and Reserve Senior Officer Management Office (AFGOMO) will resolve questions regarding access to UIFs on general officers and selects.

Reviews

As outlined in AFI 36-2907, periodic reviews of UIFs are performed by unit commanders, senior Air Force officers or commanders of an Air Force element in a joint command. Unit commanders are scheduled to review the UIFs on their assigned or attached personnel:

- Within 90 days of assumption or appointment of command.
- Annually in conjunction with the SJA.
- When a member is considered for promotion, conditional reserve status, selective continuation, regular AF appointment, a specified period of time contract, reenlistment or selective reenlistment consideration, PCS or permanent change of assignment (PCA), Personal Reliability Program (PRP) duties, voluntary or mandatory reclassification or retraining, evaluations, a reservists application for in-residence professional military education (PME) or reserve short courses, a statutory tour when a reservist is considered for an active duty tour over 30 days, and appointment or enlistment in the Air Force (active duty or reserve).

Disposition of unfavorable information files documents

Documents placed in a member's UIF are retained anywhere from six months to four years, depending on the type of action and whether the member is an officer or enlisted. Commanders maintain the UIF and all of its documents/contents until the final disposition date listed in AFI 36-2907.

After careful consideration, commanders and other UIF decision authorities can authorize early removal of documents from a member's UIF. The decision to remove documents from the file or destroy the UIF in its entirety is not made arbitrarily. The contents of a UIF impact a member's eligibility and qualification for a variety of personnel programs, PCS, training opportunities, and promotion; just to name a few. Therefore, UIF documents are retained unless early removal is clearly warranted. A questionable removal could result in a member's selection for a special-duty assignment or program for which he or she isn't qualified and could result in an unnecessary cost to the Air Force.

210. Process officer selection record

A military personnel record is the method used to maintain the military service record of each person. You may find yourself processing administrative actions or a nonjudicial punishments if a determination needs to be made to file a document into an officer selection record or not.

If an officer has received an Article 15, UCMJ, the commander offering punishment notifies the individual in writing of the intent to file by initialing the appropriate block on the applicable AF Form 3070, Record of Nonjudicial Punishment Proceedings. The individual acknowledges receipt of the notification and right to submit a statement, if any, of rebuttal, mitigation, or circumstances for consideration on the AF Form 3070. After reviewing the individual's statement and circumstances, the commander determines whether the NJP is appropriate for filing in the selection record. If the commander decides not to file the NJP in the selection record, the commander annotates the decision on the AF Form 3070, and returns it to the servicing staff judge advocate. The servicing staff judge advocate forwards a copy of the AF Form 3070 to MPS career development element.

If the commander decides to file the NJP in the selection record, the commander annotates the AF Form 3070 and forwards it to the senior commander for review if such review is necessary. If a senior commander review is not necessary, the commander will forward the NJP and related correspondence to the servicing SJA, who then forwards a copy to the MPS career development element. The MPS career development element will suspense the NJP until final action is complete, then forwards a copy of the review authority's decision memorandum and/or the NJP to the Officer Command Selection Record Group custodian. If the commander's decision is to

file the NJP in the selection record, he or she will forward the decision memorandum and/or NJP to the Master Personnel Record Group specific custodian according to AFI 36-2608, *Military Personnel Records System*.

211. Officer promotion propriety actions

There are some administrative actions that are only applied to officers. The legal office is not necessarily the office of responsibility for these actions, but we do have a part in the process. Officer promotion actions are governed by AFI 36-2501, *Officer Promotions and Selective Continuation*.

Process not qualified for promotion

Promotion is not a guarantee or based on an officer's past service. It is advancement to a position of greater responsibility. If an officer has not met the requirement for exemplary conduct or is not mentally, physically, morally, or professionally qualified to perform the duties of the next higher grade, it is in the best interest of the Air Force to delay the promotion or to find the officer not qualified for promotion (NQP).

When a second lieutenant (O-1) has not met the requirement for exemplary conduct or is not mentally, physically, morally, or professionally qualified to perform the duties of the higher grade, the commander recommends in writing that the SAF find him or her NQP. The officer's commander initiates a NQP recommendation. The commander informs the officer of the NQP recommendation, either verbally or in writing. Once the officer is notified (verbally or in writing), the commander will immediately notify HQ AFPC/DPSOO to prevent erroneous pay in MilPDS.

The officer will be separated within 18 months of the date first found NQP. The commander should give him or her a reasonable opportunity to overcome the basis for his or her non-qualification before taking separation action.

If the officer found NQP is a first lieutenant (O-2) or above, the file will need to arrive at HQ AFPC/DPSOO before the central promotion selection board convenes. This NQP is valid for only one selection board.

Officer grade determination

Officers requesting retirement in lieu of adverse action are subject to an officer grade determination (OGD). An officer is not automatically entitled to retire in the highest grade held. Instead, an officer is retired in the highest grade served on active duty satisfactorily. OGDs will result in either a decision to retain the officer's current grade as the retired grade or change the retired grade to a grade lower than that currently held.

If an officer submits a request to retire in lieu of an administrative or judicial action which placed a restriction on his retirement the officer shall be considered on notice that he or she is subject to an OGD based on that administrative or judicial action. The officer is required to submit a signed and dated statement acknowledging the administrative or judicial action placing a restriction on his or her retirement, including the date he or she was notified of the administrative or judicial action. It shall also include the officer's acknowledgement of understanding that by submitting the retirement request, he or she is subject to an OGD based on the underlying administrative or judicial action; that he or she has a right to consult counsel and submit written matters; and whether or not he or she has attached written matters relevant to the grade determination.

The officer's commander is not required to separately notify the officer of the OGD unless the commander intends to add or consider evidence that was not already provided to the officer. If any commander finds that additional evidence should be considered in the OGD action, the officer shall be appropriately notified. After the officer submits the acknowledgement, the commander provides a written recommendation for the appropriate retirement grade.

The servicing SJA office will complete a legal review. OGD legal reviews and recommendations may be included within the reviews and recommendations of the officer's request to retire in lieu of the administrative or judicial action.

212. Drug Demand Reduction Program

Part of our job as paralegals is to inspect programs, even those we do not administer them, such as UIFs, control rosters, and reprimands. The same is true for the Drug Demand Reduction (DDR) program.

Overview

AFMAN 44-197, *Military Drug Demand Reduction Program*, prescribes the Air Force Drug Testing program and assigns responsibility for carrying out the program at installation level. The DDR program directly impacts mission readiness. Keep these goals and objectives in mind as you perform inspections on this program:

- Enhance mission readiness and foster a drug free environment through a comprehensive program of education, prevention, deterrence, and community outreach in support of the President's National Drug Control Strategy.
- Maintain the health and wellness of a fit and ready fighting force and a drug-free Air Force community.
- Deter military members, including those members on initial entry to the Air Force after enlistment or appointment, from using illegal drugs and abusing controlled substances.
- Assist commanders in assessing the security, military fitness, readiness, and good order and discipline of their commands.
- Detect and identify those individuals who abuse illegal drugs and other prohibited/controlled substances.
- Provide a basis for action against a service member who tests positive for illicit drug use.
- Ensure urine specimens collected as part of the drug abuse testing program are supported by a legally defensible chain of custody procedure at the collection site, during transport, and at the drug testing laboratory.
- Ensure all Air Force military specimens are tested by a DOD certified drug testing laboratory.
- Ensure Air Force personnel recognize that the wrongful use of anabolic steroids, controlled substances, and other substances such as inhalants, prescription drugs, and over-the-counter medications by military members is a violation of Article 92 of the UCMJ.
- Ensure Air Force members serving in joint service commands, operations, and schools are tested according to the commanding service requirements.
- Foreign/International students will be tested using the same standard as US military members only when authorized by international agreement or other legal authority.

In support of the drug testing program, The Judge Advocate General (TJAG):

- Assists United States Air Force, Surgeon General (AF/SG), Air Force Medical Operations Agency (AFMOA), and MAJCOMs, FOAs, and DRUs in managing legal aspects of the drug testing program.
- Provides advice regarding legal requirements.
- Provides a legal advisor to the Air Force Drug Testing Program.
- Provides a legal advisor to the Air Force Drug Testing Laboratory (AFDTL) and ensures adequate facilities and equipment to support the legal advisor.

At the base level, the SJA is responsible for:

- Advising commanders, the drug demand reduction program manager (DDRPM), drug testing program administrative manager (DTPAM), and other base officials and agencies regarding legal aspects of the drug testing program.
- Advising and coordinating on all requests for urinalysis drug testing other than routine random inspection testing (i.e., unit sweep inspections, consent, probable cause, and commander-directed testing).
- Evaluating all requests by service members for independent retest.
- Requesting in writing to the appropriate drug testing laboratory an extension to retain a positive specimen for administrative or UCMJ actions that will extend beyond one year. The local SJA is responsible for notifying the drug testing laboratory when further retention of the specimen is no longer necessary.
- Providing, in coordination with the DDRPM, training sessions for observers on the collection and observation processes of the drug urinalysis program.
- Periodically monitoring compliance with chain of custody collection procedures at base level under applicable DOD directives (DODD), DODIs, AFIs, and policies.
- Inspecting the program itself to ensure compliance with AFMAN 44-197.

Inspections

For the program inspection, the SJA performs and documents periodic (no less than quarterly) assessments of the drug testing program using DODDs and DODIs, AFIs, and/or appropriate checklists derived from these publications. The SJA ensures all phases of installation level drug testing program (member selection, notification, sample collection, storage, packaging, and shipping) are forensically sound and recommends and ensures implementation of corrective actions to the DDRPM when necessary.

The results are documented within five duty days from the date of completion of the assessment. In turn, copies of the completed assessment are sent to the AFDTL's legal advisor within five duty days of completion of the documentation. Any observations which negatively impact on the integrity of the program must be communicated through appropriate channels to the MAJCOM SJA representative; Office of the Judge Advocate General, Administrative Law Directorate (HQ USAF/JAA); and Air Force Medical Operations Agency/Mental Health Division (AFMOA/SGHW). The local SJA is responsible for performing (no less than annually) an audit of collection procedures at geographically separated units (GSU). On-site review is preferred, but not required. AFRC and Air National Guard (ANG) perform and document periodic assessments no less than annually.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

207. Enlisted demotions

1. What Air Force directive governs administrative demotion of Airmen?
2. When would the SAF order reductions in grade?
3. Who has the authority to demote an Airman?

4. What would the effective date of the retirement be if an Airman elects retirement in lieu of demotion action?
5. What time limit exists for Airmen to apply for retirement in lieu of demotion under AFI 36-2502?
6. What must the immediate commander include in the demotion action case file when an Airman elects to have a personal hearing?
7. What is the effective DOR for an Airman demoted as a result of termination of student status?
8. What circumstances would cause a revocation of demotion order be published?

208. Administrative counselings, admonitions, reprimands, and control rosters

1. Which authority is authorized to give letters of counseling, admonishment, or reprimand?
 - _____ a. A sergeant to a subordinate he or she supervises.
 - _____ b. An instructor to a student.
 - _____ c. A commander to any enlisted member of his or her command.
 - _____ d. A captain who is squadron section commander to a second lieutenant in the unit.
 - _____ e. A military justice noncommissioned officer in charge (NCOIC) to a military justice paralegal for whom the NCOIC is the EPR reporting official.
2. What form is used to document a non-verbal counseling?
3. What four parts must a written letter of counseling, admonishment, or reprimand include?
4. Within how many days does a person who initiates an RIC/LOC, LOA, or LOR have to advise the individual of his or her final decision regarding any comments submitted by the individual?
5. What is the purpose of the control roster?
6. Who has the power to place members of their units on the control roster?

7. What is the maximum period that a person's name can be on a control roster?

209. Unfavorable information files

1. Place an M to indicate mandatory, and an O to indicate optional for each UIF entry situation.
 - ___ a. An Article 15 with a reduction in grade suspended for six months.
 - ___ b. An Article 15 with an unsuspended reduction in grade.
 - ___ c. An Article 15 with a forfeiture of \$150 per month for two months.
 - ___ d. An Article 15 with 25 days correctional custody suspended for three months.
 - ___ e. An Article 15 with 60 days restriction.
 - ___ f. An Article 15 with 25 days correctional custody, reduction to senior airman, and \$200 forfeiture.
 - ___ g. A record of conviction by summary court-martial.
 - ___ h. A written reprimand given to an enlisted member.
2. Upon receipt of a commander's notification of intent to file optional material in a UIF, how long does a member have to respond?
3. What actions may a commander take on optional unfavorable information?
4. Which form is the concise summary of all actions taken on a member's UIF?
5. What is the maximum amount of time that documents may be retained in a member's UIF?

210. Process officer selection record

1. When notified of his or her commander's option to file documents into the member's officer selection record, what does the member have the right to submit?
2. After the MPS career development element suspenses an officer NJP, where is a copy of the review authority's decision forwarded when the final action is complete?

211. Officer promotion propriety actions

1. What will the commander consider when determining if an officer will be recommended not qualified for promotion?
2. If an officer requested to retire in lieu of an administrative or judicial action, what determination must be made?

212. Drug Demand Reduction Program

1. What instruction prescribes the Air Force Drug Testing Program and assigns responsibility for carrying out the program at installation level?
2. At base level, what areas are the SJA responsible for in support of the drug testing program?
3. As a minimum, how often are inspections required for the DDRP?
4. As a minimum, how often should audits be performed on sample collection procedures at GSUs?

Answers to Self-Test Questions**201**

1. Submit his/her separation request using the virtual MPF (vMPF).
2. The MPS personnel relocation element.
3. General officers who command units, commanders of divisions or wings, commanders who exercise special or general court-martial jurisdiction, and others specifically designated by HQ AFMPC/DPSOS.
4. Secretary of the Air Force.

202

1. That an effort has been made to meet all rehabilitation requirements of AFI 36-3208, and the circumstances do not warrant discharge for cause.
2. (1) a.
(2) e.
(3) b, c.
(4) b, c

(5) b, c.

(6) b, d

3. Enlistment of minors (chapter 5, section C - *Defective Enlistments*).

4. Entry-level separation.

203

1. Notification procedure and board hearing or board waiver procedure.

2. Items b, c, e, and g.

3. The commander's recommendation with attachments, notification letter with attachments, addendum to the notification letter (if applicable), the Airman's receipt of notification letter, the Airman's statement with or without attachments, and the medical examination (if available),

4. The characterization of the discharge, whether the member should be offered probation and rehabilitation, and which reason will be cited as the primary reason for discharge if more than one reason is involved (dual processing).

5. Seven duty days.

6. A conditional waiver.

7. The Air Force Probation and Rehabilitation Program.

204

1. Is there a reason for discharge, should the member be discharged, what service characterization the respondent should receive for the current enlistment, and should the respondent be given an opportunity for P&R.

2. Three.

3. b and d.

4. The legal advisor.

5. The legal advisor or, in his or her absence, the president and the recorder.

205

1. At the respondent's own expense.

2. Preponderance of the evidence.

206

1. Regular probationary commissioned officers with less than five years of total active federal commissioned service in the Regular Air Force.

2. AFI 36-3206.

3. AFI 36-3207.

4. Substandard performance of duty; misconduct or moral or professional dereliction; fear of flying; the interests of national security; an officer who is sentenced by court-martial to a period of confinement for more than six months and not sentenced to a dismissal; HIV-related reasons; or unprofessional relationship by person serving in a position of trust.

5. AFI 36-3207.

6. To give respondents who face discharge proceedings a fair and impartial hearing, make case findings, and recommend whether the Air Force should retain or discharge officers.

7. Honorable, general (under honorable conditions), or UOTHC.

8. Within five calendar days after receiving it.

207

1. AFI 36-2502.

2. To significantly reduce the Air Force strength and/or grade levels.

3. The group commander, or equivalent level commander, may demote MSGts and below. MAJCOM, FOA, or DRU commanders may demote chief master and senior master sergeants.

4. Not later than the first day of the fourth month after the member is initially notified of the demotion action.
5. Application for retirement in lieu of demotion must be made no later than three working days after the member acknowledges the initial demotion notification memorandum.
6. A written summary of the personal hearing.
7. The date on which the Airman first performed service in the reduced grade (original date of rank).
8. When the demotion authority determines the order was published without basis of authority.

208

1. a through e.
2. AF Form 174.
3.
 - (1) Subject of the letter should identify whether it is a counseling, admonition, or reprimand.
 - (2) Body of the letter should reflect what the member did or did not do.
 - (3) Letter should include expected improvement and a warning that other severe action could result if the behavior is repeated.
 - (4) The final paragraph should include a Privacy Act statement and require written acknowledgment from the member.
4. Three duty days (30 calendar days for non-extended active duty reservists).
5. The control roster was created to reflect the names of Airmen, officer and enlisted; whose substandard conduct or duty performances require special observation and gives the member a chance to improve his or her conduct.
6. Commanders at all levels.
7. 6 months (12 months for reserve personnel with permission from HQ AFRC or HQ ARPC).

209

1.
 - a. M.
 - b. O.
 - c. M.
 - d. M.
 - e. M.
 - f. O.
 - g. M.
 - h. O.
2. Three duty days (30 calendar days from the date of receipt of the certified letter for non-extended active duty reservists).
3. File it in a UIF, destroy it, return it to the originator, or place the information in the member's unit assigned PIF located in the office of the commander's support staff.
4. AF Form 1137.
5. Anywhere from six months to four years, depending on the type of action and whether the member is an officer or enlisted.

210

1. The individual acknowledges receipt of the notification and right to submit a statement, if any, of rebuttal, mitigation, or circumstances for consideration on the AF Form 3070.
2. Officer Command Selection Record Group custodian.

211

1. If the officer has not met the requirements for exemplary conduct or is not mentally, physically, morally, or professionally qualified to perform the duties of the next higher grade.
2. Officer grade determination.

212

1. AFMAN 44-197, *Military Drug Demand Reduction Program*.
2. Advising commanders, the DDRPM, DTPAM, and other base officials and agencies regarding legal aspects of the drug testing program; advising and coordinating on all requests for urinalysis drug testing other than routine random inspection testing (i.e., unit sweep inspections, consent, probable cause, and commander-directed testing); evaluating all requests by service members for independent retest; requesting in writing to the appropriate drug testing laboratory an extension to retain a positive specimen for administrative or UCMJ actions that will extend beyond one year. The local SJA is responsible for notifying the drug testing laboratory when further retention of the specimen is no longer necessary; providing, in coordination with the DDRPM, training sessions for observers on the collection and observation processes of the drug urinalysis program; periodically monitoring compliance with chain of custody collection procedures at base level under applicable DODDs, DODIs, AFIs, and policies; and inspecting the program itself to ensure compliance with AFMAN 44-197.
3. No less than quarterly.
4. No less than annually.

Student Notes

Unit 2. Legal Assistance and Preventive Law Programs

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TWO MAJOR WORKLOAD AREAS in your office are the legal assistance program and the preventive law program. These programs give the Air Force the opportunity to help others solve their problems. Though you will not be directly solving problems, you will be screening clients for eligibility and possibly be involved in some research and other activities that are part of both programs. At times, you will refer clients to other agencies, since there are limitations on the services provided under the legal assistance program. In order to perform these functions, you must fully understand all aspects of these programs

2–1. Legal Assistance Program

This section covers the responsibilities of key individuals in the legal assistance program, defines who is eligible for legal assistance, and identifies problems that fall within the scope of the legal assistance program. The first lesson covers responsibilities and some administrative matters. The second lesson contains legal assistance services available under the program and includes client eligibility. The section continues with the lesson on legal files and documents, notaries and wills, and concludes with the tax assistance program.

213. Responsibilities and administrative matters

The purpose of the legal assistance program is for legal offices to provide legal assistance in connection with personal civil legal matters to support and sustain command effectiveness and readiness. Title 10 United States Code (U.S.C.) § 1044, *Legal Assistance*, gives us the ability to offer legal assistance and legal services to eligible categories of personnel based upon the availability of legal staff resources and expertise. You will find this area of the law both challenging and rewarding; as you will be directly involved with clients coming into your office for a variety of legal assistance needs.

Responsibilities

The Judge Advocate General receives Air Force-wide responsibility for the legal assistance program from Title 10, U.S.C. In fulfilling this responsibility, the TJAG:

- Establishes and manages the Air Force Legal Assistance and preventive law programs.
- Communicates with the American Bar Association (ABA) and other associations deemed necessary to further the Legal Assistance and preventive law programs.
- Delegates authority to operate these programs to the AF Legal Operations Agency Community Legal Services Division (AFLOA/CLSL).

Legal assistance mission

The AFLOA/CLSL is responsible for the following:

- Monitoring the Air Force Legal Assistance and preventive law programs.

- Carrying out the overall administration of the Air Force Legal Assistance and preventive law programs.
- Giving advice on legal assistance, notary, and preventive law matters that affect Air Force personnel worldwide.
- Monitoring the Web-based Legal Information Online System (WebLIONS), the Wills program, the Air Force tax program, and the US Air Force Legal Assistance Website (LAWS).

Major command, field operating agency, and direct reporting unit staff judge advocates

These units are responsible for:

- Supervising functional program staffs within their commands, ensuring they follow AFI 51–304, *Legal Assistance, Notary, Preventive Law, and Tax Programs*.
- Adding, as necessary, requirements for mobilization- and deployment-related legal assistance.
- Limiting, as necessary, non-mobilization- and non-deployment-related legal assistance.

Numbered Air Force staff judge advocates

To ensure mission readiness, NAF SJAs may add requirements for mobilization- and deployment-related legal assistance.

Wing/base staff judge advocates

Base SJAs are responsible for:

- Managing the personnel and operation of legal assistance at their offices consistent with AFI 51–304
- Briefing the office staff, including Reservists, on the purposes of legal assistance, the base program, and AFI 51–304 as frequently as necessary, but at least annually.
- Communicating with local bar organizations, legal aid offices, and appropriate federal and state agencies.
- Publicizing the office's limits on non-mobilization- and deployment-related legal assistance.
- Managing legal services volunteers.

Staff judge advocate or designee

An SJA or the designated chief of legal assistance is responsible for:

- Supervises, directs, and controls personnel providing legal assistance as well as the operation of the legal assistance program, subject to the command and staff supervision described above in this lesson.
- Determines the nature and extent of legal services available based on workload and expertise in specialized fields of law.
- Ensures each incoming legal assistance officer is briefed thoroughly on the office legal assistance program before seeing clients. At a minimum, this briefing should include principal types of problems encountered, any peculiarities in the laws of that jurisdiction (this is particularly important in overseas locations), the reference material available, the lawyer referral system, and other agencies in the local area from which assistance may be obtained.
- Provides a positive preventive law program designed to educate personnel in problem avoidance per AFI 51–304.
- Ensures that only judge advocates, Air Force civilian attorneys, and authorized volunteers practice law under the legal assistance program as authorized by 10 U.S.C. § 1044 and AFI 51-304. The SJA or designee may use the services of TJAGCR officers to the fullest extent

possible. TJAGCR services are not limited to providing legal assistance, but may include conducting seminars for legal assistance officers in their areas of expertise and maintaining contact with the local legal community.

- Assures there is scrupulous adherence to the code of professional responsibility.
- Maintains liaison with local bar organization and legal aid societies through which the services of civilian lawyers may be made available to eligible clients and ensure such services are used to the fullest extent possible.
- Conducts an ongoing program of exchanging legal assistance information within the office. This program should ensure the dissemination of developments and changes in the law. The program may be conducted by means of staff meetings, intraoffice bulletins, office manuals, or any other method, to ensure a continuous and current exchange of legal information. This exchange of information should also be extended to other judge advocate offices through channels provided by the Office of The Judge Advocate General. This person also arranges for publication of media sources, and for permanent posting on unit bulletin boards, information of the location and office hours providing assistance for the installation or command, and publicizes the office's limits on non-mission-related legal assistance. Legal assistance is normally provided during duty hours, but if local conditions make it necessary to curtail the office hours, a legal assistance officer should still be made available.
- Ensures the office is using the LAWS in accordance with AFI 51-304 to increase efficiency for its customers, and is encouraging as much feedback as possible.

Sexual assault prevention and response training requirements

The DOD has required all legal assistance personnel to receive annual training. Legal assistance personnel will be trained in order to have the capability to provide legal assistance to sexual assault victims including:

- The role of the Victim and Witness Assistance Program (VWAP) and what privileges do or do not exist between the victim and the advocate or liaison;
- The nature of the communication made to the VWAP as opposed to those made to the legal assistance attorney;
- The differences between the two types of reporting in sexual assault cases;
- The military justice system, including the roles and responsibilities of the trial counsel, the defense counsel, and investigators;
- The services available from appropriate agencies or offices for emotional and mental health counseling and other medical services;
- The availability of protections offered by military and civilian restraining orders;
- Eligibility for and benefits potentially available as part of transitional compensation benefits and other State and Federal victims' compensation programs; and
- Traditional forms of legal assistance.

Administrative matters

Now let's take a look at the numerous administrative matters that require your attention.

Front desk duties

The front desk of your office is where all the action takes place. When you sit there, you are the first direct contact for any visitors or clients entering your office. The way you treat them creates an impression; this is your opportunity to make a favorable one for both your office and yourself. When you work the front desk, you deal with people—clients, claimants, or visitors—in person and by phone. One thing you must understand from the very beginning is that working the front desk of your

office is not an additional duty, it is part of your job as a paralegal, and should be approached as such. In this position, you will be making legal assistance appointments, drafting powers of attorney and wills, notarizing documents, inputting information into WebLIONS, and speaking with clients who need advice and assistance. Since you will be in contact with many people seeking advice, it is imperative you remember your ethical responsibilities and not cross the boundaries into giving someone legal advice. If you are unsure of anything, seek advice from an attorney.

Receiving visitors

The number of visitors who come to your office depends largely on how many appointments are scheduled and the demand for legal assistance. Never ignore visitors. Treat all visitors with respect, courtesy, and dignity. If you are doing work that you cannot leave immediately, ask the visitors to be seated and assist them as soon as possible. Do not judge people by their outward appearance; first appearances are often deceiving, particularly when the visitor is in civilian clothes.

As a military receptionist, you have a certain advantage over your civilian counterpart. Most of the visitors to your office will be military personnel. You should be able to easily determine a visitor's rank and read his or her name tag. From that information, you'll be prepared to practice a very important principle: address all visitors by rank and last name. The same applies to retired military personnel. For nonmilitary visitors, the terms "sir" and "ma'am" are always acceptable, as are "Mr.," "Miss," "Mrs.," and "Ms.," as appropriate.

Appointments

Many legal offices use an appointment system to handle legal assistance clients. The amount of time available for these appointments varies from office to office; however, appointments are normally around 30 minutes. Your supervisor or the legal assistance officer can advise you on the policies and times set for your office.

Scheduling

When scheduling an appointment for a client to see a legal assistance officer, be definite about the time, date, and place. Always use an appointment log and record pertinent client information. Most logs have space for the time, client's rank, name, organization, and phone number, and general nature of the problem to be discussed. There is no set format for such an appointment log, so check with your supervisor to find out office policies.

Canceling

Unforeseen circumstances or emergencies could prevent the legal assistance officer from seeing a client for a scheduled appointment. When this happens, you have to notify the client the appointment has to be canceled; be prepared to reschedule it. It's a good idea to check the appointment book for openings before calling the client. Having some readily available alternative appointments will make this easier for you, the client, and the legal assistance officer. You will find this aspect of your job will require tact and diplomacy. Both your supervisor and the client will certainly appreciate accomplishing a cancellation and/or rescheduling with minimum disruption for both the client and attorney.

Telephone

Proper telephone etiquette is as equally important as your other front desk duties. Be considerate of other people as you handle incoming and outgoing telephone calls. Always have items ready for recording messages: a pencil and some type of notebook or notepad to take down pertinent information. Be certain all details, such as dates, times, places, names, and numbers are accurate. Taking a message is very important, but delivering the message is even more important! Be sure you deliver all messages promptly because time can be a critical factor.

Most calls you will receive will be requests for some information or requests to speak with an attorney. Remember, all legal assistance must be provided under the supervision of an attorney. Take

the time to talk to your supervisor and learn the difference between legal advice and giving information. For example, advising them on which type of power of attorney (POA) to have drafted versus dates and times of legal assistance.

As previously mentioned, most legal assistance requests are handled by appointment only. More often than not, the problem requires research to get the facts necessary to give the client proper advice. If the caller insists on speaking with an attorney, explain an appointment is needed in order to verify the caller's identity and eligibility, a task that cannot be completed by phone.

You should have routine information readily available to give to callers. You must confirm the information you give is true and correct. Giving the wrong information could prove very embarrassing to you and your office. To do your job at the front desk, you must understand who is eligible to receive legal assistance, what services are available to personnel, and whether the problems presented are covered under the legal assistance program.

214. Legal assistance services

In this lesson, we cover the types of services available under the legal assistance program. However, before you can make any services available to people entering your office, you must determine if they are eligible. Therefore, we will start with eligibility considerations. Following this, we cover the types of legal assistance services available, and conclude with referrals for assistance not available under the program.

Eligibility

Personnel entering your office for legal assistance are referred to as visitors or clients. As a paralegal, one of your many duties is to determine clients' eligibility for legal assistance. All prospective clients are screened to determine eligibility. The first step is to check the client's military identification. Next, enter the client's information into WebLIONS (fig 2-1); be sure to include the general nature of the problem. Determine if the problem falls within the scope of the legal assistance program. (This is covered in more detail a little later.) If you suspect the problem does not fall within the limits of the program, ask your law office superintendent/NCOIC or one of the attorneys in the office. If the client is in need of a power of attorney, you can assist them. If they are in need of some other type of legal assistance, you assign them to an attorney and enter them into the waiting queue in WebLIONS.

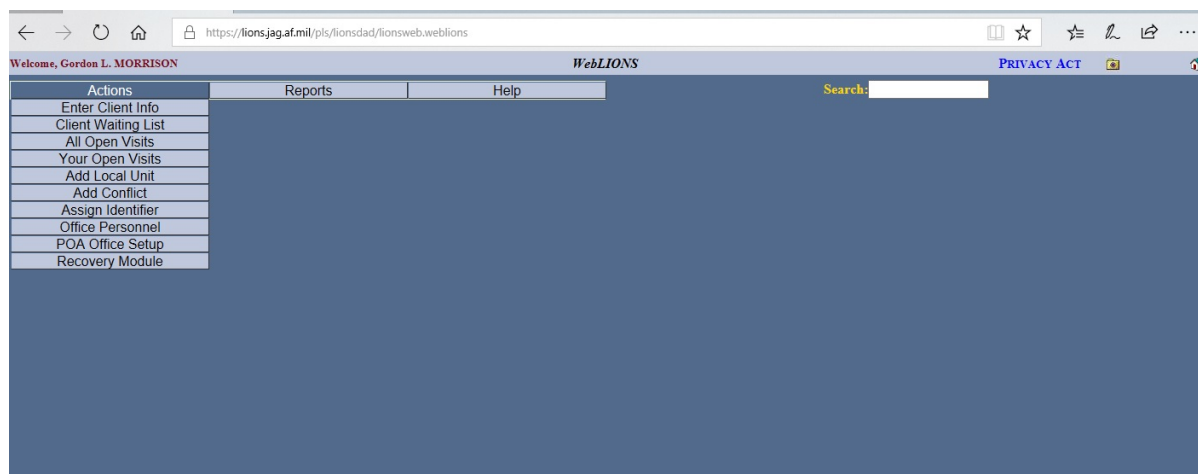


Figure 2-1. Screen capture of WebLIONS.

There are numerous categories of individuals who are eligible to receive legal assistance benefits from your office. This course will cover just a few of the beneficiaries you will most likely be in contact with on a daily basis. For an all-inclusive list of who is eligible, seek guidance from AFI 51-304. Among all eligible beneficiaries, the highest priority is given to Air Force personnel who need mobilization-or deployment-related legal assistance that facilitates command readiness. This is

especially important when the deployment is short notice. Outside of mobilization- or deployment-related legal assistance, personnel are eligible for legal assistance based on the availability of legal staff resources and expertise. However, the SJAs should make every effort to satisfy the legal assistance needs of the base. Below are a few of the beneficiaries you will have frequent contact with.

- Members of the armed forces who are on active duty, including Reservists, National Guard members, and contract Reserve Officers' Training Corps (ROTC) cadets on federal active duty under Title 10, U.S.C. and their dependents who are entitled to an identification card.
- Members entitled to retired or retainer or equivalent pay and former members of Reserve components entitled to retired pay under 10 U.S.C. § 12731 and their dependents who are entitled to an identification card. Depending on which base you are stationed at; "retirees" can make up a significant amount of your workload.
- Members of Reserve components not covered above, following release from active duty under a call or order to active duty for more than 30 days issued under mobilization authority (as determined by the Secretary of Defense [SecDef]) and their dependents who are entitled to an identification card, for twice the period of their mobilization.
- Civilian employees deploying to or in a theater of operations are provided assistance in preparing and executing wills and any necessary powers of attorney, in accordance with DODI 1400.32, *DOD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures*.
- Civilian contractor personnel who are deploying to or in a theater of operations, and produce documentation of the contract that requires the government to give the contractor employees legal assistance (provided for wills and deployment related powers of attorney).
- Civilian employees of the DOD and the military departments outside the US and its territories and their dependents residing with them.

When it benefits the command, SJAs may authorize legal assistance to someone who is not an eligible beneficiary. These situations must involve people who have a present, past, or future military obligation relevant to the legal problem. Examples are Reservists or National Guard members who have demobilized; ROTC cadets who must meet dependent care responsibilities; and next-of-kin of someone killed on active duty.

Additionally, legal offices may provide legal assistance, including tax assistance, on an expedited, prioritized basis to the executor, personal representative, administrator, or legally recognized estate representative for matters relating to the settlement of estates of service members who die on active duty or as a result of an injury or disability resulting in retirement from active duty. Legal assistance may also be provided to the primary next-of-kin to the same degree.

Scope

An attorney-client relationship is established when an Air Force attorney provides legal advice on personal, civil legal matters to eligible personnel. However, for any other legal concern, the Air Force is the primary client. The scope of legal assistance is also limited by the resources and expertise of the legal office. For these reasons, Air Force attorneys acting in an official capacity may *not* enter into an attorney-client relationship in these areas:

- Official matters in which the Air Force has an interest or is involved in the final resolution.
- Criminal issues under the UCMJ, or any local, state, or federal criminal law.
- Issues on the standards of ethical conduct.
- Issues relating to Law of War (LoW).
- Issues involving personal commercial businesses (unless such advice is related to the Servicemembers Civil Relief Act [SCRA]).

- Legal issues or concerns raised on behalf of third parties, even if the third party is eligible for legal assistance.
- Drafting or reviewing real estate sale or closing documents, separation agreements or divorce decrees, and inter vivos (living) trusts.

NOTE: This does not prevent a general review to identify potential problems. If the SJA determines an attorney has the expertise to draft or review and edit these documents, then the SJA may authorize the attorney to do so.

- Private organizations (e.g., spouses' clubs and squadron booster clubs) that have been chartered to function on Air Force installations. However, under the provisions of the civil law program, Air Force attorneys may provide legal guidance and advice through the base private organizations monitor to ensure private organizations are properly chartered and comply with pertinent statutes and regulations.
- Represent clients in a court or administrative proceeding.

Services

Legal assistance officers may consult, advise, and assist eligible clients on personal, civil legal matters subject to the availability of legal staff resources and expertise. If the SJA determines the workload or a lack of expertise in a specialized area of the law could impair the quality of legal service, clients are referred to other legal agencies. Services offered by legal offices vary from base to base. It is important to understand, the legal assistance program does *not* cover criminal, official, and military justice problems. Referrals for these unique areas will be covered later in this section.

The following is a list of civil legal matters you will commonly see in your legal office. Keep in mind, this is not an all-inclusive list, as there are many other areas clients may receive legal assistance depending upon your legal office and the expertise of the attorneys assigned.

- Basic wills (to include simple trusts).
- Advance medical directives (living wills and medical powers of attorney).
- Powers of attorney.
- Notary services.
- Dependent care issues.
- Adoption.
- Financial responsibility.
- Domestic relations.
- Servicemembers Civil Relief Act.
- Veterans' reemployment rights.
- Casualty affairs.
- Landlord-tenant.
- Consumer affairs.
- Taxes.

Legal offices may provide other types of services in addition to those listed above. Because services vary from base to base due to mission and expertise of the attorneys assigned, it is imperative you know the types of legal assistance provided at your base.

Referrals

Referrals are made to the source best able to assist the client in resolving his or her particular problem or concern at the earliest time possible. The goal is to aid our clients in consulting with an attorney competent to provide the required assistance. Referrals are based on the knowledge of or experience

with a particular military attorney, military legal assistance office, civilian bar referral service, or, in the case where referral service is lacking, the local legal community. Your options may include another civilian or military attorney (active or reserve) on the legal office staff, another military legal office, regardless of service, and the civilian bar. You must make clear to the client, the referral does not constitute a federal or Air Force endorsement of any of the individual attorneys participating in these services.

At times, you will need to refer eligible clients to other sources because the services they require are beyond the scope of the legal assistance program or beyond the expertise of the initial attorney consulted. Referrals, even when a confidential relationship has not been formed, are an important aspect of the legal assistance program. As part of the referral process, legal assistance personnel aid clients in locating outside assistance by referring them to the civilian bar referral service. This assistance is of great service to both clients and the person or office to which the clients are referred.

The following table covers guidance in determining referrals for problems beyond the scope of the legal assistance program:

Referrals for Problems Beyond the Scope of the Legal Assistance Program	
When a Client Has	Refer the
Retained a civilian attorney	Matter to the civilian attorney immediately. NOTE: The legal assistance officer is ethically prohibited from advising the client in the matter without the consent of the civilian attorney.
Not retained a civilian attorney	Client to bar referral services operated by the ABA, such as the Military Pro-Bono Project, or state or local bar associations.

There are situations when neither of the preceding guidelines is applicable. The most common is when there is no organized bar or lawyer referral service in the area. In these situations, the following guidance applies:

Additional Guidance for Referrals	
Situation	What Action to Take
Absence of organized bar or lawyer referral service	Refer the client to a local listing of attorneys who have expressed interest in serving military clients. NOTE: Only in the most unusual cases, and then only with the advance approval or permission of the SJA, may a legal assistance office refer a client to a named civilian attorney.
Location in foreign areas with a foreign legal issue	With the consent of consular officials and after consultation with the national bar, if appropriate, prepare a list of attorneys in accordance with (IAW) the applicable status of forces agreements or implementing instruction. Refer persons who may face charges before a foreign court to the military legal advisor, as outlined in AFI 51-402, <i>International Law</i> . NOTE: Clients overseas with legal issues back in the US may be referred to US programs to include the Military Pro-Bono Project.

The legal office is a great source of information and no matter what the issue; many individuals believe the legal office is where you go for assistance. Based on your own experiences in the legal office, you know there are numerous areas we cannot assist clients. You will most certainly encounter individuals coming to your office seeking advice for criminal charges, Inspector General (IG) complaints, and problems with their pay; just to name a few. You must know whether or not the

individuals problems are within the scope of legal assistance and, if not, where to refer them to for assistance.

Disciplinary actions

When an individual comes into your office seeking advice concerning civilian or military criminal charges against themselves, you must advise the client the case is beyond the scope of the legal assistance program, legal assistance personnel cannot accept the client's confidences, and you must refer the client to other counsel. Normally, there is an ADC on your base; however, if there is not, you need to have the telephone number of the ADC responsible for your base readily available. Military members facing civilian criminal matters, adverse action under the UCMJ, adverse administrative action, subject to court-martial charges, or other disciplinary action must be referred to the appropriate military defense counsel.

In these situations, it is important to understand when a client provides information to a legal assistance attorney in an attorney-client relationship; the legal assistance attorney may not disclose information concerning past criminal acts or other acts of misconduct to investigators or other attorneys in the legal office who may work on a case involving this person. As you are working with legal assistance clients with your attorney, this also applies to you. Because you are working so closely with other attorneys and paralegals in your office, it is imperative you do not release any information. If these members require legal assistance, the defense counsel will coordinate any need with the appropriate SJA, even if the matter would ordinarily fall within the scope of the legal assistance program.

Civilian bar

At times referral to the local civilian bar may be appropriate. For criminal matters, civilians are referred to the local civilian criminal defense bar. As stated in the above table, any individual who has already retained a civilian attorney must be referred to that attorney. Legal assistance attorneys may not serve as a source of a "second opinion" for a client already represented by an attorney. However, when a civilian attorney communicates a need for support from the legal assistance attorney, our attorneys may provide support to the client for matters involving identification of military-unique considerations or the interpretation and discussion of military-specific statutes, regulations, and instructions. Keep in mind; military members represented by a civilian attorney for criminal matters will gain this additional support through the local ADC, not the legal assistance attorney, unless coordinated as covered in the preceding paragraph.

Other agencies

Refer clients with problems of an official nature and clients whose problems fall within the jurisdiction of another staff agency to the appropriate agency. While legal assistance personnel may not receive confidences in such cases, the preventive law approach to legal assistance requires legal assistance personnel assist other staff agencies, as requested, in the resolution of the problem.

Experience indicates frequent referrals are made to:

- Commanders.
- First sergeants.
- MPS for problems regarding military records.
- Financial services office for problems regarding military pay.
- IG for complaints regarding chain of command.
- Equal opportunity office for problems related to the workplace or coworkers.

215. Legal files and the Web-based Legal Information Online System

Within any given week, you will come into contact with hundreds of clients while working at the front desk of your legal office. Those clients will come to their legal assistance appointments with

various documents and, along the same lines; we will produce numerous documents for our clients. What do we do with all these documents? Do we give everything back to the client, shred them, or start a file on each client and file them away? This lesson will answer those questions. In addition, you may wonder how you keep track of all those clients coming into your office. The Air Force has implemented an online system, known as WebLIONS, that not only keeps track of our clients, but also produces many of the documents we require during a legal assistance appointment. In addition, WebLIONS tracks workload and builds reports.

Confidentiality

In volume one, you learned a little bit about confidentiality in the attorney-client privilege lesson. Confidentiality is covered a little further here as it applies to legal assistance clients. Confidentiality of legal assistance matters cannot be over emphasized. Confidentiality means privileged matters are not disclosed to anyone by those rendering the service, except upon the specific permission of the client concerned. The clients visiting your office are seeking remedies for problems that are, to them, their most pressing concerns at the moment. They must feel they can speak freely and confidentially without fear of their problem or problems being the topic of on-base discussions. Confidentiality allows clients to comfortably discuss their problem, and to feel free to answer any question asked by the attorney. As a paralegal working with an attorney on a client's problem, you are an extension of the attorney-client relationship. You are bound to keep all privileged information confidential.

Since the services provided under the legal assistance program are of a legal nature, carefully guard the attorney-client relationship. All such services, and the files pertaining to the client's legal assistance appointments, are treated and considered confidential and privileged in the legal rather than the security sense. Again, it is your duty to protect this attorney-client relationship when assisting the attorney on a particular legal assistance case. Superior military authority may not lawfully order the disclosure of privileged communications under the legal assistance program. Everyone in the legal office should be instructed carefully on this subject, as well as the possible consequences for the breach of this confidentiality. Strict observance of this rule is essential to the proper functioning of the legal assistance program.

To build confidence in the integrity of the legal services operation, anyone authorized legal assistance must be able to disclose all the facts about the case without the client fearing what is said in confidence will be disclosed or used against him or her. To assist in this endeavor, offices must be designed for maximum privacy of the client. Judge advocates performing legal assistance should have private offices. This requirement should be considered in designing new offices and in altering existing ones.

One exception to the confidentiality and privileged status of communications is a client's statement of intent to commit a crime. AFI 51-110, *Professional Responsibility Program*, Attachment 2, *Air Force Rules of Professional Conduct*, rule 1.6, *Confidentiality of Information*, provides an exception from confidentiality where necessary to prevent clients from committing a criminal act the lawyer believes is likely to result in imminent death or substantial bodily harm, or substantial impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapons system. AFI 51-110 provides complete guidance on confidentiality and when exceptions apply.

Legal assistance files

Each office must record legal assistance visits and workload in the WebLIONS. This system virtually eliminated any criteria for keeping hard-copy records of clients. Do not keep formal files on legal assistance clients. All original documents are to be returned to clients as soon as possible. Clients provided with original documents and copies (as necessary) are instructed to maintain a file and return with the file to the legal assistance office if further advice is necessary.

Inputting client data

WebLIONS is a program used to track legal services provided to clients. Items maintained by WebLIONS include the name, social security number (SSN), military status, branch of service, grade (or sponsor grade), mailing address, legal residence, phone number, email address, sponsor information (as applicable) and the organization of each person given legal assistance; the date; the name of legal assistance officer or paralegal consulted; the nature of the problem; action taken by the attorney; and, if appropriate, the name of the individual or agency to which the matter was referred. WebLIONS also has the capability to generate general and special powers of attorney and eliminates the requirement for base legal offices and higher headquarters to prepare and compile the annual report of legal assistance. Statistical data of each office is available to that office and its higher headquarters through WebLIONS on demand. Offices are not allowed to employ alternative automated data management and tracking systems for legal assistance.

When a client enters your office, one of the first things you do is ask for his or her military identification card to ensure he or she is eligible for legal assistance. Once you have verified the client is eligible, enter the client's information into WebLIONS. A link to WebLIONS is on the TJAGC home page under "REPORTS." If the client has been seen in your office before, much of the personal information will already be entered; however, you must verify the information is still accurate and make changes as necessary. If the client is a dependent, remember to include the sponsor's information. Required fields are marked with a red diamond symbol.

After you have entered or verified all the client's information, select either the LEGAL ASSISTANCE or DOCUMENTS AND NOTARIES button. If the client needs legal assistance, then the LEGAL ASSISTANCE button will take you to a screen that will allow you to select the subject the client needs to discuss with an attorney. Select the one best suited to the client's issue, and then assign the client to an attorney. Once you choose an attorney from the office, a window will open telling you if there are conflicts with that particular attorney. Close the conflict window, and click either SAVE FOR LEGAL ASSISTANCE ONLY or SAVE FOR LEGAL ASSIST & NOTES/DOCS. When the attorney takes the client into his or her office, the attorney will clear the appointment from WebLIONS.

In the event of interruption to WebLIONS access or service, offices should use AF Form 1175, Legal Assistance Record. Once service returns, enter the information recorded on the AF Form 1175 into WebLIONS.

Conflicts of interest

When a client requests legal assistance, you must verify there is no conflict of interest. An example of a conflict of interest would be a wife seeking legal advice regarding domestic relations. You must ensure she is not scheduled to meet with an attorney that has already seen her husband regarding the same matter. WebLIONS automatically checks for conflicts of interest. Be sure you pay strict attention to this window to save the attorney the embarrassment of having to reassign the client to a different attorney or worse, providing assistance to an individual he or she should not have.

Powers of attorney

A POA authorizes an individual (the agent or grantee) to act on behalf of the person executing the POA (grantor). There are two types of POAs—general and special. There are several sources for generating a POA: WebLIONS offers a drop-down list; the LAWS (covered later in the preventive law section); or you may use available Air Force forms. WebLIONS or the LAWS are the preferred methods and should be used unless unavailable. A general POA is executed on AF Form 165, General Power of Attorney, and allows the grantor to give a broad range of powers to a trusted person (grantee) to act on their behalf. A special POA is executed on AF Form 831, Special Power of Attorney, and grants limited authority to a trusted person to perform specific acts on the grantor's behalf.

A general POA is seldom appropriate outside spouses and/or parents and should only be executed after consultation with an attorney. In fact, it may be less effective than a special POA. The general POA allows the grantee to act on the grantor's behalf in areas such as banking transactions, business transactions, selling of real estate and personal property, and taxes. Because the general POA allows for such a wide range of acts, many businesses will not accept them, to include many military offices such as Finance and Personnel. A special POA is more likely to be accepted because the document contains a specific act or acts to be done. For certain negotiations, specific wording is a legal requirement. This is especially true in real estate transactions where the legal description of the property is needed. Since the general POA is vague in its wording as to any and all acts, you can see why a special POA would be more readily accepted.

POAs are extremely important documents that can be hazardous in the wrong hands. A POA is automatically revoked ONLY when any of the following occurs:

- Upon death of grantor.
- On the date specified in the document.
- When the original and all copies are destroyed.
- When the grantor becomes incapacitated, unless the POA is durable (most are).

Otherwise, a client must take specific steps to revoke a POA. (This is covered later.) Prior to its preparation, an attorney or a designated member of the office staff must advise a client of the legal consequences of such a document. The recommended procedure is to prepare a special POA for a specific act or acts rather than a general POA. A word to the wise: if the SJA authorizes you to explain POAs to clients, make sure you have an attorney available for assistance. Many clients will insist on a general POA, but you need to ensure they understand the full impact by having an attorney explain the consequences to them.

To create these documents in WebLIONS, you can produce them at the same time you enter the client's personal information. If the client needs documents or notaries, you select the DOCUMENTS/NOTARIES button from the page you entered and verified the client's information. This will take you to a screen that allows you to either place the client on the waiting list, or to complete AF Form 1175 inputs. For documents and notaries, if it is a POA, select the type of POA from the drop-down list. This opens a window for you to fill out the information to produce a POA. Once all the appropriate information is entered, select the PRODUCE POA button. A new window will open; open the document. Double check the information with the client to ensure it is correct, print the document, and then close the document. Once that is complete, select the CLOSE button. This will close the POA window. Now you are back at the "Produce Documents" screen.

This is when you will select the COMPLETE AF1175 INPUTS button. In this window, you enter the number of each type of document you produced. For our example, if you produced one special POA, you would put "1" in the box next to "Power of Attorney—Special." Select the person providing the document (you) from the drop-down box. The date the documents were produced should already be filled out. If the client had a will or any other documents produced, you enter that as well, in the next block for notaries provided. Enter the total number of notaries provided, and who notarized the document from the drop-down box in that section. The next section has special interest identifiers, be sure to check all that apply, then select the SUBMIT button. After you have selected SUBMIT, WebLIONS will take you back to the beginning screen.

If the client is on the waiting list, you can select the ACTIONS button on the main screen, and select "Client Waiting List" from the options. Find the client on the list, and select their name. This will take you to the power of attorney screen described above and you continue the same process from there. After the documents are produced, you clear the client from the waiting list by completing the "AF1175 Inputs" screen. Even if the documents are created using the LAWS, the client must still be input into WebLIONS, and you must accurately reflect all of the documents created for the client on the AF1175.

Revocations

A Notice of Revocation of Power of Attorney is a legal document that provides, in writing, a POA that was previously made, but is now revoked. It states the grantor is withdrawing the powers granted to the agent or attorney-in-fact in the POA.

By putting a revocation in writing, the grantor not only has a document that shows the POA is revoked, but it also protects the grantor and the grantor's interests. As stated earlier, a POA is a very powerful document that can have a detrimental impact if used improperly.

If a client needs to revoke a POA prior to the termination date, he/she must execute a revocation of the POA, deliver notice of the revocation to the agent and to all third parties that have relied or may rely on the POA. You must inform the client that he or she is responsible to any third party who did not receive the notice of revocation. To the greatest extent possible, it is important for the client to recover the original POA from or her agent and destroy the original and all copies. A notice of revocation varies from base to base; however, they all include the same basic information. Your legal assistance attorney will be able to provide you with the type preferred at your legal office.

Reports

There are several reports in WebLIONS you will use as a paralegal and as a supervisor. We will cover the various reports and how to produce them.

Workload report

A workload report lists each member of your office, how many visitors they have seen for a given time period, the average time clients had to wait to be seen, and the documents provided by the attorney or paralegal. This report is extremely useful in crafting bullets for performance reports, both enlisted and officer. To produce this report, start at the WebLIONS home page, and select the REPORTS button. From the drop-down list, select the "Workload Report" option. This opens a window for you to enter the "TO" and "FROM" dates from which you want the report. These dates are commonly performance reporting periods. After you enter the dates, select the RUN REPORT button, and your report will display on the screen.

Notary report

This report lists each member of your office and the number of notaries and will executions they have performed in the report period. To produce this report, select "Notary Report" from the drop-down list in the reports menu. Enter the dates you want for the report, select the RUN REPORT button and your report will display on the screen.

Annual report

The annual report is a very in-depth report listing all legal assistance activities, grades and services of clients served, whether the client was a service member or family member, and services broken down by subject. It is very detailed and used to compile the annual report submitted to congress each year. This report is also useful in writing Outstanding Unit Awards. To produce this report, select "Annual Report" from the reports drop-down menu. At base level, you will only be authorized to enter the dates you want the report to run for your base and AF-wide numbers; as you do not have access to run this report for other individual bases or other higher levels of command. NAF, MAJCOM and higher offices will be able to view subordinate offices. When you have entered all the information you need, select the RUN A REPORT button and the report will display on the screen.

Individual annual report

As the name of this report implies, it is a report on an individual person. Like the annual report, it is broken down into subject, documents provided, and rank of each client; to include retirees and civilians. This report is also very useful for performance reports because it tells you what the individual did on his or her own, versus what the team accomplished as a whole. To produce this

report, select “Individual Annual Report” from the reports drop-down menu. Enter the desired dates and select the RUN A REPORT button.

Client savings report

This report lists, by category, how much money clients were saved through the legal assistance program. It also provides a cost breakdown per service to show how much it would have cost clients to have their matters seen by a civilian attorney. To produce this report, select “Client Savings” from the “Reports” drop-down menu. Enter the desired dates and select the RUN QUERY button.

Paralegal wills report

Paralegals trained in drafting wills may draft wills prior to a client’s legal assistance appointment with the attorney. This allows the paralegal to expand their legal knowledge and paralegal duties, assist the legal assistance program with better customer service, and allow paralegals to identify issues for review by the attorney. The “Paralegal Wills Report” allows you to pull reports on paralegals AF-wide or by MAJCOM, NAF, or base levels. The report will display the name of the paralegal and how many wills, medical directives, and healthcare POAs they have drafted within a specified date range. To produce this report, select “Paralegal Wills Report” from the “Reports” drop-down menu. Select AF-wide, MAJCOM, NAF, or base level and then select the date range in which you want your report to run, then select the EXPORT TO EXCEL button.

There are other reports available from the reports menu; however, these are the most common ones you will use.

216. Notaries, wills, and other documents

The two most common duties you will perform while working with legal assistance clients are notarizing documents and drafting and executing wills. This lesson covers notaries, who can perform them, and what types of documents they can be performed on. The lesson then moves to the drafting and execution of wills. The last part of the lesson goes into some other legal documents you might draft while performing your legal assistance duties.

Notarial duties

Title 10 U.S.C. § 1044a, *Authority to Act as Notary*, grants specific categories of persons, outlined in AFI 51-304, the general powers of a notary public and of a consul of the United States. This authority comes from the federal statute and is different from the notary authority created by each state’s laws. When a document is notarized, the notary acts as an official, unbiased witness to the identity and signature of the person who comes before the notary.

SJAs may designate civilian employees to serve as notaries as part of their official duties. The notarial authority created by Title 10 U.S.C. § 1044a does not cover this type of designation. Thus, any designated civilian employee must qualify as a notary under the laws of the state where he or she will perform notarial acts. If civilian employees designated as notaries are reimbursed for commission expenses, they may only provide notary services for the eligible beneficiaries.

Air Force members authorized to act as notary public

Pursuant to Title 10 U.S.C. § 1044a, these individuals have the general powers of a notary public and of a consul of the United States for notary acts executed for eligible legal assistance beneficiaries:

- All judge advocates, including judge advocates of the Air Force Reserve whether or not in a duty status.
- Civilian attorneys employed by the Air Force serving as legal assistance attorneys and who are licensed to practice law in the United States.
- All adjutants, assistant adjutants, and personnel adjutants, including reserve members on active duty or performing inactive duty training.

- Enlisted paralegals on active duty or performing inactive duty training. **NOTE:** Only those paralegals who have been trained to perform notary acts as specified by the Career Education and Training Plan (CFETP) may act as notaries.
- Active duty Air Force personnel who satisfy *all three* of the following criteria:
 1. A commissioned officer or senior noncommissioned officer (holding the rank of master sergeant or higher).
 2. Stationed at a GSU or remote location where no judge advocate or paralegal notary is also assigned.
 3. Appointed, in writing, by the unit's servicing GCMCA SJA to exercise notary authority under Title 10 U.S.C. § 1044a and AFI 51-304.
- At locations outside the United States, civilian Air Force employees appointed by the base SJA to serve as notaries under the authority of Title 10 U.S.C. § 1044a(b)(5).

Personnel authorized to receive notary services

In accordance with 10 U.S.C. § 1044a, these personnel may receive notary services:

- All members of the US Armed Forces.
- All other individuals eligible for legal assistance under AFI 51-304.
- All individuals serving with, employed by, or accompanying the armed forces outside the US and outside Puerto Rico, Guam, and the Virgin Islands.
- All individuals subject to the UCMJ outside the US.

Where a document requires signatures of multiple persons, notarize only the signatures of those persons eligible for military notary services per the categories above.

Authenticity and seals

When signing documents in his or her official capacity, notaries specify the date and location, list his or her title and office, and use a raised seal or inked stamp citing Title 10 U.S.C. § 1044a (for military notaries) or state authority for civilians designated in AFI 51-304. The raised seal or inked stamp of military notaries should also include "U.S. Air Force" and "Judge Advocate," as these identifiers are essential to the acceptance of military notarizations on documents being presented to foreign governments and will ensure documents are accepted as authentic.

By having this specific information, if a document is contested in court at a later date, the notary will be able to be identified and located. The notary will then be able to locate the contested notary in his or her notary log by using the date and verify he or she, in fact, notarized the document in question.

Notary guidelines

If you are exercising notary authority under Title 10 U.S.C. § 1044a, follow these guidelines:

- Before performing a notary act, verify the identity of each person whose signature you will notarize.
- Do not accept any signature as genuine on the word of a third person. The person whose act is the subject of the notary must personally appear and sign before the notary.
- Administer oaths or affirmations for any sworn document. The person being sworn must appear before the notary.
- Familiarize yourself with state law requirements for acknowledgement of documents. Research the appropriate state statutes or consult with the agency requiring the document to be notarized.
- Do not notarize incomplete documents. A client's assurance to add missing information subsequent to the notarization is not adequate and must not be honored.

- Notaries and legal office staff may not certify documents as true and accurate copies of original documents which are neither created by the office nor maintained by the office as part of its official duties. Certification requires verification of the authenticity of the document represented by the client to be the original. Only the agency that created the document or maintains the original document or electronic record as part of its official responsibilities can make this verification. However, notaries may notarize the certification of authenticity and signature of the document custodian from the office responsible for maintaining the original document or electronic record, if they witness that person's signature.
- All notaries, both military and civilian, must maintain a personal log of notary acts performed. The log must include the signer's name and signature, the type of document, date, and location. Take your log with you when you leave that office. Upon separation or retirement, military notaries leave his or her notary log at his or her last duty stations. Civilian employee notaries must follow the relevant state law regarding disposition of notary logs.
- Secure office notary seals, stamps, and log books in a desk drawer or file cabinet. Each state notary should verify his or her notary equipment is similarly secured at the end of each duty day.

There are several types of documents you will notarize during the course of your career as a paralegal. Some of those documents are produced within your legal office, while others are brought into your office by the client. One document you will notarize on a frequent basis is the last will and testament. Considering the importance of this document and the ramifications if not drafted and notarized properly, it is especially important procedures are followed as set forth in AFI 51-304 and other governing statutes.

Will terminology

Before diving into what a last will and testament is and the procedures for drafting one, you need to be familiar with some basic terminology. You will be exposed to many unfamiliar terms while drafting wills in the Wills program. The Wills program is a computer based program installed on several different computers in your office for the sole purpose of drafting wills and other healthcare documents. Having a basic knowledge of this terminology will help you better assist your legal assistance clients, become more proficient in drafting wills, and providing thorough wills and other documents to the attorneys in your office.

Basic Legal Terminology	
Term	Definition
Adeem	When a gift fails or goes away. When ademption occurs, the estate is not liable for the value of the gift to the intended beneficiary.
Guardian Ad Litem	Person appointed by the court to look out for the best interests of the child during the course of legal proceedings.
Beneficiary	A person named in a will to receive specified property.
Bequeath	A testator giving personal property.
Codicil	A supplement or an addition to a will. A codicil has the same execution requirements as a will.
Community Property	Property owned in common by a husband and wife where each spouse owns an undivided one-half interest in the community property.
Devise	A testator giving real property.
Disclaim	Refuse to accept a testamentary gift from the estate.
Domicile (for military	The location where you have both physically resided and formed an intent

Basic Legal Terminology	
Term	Definition
members)	to return to permanently, to the exclusion of any other domicile.
Domicile (for civilians)	The residence where you have your permanent home or principal establishment and to where, whenever you are absent, you intend to return.
Durable Springing Power of Attorney for Health Care	Appoints another person to make health care decisions should the client become incapacitated and unable to make decisions on his or her own.
Estate	All the possessions of one who has died that are subject to probate administration and distribution to heirs and beneficiaries.
Execution	Actual signing and notarizing of a will according to procedural requirements of applicable law.
Executor/Executrix (or personal representative)	A person named by the testator/testatrix who is responsible for administering the estate upon death (executor = male, executrix = female).
Fiduciary	A person acting primarily for another's benefit in confidence, good faith, prudence, and fair dealing, such as a trustee or executor.
Guardian	A person lawfully vested with the power and charged with the duty of taking care of and managing the person and/or property of another whom, because of status, age, understanding, or self-control, is determined to be incapable of administering his/her own affairs.
Inter Vivos Trust	Also known as a living trust, this trust begins at the time of execution of the trust instrument, during the life of the trustor. It can entail the distribution of assets to the beneficiary during and after the trustor's lifetime.
Issue	All persons who have descended from a common ancestor.
Living Will	States a person's desires regarding the termination of life support in the event of a terminal, incurable medical condition, during which the person is incapable of competently communicating his/her desires.
Military Testamentary Instrument	Instrument that is prepared with testamentary intent in accordance with AFI 51-304 and: (1) is executed in accordance with Title 10 U.S.C. 1044d, <i>Military Testamentary Instruments: Requirement for Recognition by States</i> , by a person, as a testator, who is eligible for military legal assistance; (2) makes a disposition of property of the testator; and (3) takes effect upon the death of the testator.
Per Capita	The property shall be distributed in equal shares among living descendants who are at the same level of relationship to the testator to the exclusion of all others, i.e., all living children, or all living grandchildren if there are no surviving children.
Per Stirpes	The property shall be distributed in equal shares among the children, with the issue of deceased children dividing their deceased parent's share equally.
Personal Property	All intangible and tangible property that is movable and thus not real property.
Pre-Residuary Trust	A trust that is funded with specific assets or a specific amount of assets from the estate.
Residuary Estate	The portion of the estate that is not otherwise devised or bequeathed, or used to pay debts and administrative expenses. This is often the bulk of the estate.
Real Property	Land and everything that is permanently affixed to land, such as, structures and the fixtures within structures.
Self-Proving Affidavit	Is a notarized, written declaration signed by each witness and the

Basic Legal Terminology	
Term	Definition
	testator/testatrix that attests to the circumstances under which the will was executed.
Separate Trusts	When a trustor creates more than one trust, and each trust has different beneficiaries. Typically, there would be one trust for each beneficiary. Separate trusts may have different trustees.
Single Trust	When a trustor creates one trust, with pooled assets for all of the beneficiaries, and with one trustee.
Supplemental Needs Trust	A trust that is designed in accordance with law to ensure that the existence of the trust does not eliminate the trust's beneficiary from eligibility for government provided healthcare assistance.
Testamentary	Relating to a will or given by a will.
Testamentary Trust	A trust created in the deceased's will.
Testator/Testatrix	A person who makes a will (testator = male; testatrix = female).
Trust	A right of property created by the trustor, and held by the trustee, for the benefit of at least one beneficiary.
Trustee	The individual who is responsible for holding and keeping the trust property for the benefit of the beneficiaries.
Trustor	The individual who established the trust, who transferred the property into the trust.
Virtual Representation	That a person can be represented in a legally binding manner by other's decisions. This legal process is used for minors and others who are legally incapable of making decisions.

Last will and testament

A will is a person's official declaration, in writing, naming the person(s) or institution(s) who will inherit their property at the time of the person's death. A will may also name people to act as a personal representative or executor of their estate, a trustee if a trust is established, and guardians for minor children. However, not all property is covered by a will, for example:

- Life insurance beneficiaries, including Servicemembers' Group Life Insurance (SGLI), are determined by written designation.
- Money from retirement plans is paid to the beneficiary as named in the plan.
- Property held in joint tenancy with right of survivorship applies to real estate, bank accounts, savings accounts, US savings bonds, automobiles, or other property with someone else as a joint tenant with right to survivorship. The co-owner automatically inherits the share upon death of the other co-owner.
- Any property placed in a living trust during the client's lifetime passes according to the trust.
- A spouse's half of community property. In a community property state, real estate and possessions acquired during marriage are owned equally by each spouse. A client's will only distributes their half of the community property, any property or possessions they brought into the marriage, and any gifts or inheritances received.
- Some bank accounts and security accounts may be transferred by a beneficiary designation.

When to have a will

Generally, any person owning property—real or personal—or who has children should have a will. Normally, people wish to leave their property to specific individuals or have their children cared for by specific persons. A will can accomplish those desires. It is important that, in the case of minor

children, a guardian be nominated to care for the children. In addition, a separate guardian may be appointed to take responsibility for the property of minor children; as children under the age of 18 years of age (higher in some states) cannot own property without supervision.

When nominating executors to administer the estate and guardians of children and their property, the client should follow “the rule of 3,” which is having at least two alternates to the primary person named. The primary person may become ill, incapacitated, or die and without an alternate person named, it will then be up to the court to find someone to distribute the estate and find a guardian to care for any minor children. It is certainly in the best interest of the client to name alternates to ensure their property and children are taken care of in the way they wish.

When a person dies intestate (without a will), his or her property is distributed according to the laws of the state in which he or she was a legal resident at the time of death. In such cases, the court would appoint an administrator to distribute the property. Further, the court would appoint a guardian for any minor children to raise them and manage any property belonging to the children.

Processing a will

As previously mentioned, paralegals are now drafting wills as part of normal paralegal duties. A part of this process is for you to review the Will and Advance Medical Directive Worksheet prior to drafting the will itself. These worksheets are provided to you in one of two ways; (1) the client will provide you with a completed worksheet upon arrival to the client’s legal assistance appointment, or (2) you may gain access to completed worksheets in the LAWS, for those clients who may have utilized the website. The latter will be covered as it pertains to your duties in drafting a will.

Many of your clients will take the opportunity to access the LAWS prior to their legal assistance appointments. As one of its many functions, this site allows clients to fill out the Will and Advance Medical Directive Worksheet online for submission directly to the legal office. The online worksheet guides the client through a step-by-step question and answer process related to the document selected, in this case, a will. After completing the worksheet, the website will generate a ticket number. The client is required to provide the ticket number to you at the time the client calls to schedule an appointment or at the time he or she arrives at your office during walk-in legal assistance hours. It is important to let clients know you will not be able to access his or her worksheet if you do not have the ticket number.

Once you have the ticket number, you can access the worksheet by logging into the Air Force Legal Assistance administration site. Next, you will input the client’s last name and ticket number for access to his or her worksheet. You will have the ability to review and print the worksheet. If possible, perform a quick review while speaking with the client on the phone so you can quickly ask questions in any areas that are left blank or unclear. You may, of course, review the worksheet when time permits and call the client back with any questions you may have. You want to work from the most complete worksheet to ensure your draft will is as accurate as possible. You are now ready to draft the will.

As previously stated, all wills are drafted in the Wills program which can be installed on your computer. The Wills program will guide you through a question and answer format until the will is complete. Print the draft will and provide it, along with the client worksheet, to your legal assistance attorney. Let the attorney know of any possible problem areas you may have discovered. At the scheduled appointment time, the client will meet with the attorney and discuss the will and any other related documents (covered later) the client wishes to have. Once the will is finalized, the will and any accompanying documents are printed. It is now time for the final step; execution (the act of signing).

Every will shall be prepared and executed as a military testamentary instrument. In accordance with Title 10 U.S.C. § 1044d and DOD Directive (DODD) 1350.4, *Legal Assistance Matters*, a military testamentary instrument shall:

- Be executed by the testator/testatrix (or if unable to execute personally, executed in the presence of, by the direction of, and on behalf of the testator/testatrix).
- Be executed in the presence of a military legal assistance counsel as presiding attorney.
- Be executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), who attests to witnessing the testator's/testatrix's execution of the instrument by signing it.
- Include a statement of preamble in form and content as provided in AFI 51-304 (Wills program will produce a preamble).
- Include a self-proving affidavit in form and content as provided in AFI 51-304 (Wills program will produce a self-proving affidavit).

A separate notary should be present at the will execution. Because the notary will notarize the signatures of witnesses, the notary cannot serve as one of the witnesses; however, the presiding attorney may notarize the will and all accompanying documents, if necessary. Your role in reviewing will worksheets and drafting wills saves the client and the attorney a great deal of time and allows for your legal office to provide the client with a thorough and legal document.

Before the client leaves your office with the new will, take the time to explain where the client should keep the will, the benefits of updating a will, explain unintentional revocation, and that legal offices do not keep copies of wills.

Advance medical directives

You will often find when a client comes to your office for a will he or she will require or ask for more than just a will itself. Legal assistance attorneys will advise clients on the importance of taking care of family and business affairs in the event he or she should become incapacitated. Advance medical directives include living wills and medical powers of attorney and are often referred to as health care instruments. A *living will* states a person's desires regarding the termination of life support in the event of a terminal, incurable medical condition. A medical power of attorney is used by the client to appoint a trusted person to make medical care decisions in the event of incompetence or inability to communicate his or her decisions or desires. The Wills program has the capability to produce these advance medical directives. When providing medical powers of attorney, there are a couple of terms you need to be familiar with: durable and springing.

- Durable power of attorney - A durable POA is simply a POA that remains in effect even after the client becomes incapacitated, such as a coma or stroke. A health care POA should always be durable, as well as many other POAs. Powers of attorney produced by Air Force legal offices will include a durability clause unless you want it removed.
- Springing power of attorney - A springing POA can give the designated agent the right to make decisions if the client becomes incapacitated by an illness, such as a coma or stroke. The difference between this type of POA and a durable POA is this POA *only* becomes effective upon incapacity.

Where to keep a will

A will should be kept in the safest possible place, but in a place where an authorized person can get it when needed. The will can be left with an executor or principal beneficiary. In some states, wills can be filed with probate courts for safekeeping, but the drawback is that it becomes a public record. A safe-deposit box is usually not a good place to keep a will because upon a person's death, the bank may not allow the box to be opened without a court order.

How to change a will

When executing a will, advise legal assistance clients to periodically review the will and to keep the will current. Also, advise clients not to write on or alter a will if their wishes change. Many clients try to change his or her will by lining out parts of the will or by writing in changes. This could possibly

invalidate the will and, without a valid will, he or she could die intestate. To change a will, individuals should have a legal assistance officer draw up and execute a new will. The Air Force does not create codicils, which are documents that modify an existing will.

Other legal documents

There are literally hundreds, if not thousands, of different legal issues for which clients will come to your office seeking advice. As you might imagine, your workload will be far more than just drafting wills and POAs and notarizing documents for clients. As part of the legal assistance program, we provide many other legal documents to our clients, as well as review documents clients bring to our office. For example, the notice of revocation (covered earlier in the lesson); affidavits; bills of sale; divorce/separation agreements; survivor benefits; finance, banking, and debt issues; landlord/tenant issues, and child custody.

Although we may not get directly involved with the client on these issues, your legal assistance attorney may ask for your support in the area of legal research and drafting and reviewing documents. We will take a look at just a few of the common legal issues you may encounter during legal assistance.

Credit problems

Many clients with financial difficulties will come to your office. There are many things we can do to help to ensure these clients are being treated fairly and by the law. For example, a client may be experiencing problems with a bill, credit card charge, or the inaccuracy of a credit report. We have the ability to research and review different areas of the law to assist the client. For example, Congress enacted the Fair Credit Billing Act (FCBA) in 1975, which provides a procedure for disputing billing errors and asserting claims against credit and charge card issuers for unsatisfactory products purchased from merchants.

Servicemembers Civil Relief Act

In accordance with Title 50 U.S.C. § 502, *War and National Defense*, the purpose of the SCRA is to provide for, strengthen, and expedite the national defense through protection against civil actions. It also provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. A couple examples in this area are assisting members with obtaining a maximum interest rate of six percent for pre-service obligations such as car loans, mortgages, credit cards, etc. or assisting a member with an eviction notice. Again, the attorney will advise the clients on these issues; however, we can be of great service to the client and our attorney by researching the SCRA and reviewing the client's documents for potential problems.

Bill of sale

According to Black's Law Dictionary, Tenth Edition, a bill of sale is an instrument for conveying title to personal property, absolutely or by way of security. Webster's dictionary breaks it down in even simpler terms: "a written statement transferring ownership of something by sale." Bills of sale can be used for personal property and are a simple way to transfer title from the seller to the buyer. Many legal offices will keep a draft bill of sale at the front desk to assist clients in the selling of his or her property.

The examples above are just a small sample of what you may see at your own legal office. The variety of legal issues will vary depending on which base you are assigned. What one legal office sees on a frequent basis may not be the same for yours. Become familiar with common legal assistance problems at your base and be prepared to assist your clients and attorneys.

217. Tax assistance program

In addition to legal assistance services, Air Force tax assistance programs (separate and distinct from the legal assistance program) involve legal office staff, detailed service members, and base volunteers

preparing and filing federal and state income tax returns for those eligible to receive this assistance. SJAs supervise and manage these base programs, exercising discretion concerning the scope of assistance provided, eligible beneficiaries, and sources of support for training and electronic filing. All Air Force bases operate individual income tax assistance programs, to include electronic filing services.

Overview

For the tax assistance program, eligible beneficiaries include active duty service members and their dependents, as well as retirees and their dependents. Additionally, SJAs may authorize preparation of tax returns for federal civilian employees, to the extent permitted by the Internal Revenue Service (IRS) Volunteer Income Tax Assistance (VITA) program. In making this determination, SJAs must consider whether the resources available to the installation tax program are sufficient to support the increased demands such an extension of support would entail.

Air Force tax assistance programs may take advantage of the IRS VITA and electronic filing programs, or other practicable sources of support, to effect training of tax assistance volunteers and provision of electronic filing services at the local base. Other sources may include commercially available training programs and electronic filing software.

Annual tax report

At the end of each tax season, a final report must be filed. The report details such items as how many TJAGC personnel and non-TJAGC personnel (unit tax advisors and volunteers) are working in the tax office, how many federal and state returns were e-filed, how many federal and state paper returns were prepared, and how much money clients saved by utilizing the tax program rather than filing with private firms. This report is filed in the Tax Program Reporting System (TPRS) through the Judge Advocate (JAG) Unified Automated Reporting System (JAGUARS). TPRS automates the annual reporting of tax assistance services provided across the Corps and compiles statistics for the Air Force Tax Program. Tax reports are required on two separate occasions throughout the year. Interim reports are due by the deadline posted on JAGUARS and final reports for tax filing are due in December.

Any questions concerning current annual reports and past year reports are directed to AFLOA/JACA, as they are responsible for the tax program.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

213. Responsibilities and administrative matters

1. Who has the responsibility for establishing and managing the Air Force legal assistance program?
2. Who is responsible for communicating with the local bar organization, legal aid offices, and appropriate federal and state agencies?
3. Within the legal assistance program, who has responsibility for each of the following:
 - a. Determining the nature and extent of the legal services available at a base-level legal office.
 - b. Briefing the office staff, including Reservists, on the purposes of legal assistance.

- c. Supervising functional program staffs within their commands.
 - d. Communicating with the American Bar Association and other associations necessary to further the legal assistance program.
- 4. How should you treat all visitors?
 - 5. What advantage does a military receptionist have over his or her civilian counterpart when receiving visitors?
 - 6. How should you address a visitor?
 - 7. What three items should you be definite about when scheduling an appointment?
 - 8. Where are appointments recorded?
 - 9. Why may you have to cancel an appointment with a client?
 - 10. What should you be prepared to do when calling a client to cancel an appointment?

214. Legal assistance services

- 1. Among all eligible beneficiaries, what category of personnel is given the highest priority for legal assistance related matters?
- 2. In each of the following situations, determine if the prospective client is eligible for legal assistance. If not, explain why.
 - a. Retired Master Sergeant Gatlin passed away three years ago. Ms. Gatlin, the unremarried widow, seeks legal advice on a power of attorney.
 - b. A DOD civilian employee stationed overseas seeks assistance on filing his taxes.

3. On what matters can legal assistance officers provide advice to eligible personnel?
4. What matters are excluded from the legal assistance program?
5. Who determines if an attorney has the expertise to provide special services to legal assistance clients, such as drafting or reviewing real estate or closing documents?
6. In what situations may the SJA make a determination to refer clients seeking legal assistance with personal civil legal matters to other legal agencies?
7. What is the goal for referring legal assistance clients to other legal agencies?
8. When may a legal assistance office refer a client to a named civilian attorney?
9. In what situations would you refer a client to an appropriate military defense counsel?
10. Where should you refer personnel for the following matters?
 - a. Airman Hampton did not receive a paycheck.
 - b. TSgt Smith wants a bad EPR removed from his records.
 - c. Captain Jones has a problem with one of his coworkers.

215. Legal files and documents in the Web-based Legal Information Online System

1. What is meant by confidentiality?
2. How does confidentiality apply to your job as a paralegal?
3. When can individuals rendering services disclose privileged matters?

4. What is one exception to the confidentiality and privileged status of legal services communications?
5. Where must each office record their legal assistance visits and workload?
6. What types of client information is maintained in WebLIONS?
7. When a client enters your office, what is the first thing you will do?
8. Why is a special power of attorney more likely to be accepted than a general power of attorney?
9. When is a power of attorney automatically revoked?
10. What is a notice of revocation of a power of attorney?
11. What items are included in a workload report?
12. What report lists, by category, how much money clients were saved through the legal assistance program?

216. Notaries, wills, and other documents

1. List the Air Force members who are authorized to perform as notaries for US armed services members.
2. When signing documents in his/her official capacity, what information must a notary include?

3. What item must all military and civilian legal assistance notaries maintain?
4. Match the term in column A with the appropriate definition in column B. Items in column B will only be used once.

<i>Column A</i>	<i>Column B</i>
____ (1) Actual signing and notarizing of a will according to procedural requirements of applicable law.	a. Adeem.
____ (2) States a person's desires regarding the termination of life support in the event of a terminal, incurable medical condition, during which the person is incapable of competently communicating his/her desires.	b. Bequeath.
____ (3) A testator giving personal property.	c. Devise.
____ (4) A person lawfully vested with the power and charged with the duty of taking care of and managing the person and/or property of another whom, because of status, age, understanding, or self-control, is determined to be incapable of administering his/her own affairs.	d. Execution.
____ (5) The individual who is responsible for holding and keeping the trust property for the benefit of the beneficiaries.	e. Guardian.
____ (6) When a trustor creates one trust, with pooled assets for all of the beneficiaries, and with one trustee.	f. Living will.
____ (7) When a gift fails or goes away. When ademption occurs, the estate is not liable for the value of the gift to the intended beneficiary.	g. Per stirpes.
____ (8) The property shall be distributed in equal shares among the children, with the issue of deceased children dividing their deceased parent's share equally.	h. Real property.
____ (9) A testator giving real property.	i. Single trust.
____ (10) Land and everything that is permanently affixed to land, such as, structures and the fixtures within structures.	j. Trustee.

5. List three types of property not covered by a will.
6. Generally, who should have a will?
7. What action does a court take when a person dies intestate?
8. Prior to drafting a will, what document do you need to review?

9. When a client completes the Will and Advance Medical Directive Worksheet online, what is automatically provided to him/her upon completion of the worksheet?
10. What action do you take to access a client's worksheet once the client provides you with his/her ticket number?
11. Once a will is finalized, what is the last step in the process?
12. Before a client leaves your office with a new will, what information should you take the time to explain?
13. What is a living will?
14. What effect could lining out part of a will have?
15. What would you advise a client to do if he/she has a desire to change a will?
16. Aside from wills, POAs, and notary acts, what are some common legal documents/issues we may assist clients with?

217. Tax assistance program

1. Who supervises and manages the tax assistance programs at the base level?

2. Where do you report final tax assistance statistics?

2-2. Preventive Law Program

The basic concept behind the preventive law program is to avoid problems through communication, advising people of potential legal problems, and helping them avoid problems before they develop. You will notice many similarities between the legal assistance program and the preventive law program (e.g., responsibilities and those who are tasked with them). The two programs work together. With a strong and effective preventive law program, chances are you will eliminate some of the legal assistance workload by educating people about his/her rights and common problems. Therefore, some of the problems will not develop because of the knowledge the person possesses. What exactly is the Air Force policy on the preventive law program? The lessons in this section will help you answer this question.

218. Purpose, responsibilities, and scope

This lesson explores the purpose and scope of the preventive law program. Additionally, it covers the responsibilities of various levels of command under the preventive law program.

Purpose

The purpose of the preventive law program is to educate commanders, Air Force members, and their families on legal issues so they can prevent legal problems and reduce the time and resources needed to resolve legal problems. Preventing legal problems enhances command effectiveness and readiness, especially during periods of mobilization and deployment of personnel. For these very important reasons, every base will have an active preventive law program. The SJA implements the program for his or her organization and all attorneys are responsible for integrating preventive efforts into legal assistance consultations and presentations to base audiences on legal programs.

Responsibilities

The following responsibilities are derived from the legal assistance program policy.

AFLOA/CLSL

As covered in the first lesson, the AFLOA/CLSL is responsible for monitoring and carrying out the overall administration of the Air Force legal assistance and preventive law programs.

MAJCOM and SJAs

MAJCOM SJAs supervise the preventive law programs within their command.

NAF SJAs

NAF SJAs focus on legal needs arising from operational readiness and oversee and direct legal assistance services consistent with mission-related needs.

Base SJAs

SJAs are responsible for implementing the preventive law program at their installation. The SJA, in conjunction with commanders and other staff agencies, identifies areas of legal concern and designs and implements measures to meet those needs. Base SJAs appoint a chief of preventive law or a preventive law officer to manage the base-level preventive law program.

Chief of preventive law

At base level, the chief of preventive law or preventive law officer is charged with developing and implementing educational initiatives as a primary duty. This individual communicates with

other military legal offices, particularly those in the same state, higher headquarters legal offices, and appropriate federal, state, and local agencies, such as bar referral services and consumer protection agencies.

Because communication plays such an important role in the effectiveness of the preventive law program, all judge advocates may communicate directly with each other and with relevant organizations and persons about preventive law matters.

Scope

Preventive law program focus on education and recommend preventive measures in legal areas where the Air Force has a direct interest in the outcome, as well as those likely to impact base readiness and morale. The following table illustrates, at a minimum, what the preventive law program should include:

The Scope of the Preventative Law Program	
Program	Purpose
Mobilization and deployment preparation	Educate members on personal legal needs to ensure readiness for mobilization and deployment. Members need to prepare for personal and family legal affairs demands of and dislocations caused by mobilization and deployment, and receive training on his or her rights under the SCRA and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Stress the importance of preparing wills, powers of attorney, and other necessary documents before deployment. Communicate to commanders the importance of making predeployment planning a priority within his/her unit.
Commander/first sergeant awareness	Educate commanders, first sergeants, and staff agency chiefs on the full range of legal services provided by the legal office (not just legal assistance matters); the advantages to the command of timely use of these legal services; and all legal matters affecting the installation, including, as examples, fraud, waste and abuse, standards of conduct, environmental issues, contract issues, military justice issues, and claims matters. Communicate with commanders, first sergeants, and staff agencies on the status of legal services and the legal office's availability to present informational briefings at commander and first sergeant seminars, commanders' calls, staff meetings, base committee meetings, and newcomers' orientations.
Service member awareness	Promote service member awareness of the importance of recognizing legal issues and seeking timely legal advice, the importance of considering the legal consequences of his/her actions prior to signing legal documents, and ignoring legal issues or concerns.
Common legal problems	Identify common legal problems encountered by service members and family members.
Novel legal concerns	Identify novel legal concerns, such as new consumer scams, and promptly develop and disseminate educational materials to help the base community make informed decisions and avoid potential legal problems.
Base-wide activities	Encourage submission of articles for the base newspaper, daily bulletin boards etc.; distribution of handouts or pamphlets on preventive law measures at legal offices, or other appropriate agencies; development and maintenance of legal office web sites; and presentation of preventive law lectures and seminars.
Law Day	Law Day is observed each year on the first day of May to draw attention to the principles of justice and the practice of law. SJAs and preventive law officers join thousands of national organizations, businesses, and schools to participate in new and creative law day activities.

The Scope of the Preventative Law Program	
Program	Purpose
State or local bar associations	Legal office attorneys are encouraged to participate in state and local bar associations to gain information on support programs available to benefit military clients and preventive law efforts and to educate civilian attorneys on the military in general and military legal problems. Seek support to provide no-fee or reduced-fee legal services for members and their families. Encourage local attorneys and state and local bar associations to participate in ABA sponsored programs.
Tax assistance	Establish an active, aggressive, well-publicized tax assistance program.

Keep in mind that avoiding problems through communication is the main goal of the preventive law program. Experience has shown that education is the best deterrent to curb legal problems and bring about solutions. As a paralegal, your involvement in the program is varied, from assisting clients with tax returns to writing preventive law articles as part of the education process. Keep current on civil law and military justice matters and talk with judge advocates concerning newly developed preventive law issues.

US Air Force Legal Assistance Website

LAWS provides a valuable preventive law education tool through its “Legal Assistance Topics” section and enhances legal assistance by allowing clients to complete online worksheets for wills, healthcare documents, and powers of attorney. In addition, LAWS collects online feedback that allows us to identify areas of strength and weaknesses in our legal assistance program and to make adjustments as needed.

LAWS is organized into three broad categories: legal information, legal worksheets, and the online survey. The legal information category covers a broad range of legal assistance/preventive law topics to assist clients in making necessary decisions and obtaining the necessary information regarding legal issues.

“Legal Information” tab

The “Legal Information” tab provides educational and general information on consumer/financial affairs, deployment readiness, disaster assistance, family law, immigration, military benefits, powers of attorney, real property, SCRA, taxation, voting, and wills and estate planning. These topics also provide subcategories for numerous different situations that may fall under the broader topic.

“Legal Worksheets” tab

The “Legal Worksheets” tab gives the client the ability to complete an online worksheet for a will, advance medical directive, or power of attorney prior to visiting the legal office. It also provides the ability to access previously completed online worksheets by providing the client’s last name and ticket number. Legal documents cannot be printed from the website by the clients. Clients are required to visit the nearest Air Force legal office to obtain legal documents and receive consultation from an attorney, as necessary.

“Online Survey” tab

The “Online Survey” tab allows the client to submit an anonymous survey to assist us in ways to improve the quality of our service and provide the best possible service for our clients. This survey is designed for submission after the client has visited the local Air Force legal office.

In addition to the tabs above, LAWS also provides frequently asked questions, legal services locator, and help buttons.

There is no doubt, LAWS is an outstanding tool for providing important legal information to our members and provides our legal offices with a more effective and efficient way to assist our clients.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

218. Purpose, responsibilities, and scope

1. What is the purpose of the preventive law program?
2. Who is responsible for monitoring and carrying out the overall administration of the preventive law program?
3. At base level, who is charged with developing and implementing educational initiatives as a primary duty?
4. What information is covered under the preventive law program?
5. What information should be stressed when covering mobilization and deployment preparation issues?
6. How does the US Air Force Legal Assistance Website enhance legal assistance?
7. How is the US Air Force Legal Assistance Website organized?

Answers to Self-Test Questions

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1. TJAG. TJAG can delegate certain responsibilities for this program to the AFLOA/JACA.
2. Wing/base SJA.
3. a. SJA or designee.
b. Base SJA.
c. MAJCOM, FOA or DRU/SJA.
d. TJAG.
4. With respect, courtesy, and dignity. Do not ignore them.
5. Because most visitors are military personnel, it is easier to recognize a visitor's rank and determine the last name.
6. By rank and last name when possible, by using sir or ma'am, or "Mr.," "Miss," "Mrs.," and "Ms.," as appropriate.
7. Time, date, and place.

8. An appointment log.
9. Unforeseen circumstances or emergencies.
10. Have some alternate appointments available when you call to cancel.

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1. Air Force personnel who need mobilization-or deployment-related legal assistance that facilitates command readiness.
2.
 - a. Eligible.
 - b. Eligible.
3. Personal, civil legal matters.
4. Official matters in which the Air Force has an interest or is involved in the final resolution; criminal issues under the UCMJ, or any local, state, or federal criminal law; issues on the standards of ethical conduct; issues relating to LoW; issues involving personal commercial businesses (unless such advice is related to the SCRA); legal issues or concerns raised on behalf of third parties, even if the third party is eligible for legal assistance; drafting or reviewing real estate sale or closing documents, separation agreements or divorce decrees, and inter vivos (living) trusts; private organizations (e.g., spouses clubs and squadron booster clubs) that have been chartered to function on Air Force installations. However, under the provisions of the civil law program, Air Force attorneys may provide legal guidance and advice through the base private organizations monitor to ensure private organizations are properly chartered and comply with pertinent statutes and regulations; and represent clients in a court or administrative proceeding.
5. SJA.
6. If the SJA determines the workload or a lack of expertise in a specialized area of the law could impair the quality of legal service.
7. To aid clients in consulting with an attorney competent to provide the required assistance.
8. Only in the most unusual cases, and then only with the advance approval or permission of the SJA.
9. Refer clients to the area defense counsel for civilian criminal matters, adverse action under the UCMJ, adverse administrative action, subject to court-martial charges, or other disciplinary action.
10.
 - a. Financial services office.
 - b. Military personnel section.
 - c. Equal opportunity office.

215

1. Privileged matters are not to be disclosed to anyone by individuals rendering the services except upon the specific permission of the person concerned.
2. You are an extension of the attorney-client relationship and are bound to keep all privileged information on the client's problem confidential. As a result, you must protect the attorney-client relationship.
3. With the specific permission of the person concerned.
4. A client's statement of intent to commit a crime.
5. In WebLIONS.
6. Name, SSAN, military status, branch of service, grade (or sponsor grade), mailing address, legal residence, phone number, email address, sponsor information (as applicable) and the organization of each person given legal assistance; the date; the name of legal assistance officer or paralegal consulted; the nature of the problem; action taken by the attorney; and, if appropriate, the name of the individual or agency to which the matter was referred.
7. Ask for his/her military identification card to ensure the client is eligible for legal assistance.
8. Because the general POA allows for such a wide range of acts, many businesses will not accept them, to include many military offices such as Finance and Personnel offices. A special POA is more likely to be accepted because the document contains a specific act or acts to be done.
9. Upon death of grantor, on the date specified in the document, or when the original and all copies are destroyed.
10. A legal document that provides, in writing, a POA that was previously made is now revoked. It states the grantor is withdrawing the powers granted to the agent or attorney-in-fact in the POA.

11. Lists each member of your office, how many visitors they have seen for a given time period, the average time clients had to wait to be seen, and the documents provided by the attorney or paralegal.
12. Client saving report.

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1. All judge advocates, including judge advocates of the Air Force Reserve whether or not in a duty status; civilian attorneys employed by the Air Force serving as legal assistance attorneys and who are licensed to practice law in the United States; all adjutants, assistant adjutants, and personnel adjutants, including reserve members on active duty or performing inactive duty training; enlisted paralegals on active duty or performing inactive duty training; active duty Air Force personnel who satisfy *all three* of the following criteria: a commissioned officer or senior noncommissioned officer (holding the rank of master sergeant or higher); stationed at a GSU or remote location where no judge advocate or paralegal notary is also assigned, and; appointed, in writing, by the unit's servicing GCMCA SJA to exercise notary authority.
2. The date and location, his/her title and office, and use a raised seal or inked stamp citing Title 10 U.S.C. § 1044a (for military notaries) or state authority for civilians designated in AFI 51-304.
3. A personal log of notary acts performed.
4. (1) d.
(2) f.
(3) b.
(4) e.
(5) j.
(6) i.
(7) a.
(8) g.
(9) c.
(10) h.
5. Life insurance beneficiaries, including SGLI; money from retirement plans; property held in joint tenancy with right of survivorship; any property placed in a living trust; a spouse's half of community property; and some bank accounts and security accounts may be transferred by a beneficiary designation.
6. Any person owning real or personal property or who has children.
7. Distributes the estate according to the state law; appoints an administrator; and designates guardians for minor children when necessary.
8. The Will and Advance Medical Directive Worksheet.
9. A ticket number.
10. You access the worksheet by logging into the US Air Force Legal Assistance administration site.
11. Execution (the act of signing).
12. Where the client should keep the will, the benefits of updating the will, the revocation process and caution about unintentional revocation, and the legal offices does not keep copies of wills.
13. A living will states a person's desires regarding the termination of life support in the event of a terminal, incurable medical condition.
14. It can invalidate the will.
15. Seek the advice of a legal assistance officer to draw up and execute a new will.
16. Notice of revocation; affidavits; bills of sale; divorce/separation agreements; survivor benefits; finance, banking, and debt issues; landlord/tenant issues, and child custody.

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1. SJAs.
2. In TPRS through JAGUARS.

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1. To educate commanders, Air Force members, and their families on legal issues so they can prevent legal problems and reduce the time and resources needed to resolve legal problems.
2. AFLOA/CLSL.
3. The chief of preventive law or preventive law officer.
4. Preventive law programs focus on education and recommend preventive measures in legal areas where the Air Force has a direct interest in the outcome, as well as those likely to impact base readiness and morale.
5. Stress the importance of preparing a will, powers of attorney, and other necessary documents before deployment.
6. Provides a valuable preventive law education tool through its “Legal Assistance Topics” section and enhances legal assistance by allowing clients to complete online worksheets for wills, healthcare documents, and powers of attorney. In addition, LAWS collects online feedback that allows us to identify areas of strength and weaknesses in our legal assistance program and to make adjustments as needed.
7. Into three broad categories: legal information, legal worksheets, and the online survey.

Unit 3. Other Administrative/General Law Matters

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THERE ARE MANY different types of investigations, from commander-directed to Inspector General-initiated. This unit will cover administrative inquiries and investigations, the process of conscientious objector status, Article 138, UCMJ complaints, congressional inquiries, accident investigation boards, Freedom of Information Act (FOIA) and Privacy Act (PA) requests, release of information for litigation, and drafting various legal reviews. These are all aspects of your duties in general law that can, at times, get quite interesting.

3-1. Complaints and Investigations

TJAG has supervisory responsibility for Air Force programs dealing with international law, domestic civil matters, aircraft accident investigations, and foreign criminal and civil litigation. While you may not be actively involved in all aspects of these areas, you will be involved in certain important steps as part of these procedures.

219. Administrative inquiries and investigations

Any time there is an incident, a problem, or an unusual occurrence, people want to know what happened. Plain curiosity, a desire to prevent recurrence, or alter action may motivate them. The Air Force, too, often wants the facts about a particular situation. It has two methods of gaining that information: administrative inquiries and investigations.

Many inquiries and investigations are conducted pursuant to a specific regulation; however, when a specific regulation does not apply, the investigation is conducted under the commander's inherent authority. AFI 90-301, *Inspector General Complaints Resolution*, provides guidance on how to conduct a commander's inquiry or investigation. While this instruction is directly applicable to IG investigations, it is often used as a guide for other types of investigations, most commonly, investigations pursuant to a commander's inherent authority to look into matters under his or her command. As such, this AFI may only be used for guidance and shall not be used as the authority for such investigations or inquiries.

Inquiries versus investigations

Let's first distinguish between an inquiry and an investigation. An inquiry, quite simply, is an examination into facts or principles. Inquiries are generally adequate if the subject of the inquiry is not complex or of a serious nature, and the matter can be resolved through routine channels and procedures. A written report may or may not be required; that is left to the discretion of the appointing authority.

An investigation is a properly authorized, systematic, detailed examination to uncover the facts and determine the truth of a matter. It is appropriate for determining facts in a serious or complex matter. An investigation always requires a written report. Normally, exhibits and sworn witness testimony are gathered to support the facts that are determined within the investigation.

Whether it's an inquiry or investigation, the investigator must be impartial and unbiased in the gathering and presentation of the facts. The investigating officer must provide sufficient information on which the appropriate authority can make an intelligent decision on the best course of action to take. The information provided also indicates ways to prevent recurrence and whether or not to initiate disciplinary or other administrative actions.

Usually an investigation is generated because a complaint has been lodged; however, it may be directed at any time to "inform" a commander of conditions within his or her command.

When a MAJCOM commander directs a subordinate commander to appoint an investigating officer or board, the appointing commander may approve or disapprove the report by endorsement to the major commander, but final action on the report rests with the MAJCOM commander.

Personnel involved

Any commander or other competent authority, who directs the conduct of an inquiry or investigation, is called the appointing authority. The investigator may be any commissioned officer, senior NCO, civil service employee holding an equivalent commissioned officer's grade and position, or a group of the above individuals so detailed. The person being investigated may be a suspect or accused. Witnesses may be questioned. And lastly, you may be detailed as a reporter to make a summarized or verbatim transcript of the inquiry or investigation.

Types of administrative inquiries and investigations

AFI 90-301 specifically covers IG investigations and should only be used as a guide for commander-directed inquiries or investigations. Since there are inquiries and investigations governed by other instructions, those instructions are cited as the authority. Some examples of other inquiries and investigations not conducted under the authority of AFI 90-301 are:

Inquiries and Investigations Not Conducted under AFI 90-301	
Type of Investigation	Authority
Aircraft and missile accidents	AFI 51-307, <i>Aerospace and Ground Accident Investigations</i>
USAF mishap investigations	AFI 91-204, <i>Safety Investigations and Reports</i>
AFOSI investigations	AFI 71-101, Volume 1, <i>Criminal Investigations Program</i>
Security Forces investigations	AFI 31-115, <i>Security Forces Investigations Program</i>
Investigations under Article 32	Manual for Courts-Martial (MCM)
Line-of-duty investigations	AFI 36-2910, <i>Line of Duty (Misconduct) Determination</i>
Grievances of civilian employees	DODI 1400.25-V771_AFI 36-706, <i>Administrative Grievance System</i>
Identification of personnel with substance abuse problems	AFI 44-121, <i>Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program</i>
Armed forces members wronged by a commanding officer	AFI 51-505, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>
Unlawful discrimination, harassment, and reprisal	AFI 36-2706, <i>Equal Opportunity Program, Military and Civilian</i>

Processing complaints

Complaints come from a variety of sources—by telephone, personal conversation, letter, or indirectly through other staff agencies. Complaints are processed in different ways, depending on the type. Complaints received by the IG, HQ USAF, are handled in the following ways:

- Referral to a subordinate command for inquiry/investigation upon which the US Air Force may make a reply.
- Referral to the responsible Air Force agency.
- Investigation by the IG, USAF.
- Referral to the field for action.

Any member of the Air Force has a right to submit a grievance, and it should be processed through appropriate channels.

Written reports

After an inquiry or investigation is completed, all relevant facts must be reported to the appointing authority. To this end, there are three types of written reports you should be familiar:

Types of Written Reports	
Report	Explanation
Report of Review	May be a memorandum, letter, or report supported by appropriate documentation.
Report of Inquiry	Is usually prepared in narrative. It states the authority on which it is based, matters investigated, who was interviewed, and recites the facts established by the investigation. It may be submitted as a letter, a memorandum, or an indorsement to basic correspondence. Appropriate exhibits are included.
Report of Investigation	Provides for a logical step-by-step layout. The recital of the facts, at the outset of the report, fixes the subject matter firmly in the reader's mind, and leads naturally to the discussion. It assists the reader to independently reach conclusions. The facts, discussion, conclusions, and recommendations must be consistent in nature and must be presented in their logical order.

As a member of the legal staff, you will have access to or knowledge of many investigations taking place on your base. The important fact is that you keep what you hear, see, or process within the confines of your office. If you “leak” any information about an investigation that compromises the investigation, you may compromise your job, your credibility, or the office’s credibility, as well.

220. Conscientious objector

Although military service is generally viewed as an obligation of citizenship, Congress recognized early on that certain individuals and groups hold convictions against the use of force in any form. As such, military members can apply for discharge or reassignment to a noncombatant position. As a paralegal assigned to the general law section you may see a member submit a conscientious objector application and you will play a role in processing it. AFI 36-3204, *Procedures for Applying as a Conscientious Objector*, details how to process the application.

General policies

A conscientious objector (CO) is a person who objects to participation in war in any form or the bearing of arms, through a firm, fixed and sincere objection by reason of religious training and belief. Moral or ethical beliefs, even if not characterized by the person as “religious,” may provide sufficient grounds for CO status. The member’s objection to war must be all-inclusive and not to one specific war or conflict.

There are two classifications of COs:

1. Class 1-0: a person, by reason of conscientious objection, who sincerely objects to participation of *any kind of war in any form*.
2. Class 1-A-0: a person, by reason of conscientious objection, who sincerely objects to participation as a combatant in war in any form, but whose convictions or beliefs will permit service in a noncombatant status (i.e., medical).

Application procedures

Members applying for CO status have the burden of establishing conscientious objections as grounds for separation or assignment to noncombatant training and service. The member must establish by clear and convincing evidence the following:

- The nature or basis of the claim falls under the definition of conscientious objections as defined in AFI 36-3204, which is the firm, fixed, and sincere objection by reason of religious training and belief to participation in war in any form, or the bearing of arms.
- The member's belief is honest, sincere, and deeply held.
- The member's belief is by virtue of religious training or another belief system similar to religion.
- The member opposes participation in war in any form for the bearing of arms.

The following table explains the process to submit a CO application:

Applying for Conscientious Objection Status	
Individual's Role	Explanation
Member	Submits the CO application to the base MPS career development element (members serving on active duty) or their immediate commander (USAFR and ANG non-EAD (not on extended active duty) members). The application must contain the information according to AFI 36-3204. This information includes an extensive description of the member's personal background, a thorough description of the member's religious training and beliefs, and a listing of the applicant's membership in any military organization, religious sect, or other private organizations.
MPS	Before processing the application, counsels the member of the effects of discharge as a CO, to include Veterans Administration (VA) benefits; reviews the member's personnel records; contacts other sources for information to include in the member's file for consideration by the investigating officer (IO) (i.e., medical services, chaplains, legal); notifies the member's immediate commander and ensures the member takes "withhold or delay action" IAW AFI 36-3204; and schedules appointments with a chaplain and a psychiatrist.
Chaplain	Personally interviews the member, prior to the member's application being processed, to determine the sincerity and depth of conviction against war or bearing arms. Submits a written opinion as to the nature and basis of the member's sincerity and depth of conviction and the reasons for its conclusions. NOTE: The chaplain does not make any recommendation concerning the disposition of the member's application.
Psychiatrist	Interviews the applicant, prior to the member's application being processed, to determine the presence of any mental disorder warranting medical or administrative disposition. Submits a written report of the mental evaluation, including discussion of any psychiatric disorder that would warrant treatment or disposition through medical channels, or any personality disorder that would warrant appropriate administrative action. NOTE: The psychiatrist does not make any recommendation concerning the disposition of the member's application.

Conscientious objector investigative hearing

Once the member has submitted the application and the interviews with the chaplain and psychiatrist reports have been received, the MPS forwards the case file to the commander exercising SPCMCA. The SPCMCA (for active duty and USAFR non-EAD members) or the ANG wing or group commander exercising control over the ANG/consolidated base personnel office (CBPO) responsible for processing the application (ANG non-EAD members) appoints a judge advocate, in the grade of captain or higher, as the IO to investigate the member's claim as a CO. If the member is an officer, the IO must be senior in grade to the member. The IO investigates and conducts a hearing to:

- Give the applicant an opportunity to present any desired evidence in support of the application.
- Enable the investigating officer to gather all relevant facts.
- Create a comprehensive record.
- Facilitate an informed recommendation by the investigating officer and an informed decision on the merits of the claim by higher authority.

Occasionally, a member may fail or refuse to submit to questioning under oath or affirmation. The IO may consider this when evaluating the applicant's claim. In addition, if the member fails to appear at the hearing without a good reason, then the member has waived his or her rights to be present at the hearing. The member is not entitled to military counsel, but may be represented by legal counsel at the member's own expense. Legal counsel may be present at the hearing, to assist the applicant in the presentation of the case, and to examine all items in the file. (The member is entitled to be represented by military counsel only if the member is pending administrative discharge under AFI 36-3207 or AFI 36-3208, *Administrative Separation of Airmen* for conscientious objection.)

The hearing is informal and not governed by the courts-martial rules of evidence except that all verbal testimony presented must be under oath or affirmation. The IO may consider any relevant evidence along with written statements from persons not present at the hearing, but have been taken under oath or affirmation.

The applicant may submit any additional evidence, including sworn or unsworn written statements, and present any witnesses in his or her behalf. The member is responsible for his or her witness' attendance. However, the commander exercising special court-martial jurisdiction will try (if reasonably available) to make available military members requested by the member as witnesses. Also, the member may question any other witnesses who appear and examine all items in the file.

The IO summarizes the witnesses' testimony (unless a verbatim record is requested by the applicant) and allows the applicant or counsel to examine the statements and then note, for the record, their differences with the IO's summary. At the end of the investigation, the IO prepares a written report that contains: the date of the hearing; if the applicant appeared; if the applicant was represented by counsel (include the identity of the attorney); and if the applicant understood the nature and purpose of the hearing. It also includes any materials received during the investigation including a specific comment paragraph regarding psychiatric information and what bearing, if any, it had on the conclusions reached; the summaries of witness testimonies or a verbatim record of the testimonies, if there is one; and finally the IO's conclusions and recommendations for the disposition of the case, including reasons for the recommendations. The actions recommended are limited to:

- Denial of any classification as a CO.
- Classification as a CO and assignment to noncombatant duties (1-A-0).
- Classification as a CO and discharge (1-0).

Once completed, the final record will consist of: the IO report, along with the member's application; all interviews with chaplains and doctors; evidence from the IO's hearing; the commander's IO appointment letter; and any other items submitted by the applicant. A copy of the record is given to the applicant when it is forwarded to the servicing MPS, who informs the applicant of the right to

submit a rebuttal within 15 calendar days after receipt of a copy of the record. If the member fails to submit a rebuttal, he or she loses the right to rebuttal. The case file must include a statement by the investigating officer, or a copy of a receipt from the applicant, showing the date on which the copy of the record was delivered to the applicant.

Final disposition

The MPS forwards the case file to the local legal office for review and recommendation to the SPCMCA within 15 calendar days after the date of the applicant's request for a copy of the record or when the MPS receives the applicant's rebuttal, whichever comes first. If the base SJA has acted as the IO, then the package is forwarded to the NAF or MAJCOM SJA for the legal review. Once the legal review is complete, the SJA will forward the case file to the commander who appointed the IO. The appointing commander then forwards the case file, to include his or her recommendations and rational for disposition to the MAJCOM or FOA of assignment for active duty members. Case files for members of the Reserve and ANG are sent through separate channels; be sure to follow the guidance in AFI 36-3204 for these cases.

The MAJCOM or FOA, after reviewing the case file for legal sufficiency, also makes their recommendation and rational for disposition and forwards the case file to HQ AFPC for both officers and Airmen. Again, case files for members of the Reserve and ANG are sent through separate channels. The final decision authority for officers is the SAF or designated representative and the final *approval* authority for enlisted personnel is HQ AFPC (active duty Airmen), Air National Guard Readiness Center/Personnel Directorate (ANGRC/DPM) (ANG Airmen), Headquarters AF Reserve Command Vice Commander (HQ AFRC/CV) (Reserve Airmen), or Headquarters Air Reserve Personnel Center Commander (HQ ARPC/CC) (all other Reserve Airmen). The final *disapproval* authority for enlisted personnel is the Secretary of the Air Force, Assistant Secretary for Manpower and Reserve Affairs, Deputy, Air Force Review Board (SAF/MIB).

As you can see, SAF is the final authority for both approval and disapproval in officer cases, but only for disapproval in enlisted personnel cases. Even though you may not be directly involved in forwarding case files to these levels, it is important to understand the process so you may adequately assist first sergeants and commanders at base level.

Applicants with an approved noncombatant status are either assigned to noncombatant duty or discharged from military service at the discretion of the appropriate decision authority. Applicants with a disapproved application will be assigned to normal military duties. Applicants assigned to noncombatant duties or normal military duties must conform to the normal requirements of military service and satisfactorily perform assigned duties.

221. Complaints of wrongs

Under Article 138, UCMJ, any military member who believes he or she has been wronged by his or her commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer. The superior commissioned officer forwards the complaint to the officer exercising general court-martial jurisdiction over the officer against whom the complaint is made. To be able to assist your attorneys and handle such complaints, become familiar with AFI 51-505.

Wrongs

A wrong is a discretionary act or omission by a commander that adversely affects the member personally and for example, is:

- In violation of law or regulation.
- Beyond the legitimate authority of that commander.
- Arbitrary, capricious, or an abuse of discretion.

- Clearly unfair (e.g., selective application of administrative standards/action, either in the type of standard/action applied or in the severity of the penalty imposed which results in a clearly unfair application of the administrative standard/action).

Limitations

One of your concerns will be the limitations that apply to complaints. For example, complaints relating to military discipline under the UCMJ, including Article 15 nonjudicial punishment (except complaints involving deferral of post-trial confinement), are not proper for consideration under Article 138. If guidance on requesting relief is covered by another instruction, then that instruction would govern. Examples include:

- A performance report or evaluation system.
- A suspension from flying status.
- Assessment of pecuniary liability.

Application for redress

Before submitting a complaint under Article 138, UCMJ, a member must apply, in writing through channels, to his or her commander for redress of the grievance. The member must apply for redress within 90 days of the member discovering the wrong, unless unusual circumstances prevent the member from applying within this time frame. This procedure requires the commander to address, and, perhaps, solve the grievance. The commander receiving the application has certain options available in dealing with the application:

- Grant the redress requested.
- Deny the redress request because he or she feels it is not warranted, the complaint is not recognized under Article 138, the complaint is recognized under Article 138, but not reviewed because there is another complaint channel available, or the complaint is untimely.
- Inform the complainant he or she lacks the authority to grant the redress sought due to pending action before another authority.
- Inform the complainant he or she lacks the authority to grant the redress sought for reasons not covered above, and returns the application, including supporting evidence, and informs the member which office or officer, if any, has authority to grant the redress sought.

Complaints of wrong

If the commander to whom the application for redress is properly submitted refuses the redress, the complainant may then submit the complaint directly (or through any superior commissioned officer) to the officer exercising general court-martial (GCM) jurisdiction over the officer against whom the complaint was initially made. The GCM authority will conduct or direct further investigation as appropriate, and will act based on the facts and circumstances of the complaint and any investigation.

He or she will review the case file to determine if the complaint is recognized under Article 138, and whether it may be subject to resolution in other established channels. If there is a valid complaint under Article 138, UCMJ, the GCM authority will take final action on the complaint. In all cases, the complainant will be advised in writing of the action taken and reasons for the action. After taking final action and notifying the member, the GCM authority sends one of the completed copies of the file to HQ USAF/JAA, for secretarial review and disposition.

222. Congressional and high-level inquiries

Occasionally, Congress will send a request for information or inquiry to a base. The Air Force policy, according to AFI 90-401, *Air Force Relations with Congress*, is to cooperate fully with the Congress and give a full and timely response to congressional inquiries.

Rules for releasing information

Under AFI 90-401, there are certain rules that apply to releasing information:

Rules for Releasing Information	
Type	Rules
Classified information	Classified information may be disclosed only with the consent of SAF and in accordance with applicable DOD and AF regulations. SAF has designated the Office of Security Review as the approval authority for release of classified information to Congress.
Controlled Unclassified Information (CUI) (Formerly For Official Use Only [FOUO])	According to DODM 5400.07 <i>Air Force Manual (AFMAN) 33-302, Freedom of Information Act Program</i> , it is DOD policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions of the FOIA. DOD components shall make discretionary releases whenever possible; however, must strictly follow the guidance set forth in DODM 5400.07 <i>AFMAN 33-302</i> and the FOIA to ensure release is appropriate. CUI is covered in DODI 5200-48.
Privacy Act information	Follow the PA guidance when processing information about military and civilian employees. Without an individual's written consent to release information, Air Force officials may provide only general information according to AFI 33-332, <i>Air Force Privacy and Civil Liberties Program</i> . The Air Force may, however, disclose an individual's records without the individual's consent when it is requested by a chairperson or ranking minority member of a congressional committee or subcommittee. However, the disclosed information must relate to matters within their jurisdiction. When making such a disclosure, the Air Force should tell the committee or subcommittee members about any sensitive information and the need to safeguard it.
Information from Air Force people	In accordance with Title 5 U.S.C. § 7102, <i>Employees' Rights</i> , and Title 10 U.S.C. § 1034, <i>Protected Communications; Prohibition of Retaliatory Personnel Actions</i> , Air Force personnel have the legal right to petition, furnish information to, or communicate with Congress.
Locally sensitive information	Information on changes in the status of Air Force units, installations, and industrial facilities may have an impact on state and congressional districts. Therefore, Air Force officials must not release such information without approval from SAF.
Congressional security clearances	Senators and Representatives have Top Secret clearances. Therefore, the Air Force allows members on special committees to see all documents relevant to the committee.

Documenting congressional inquiries

For congressional inquiries to local commanders, inform SAF/LL (Office of Legislative Liaison) and parent MAJCOM of all congressional inquiries. Fax a copy of a written inquiry to the Legislative Liaison Inquiry Division (SAF/LLI) and the MAJCOM Legislative Liaison Affairs function within 24

hours of receipt. On inquiries received by telephone, transcribe and fax it to the Legislative Liaison Inquiry Division within 24 hours of receipt or by the first duty day following a weekend or holiday.

223. Accident investigation boards

The Aviation and Admiralty Law Branch is located at Joint Base Andrews, MD and provides a team of legal advisors to assist in accident investigations. However, as you may be closest to the scene of the accident, you may be asked to assist in the investigation of an aircraft or aerospace accident that caused personal injury or property damage. Likewise, you may be called on to fulfill the role as a recorder for an accident investigation board (AIB). This lesson covers some of the aspects of aircraft and aerospace accidents and the resulting investigation.

Types of aircraft and missile investigations

There are two different types of aircraft and aerospace accident investigations:

Aircraft and Aerospace Accident Investigations	
Type	Explanation
Accident	Accident investigations are conducted by AIBs. The purpose of these investigations are to inquire into the facts surrounding Air Force aircraft and aerospace accidents; to prepare a publicly-releasable report; and to gather and preserve evidence for use in litigation, claims, disciplinary actions, administrative proceedings, and for other purposes.
Safety	Safety investigations are conducted by a safety investigation board (SIB). These investigations are conducted under AFI 91-204, and are conducted and written solely to prevent future mishaps. Safety investigations take priority over any corresponding legal investigations. NOTE: Air Force accident investigations are separate from and independent of safety investigations.

Responsibilities

The MAJCOM commander who convened or would have convened the preceding safety investigation under AFI 91-204, also convenes the accident investigation. Under these guidelines, the Air Force generally assigns mishap investigative responsibilities to the MAJCOM that experienced the loss of an assigned/owned asset (personnel or property). If an accident occurs and the personnel or property of two or more MAJCOMs are involved in the accident, the MAJCOM commanders must determine which command will assume investigative responsibility and advise AF/SE (Air Force Chief of Safety) within 24 hours. In general, the command whose asset initiated the mishap will assume investigative responsibility.

Who should be appointed to investigate an accident? MAJCOM commanders should appoint only officers with the necessary experience. AIB members should not be from the wing (or equivalent organization) to which the involved aircraft, aerospace equipment, or personnel are/were assigned; this is commonly referred to as the “mishap wing.” The composition of an AIB and the member’s qualifications are:

Accident Investigation Board Composition	
Member	Qualifications
AIB president	Should be a field grade officer, senior in grade to persons involved in the accident, and must come from outside the mishap wing. For Class A accidents, the president should be equivalent in grade to the corresponding SIB president and for any accident involving a fatality, must be a General Officer or Brigadier General select. For most manned aircraft accidents, they shall be rated officers (pilots, navigators, or air battle managers) and should have experience with the same or similar mishap airframe. For missile or space accidents, the president should have expertise and experience in the mishap missile or system and must be a missile or space operations officer.

Accident Investigation Board Composition	
Member	Qualifications
Legal advisor	The legal advisor shall be assigned to a unit outside of the mishap wing and have graduated from the Aircraft Accident Investigation Course or its predecessor, the AIB Legal Advisor Course. For fatalities, the legal advisor shall be a judge advocate with AIB legal advisor experience or a field grade officer.
Recorder	The recorder is normally an enlisted member or junior officer who possesses an administrative background.

The composition of the AIB is tailored to reflect the complexity of the accident. At a minimum, each AIB shall have a president, a legal advisor, and a recorder.

Other appointed AIB members typically include a pilot member or missile/space operations officer member, a maintenance member or missile/space material officer member, and a medical member. In accidents resulting in a fatality or serious personal injury, the medical member should be a flight doctor. In addition, the convening authority may appoint board members from a variety of other specialties depending on the nature of the accident.

An AIB subject matter expert (SME) may be detailed to advise the AIB, but will not serve as an AIB member. An SME cannot perform safety duties.

Investigative procedures

An AIB investigation must be convened for on-duty, Class A accidents involving Air Force aircraft, unmanned aerial systems, missiles, or space accidents. A Class A accident is one resulting in at least one of the following:

- A fatality or permanent total disability.
- The destruction of an Air Force aircraft, unmanned aerial system, missile, space launch system, or space asset.
- A total mishap cost of \$2,000,000 or more to government and other property

When an accident occurs, the safety investigation shall be conducted prior to the accident investigation. In limited circumstances, AF Legal Operations Agency Claims and Tort Litigation Division (AFLOA/JACC) may authorize the start of an AIB prior to completion of the SIB. The SIB produces a two-part report for Class A mishaps, a fatality or permanent total disability, or destruction of an Air Force aircraft or aerospace asset. Part I contains non-privileged, factual information. The SIB Part I is completed and provided to the AIB. This hand-off marks the AIB start date. Part II of the SIB report is privileged and only used for safety purposes. The AIB is not allowed access to Part II and, prior to the AIB president and members receiving any evidence from any SIB convened, the legal advisor must review the evidence to ensure it does not contain any privileged safety information.

As the AIB process and AIB member duties are quite extensive, the entire AIB process will not be covered here; however, strict adherence to policy and procedure is imperative to the outcome of the investigation. Refer to AFI 51-307 for the full procedures.

Disposition

AFI 51-307, offers timelines for various parts of the investigation process based on the need for the investigation to be completed in a timely manner. The accident report must be completed within 30 days after the start of the investigation, unless an extension is granted. Because the drafting and organization of the report can be just as extensive as the actual investigation, it is recommended the AIB forward a draft copy of the executive summary, summary of facts, the statement of opinion, and the completed AFLOA/JACC Legal Advisor's checklist to the convening authority's SJA for an

informal review by the SJA and selected staff personnel to ensure the AIB report meets the requirements of applicable instructions and to obtain constructive comments.

Once the report is complete, the AIB shall mail the original AIB report and as many copies (paper and electronic) as was specified by the AIB convening documents, MAJCOM supplement to AFI 51-307, or MAJCOM guidance directly to the convening authority's SJA. The SJA staffs the AIB report to the appropriate staff offices for comments, forwards comments to the AIB president, receives any revisions, completes a final legal review, and forwards the AIB report and legal review to the convening authority within 30 days. The convening authority reviews the AIB report and decides whether to approve the report as written, or return it to the AIB president for further action. Approval of the AIB report by the convening authority indicates he or she determined the report complies with applicable laws and regulations.

After the convening authority approves the AIB report, the convening authority's SJA coordinates with the convening authority's Public Affairs (PA) for AIB report distribution for non-high-interest mishaps. The amount of interest in the mishap will determine which agency receives a copy of the report and which parts of the report they receive. The original report is filed in the office of the MAJCOM SJA.

While you are not expected to conduct the investigations mentioned here, familiarity with the directives mentioned will help you understand the assistance your office will provide to the aircraft or aerospace accident investigator, other investigators, or in the event you act as a recorder.

AIB recorder

You may be tasked to be the recorder during an AIB investigation. Normally, AIB recorders are provided from the MAJCOM in which the Air Force asset belonged. In other words, if an aircraft assigned to an Air Combat Command (ACC) base crashes, then ACC is responsible for providing the recorder for the AIB investigation. In addition, for fatality investigations, the person selected to perform recorder duties must have completed the Accident Investigation Course at Maxwell AFB, AL.

As outlined in AFI 51-307, the AIB recorder must be a paralegal or a judge advocate. For fatality investigations, the recorder must be a graduate of the Accident Investigation Course. The recorder has the following responsibilities:

- Will ensure the facilities where the accident investigation board work are set up prior to the arrival of the board president and the rest of the board.
- Serves as custodian of all AIB documents and evidence.
- Manages and formats all tabs, to include redactions.
- Assists with transcriptions, as necessary.
- Drafts the Authority and Purpose, Background, and Governing Directives and Publications sections of the Summary of Facts.
- Assists with assembling the report.
- Collects AIB witnesses and member contact information for the post-investigation memorandum.
- Assists with assembling the post-investigation memorandum, and mailing reports and evidence to the convening authority's SJA.
- Performs other duties to support the AIB as assigned by the AIB president.

As you can see, the duties of an AIB recorder are quite extensive and you will be an essential part of the AIB investigation.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

219. Administrative inquiries and investigations

1. What methods does the Air Force use to gain information about a particular situation?
2. What is the difference between an inquiry and an investigation?
3. Who takes final action on an investigation report submitted by the investigating officer?
4. Who is authorized to appoint an officer to conduct an inquiry?
5. How does HQ USAF/IG handle the complaints it receives?
6. List the three types of written reports.

220. Conscientious objector

1. What are the types of conscientious objector classifications?
2. What does a CO applicant have to prove?
3. Who must interview the CO applicant prior to the processing of his/her application?
4. What requirements must an investigative officer meet to be appointed to conduct a CO hearing?
5. Who is the final approval authority for an officer CO applicant? For an enlisted applicant?

221. Complaints of wrongs

1. What is the definition of a wrong?

2. Name the complaints not processed under Article 138, UCMJ.
3. To whom does an individual forward an application for redress?
4. When should an application for redress be made?
5. If the complainant is refused redress by his or her commander, to who would the complaint of wrong be sent?

222. Congressional and high-level inquiries

1. According to AFI 90-401, what is the Air Force policy when responding to congressional inquiries?
2. When may classified information be disclosed?
3. Why must Air Force officials get SAF approval before releasing information on changes in the status of Air Force units, installations, and industrial facilities?
4. For congressional inquiries to local commanders, what must be done within 24 hours of the receipt of the inquiry?

223. Accident investigation boards

1. What are the types of investigations that involve aircraft or aerospace equipment?
2. Who is responsible for investigating accidents involving aircraft or aerospace equipment?
3. When must an AIB investigation be convened?
4. An accident report must be completed within how many days?

5. After the convening authority approves the AIB report, what is the next step in the AIB process?
6. Who can fill the position of the AIB recorder?

3-2. Release of Information

The areas covered in this section may not seem related at first glance, but they all fall under various areas of general law. We incorporate various laws passed by Congress implemented by DOD, Air Force instructions, or related guidance. This lesson covers Freedom of Information, Privacy Act requirements, and release of information.

224. Freedom of Information Act and Privacy Act

During a period of public mistrust in the government, Congress passed two acts in hopes of regaining that trust—the FOIA and the PA.

The specific intent of both acts is disclosure of records, forms, documents, and files. The idea is that the government has nothing to hide from the public; therefore, most records and documents can be released upon request with certain restrictions.

References

In fulfilling the responsibilities under both the FOIA and the PA, the basic references you may be concerned with these:

- DODM 5400.07_AFMAN 33-302.
- Department of Defense Directive (DODD) 5400.07, *DOD Freedom of Information Act (FOIA) Program*.
- DOD 5400.11-R, *Department of Defense Privacy Program*.
- *OPEN Government Act of 2007* (S. 2488).
- AFI 33-332.
- Title 5 U.S.C. § 552a, *Records Maintained on Individuals* (Public Law 93-579).
- Title 5 U.S.C. § 552, *Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings* (Public Law 93-502).
- *The Electronic Freedom of Information Act* (Public Law 104-231), codified at Title 5 U.S.C. 552b.

Freedom of Information Act

The FOIA specifically covers the release of government records. According to the Department of Justice Guide to the Freedom of Information Act, 2009 Edition, the US Supreme Court has explained “the basic purpose of the FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” Under the FOIA, any person, including a member of the public (US or foreign citizen/entity), an organization, or a business may request in writing to either a specific department or to an individual having access that he or she wishes to have copies of or personally review a certain record. Upon initial receipt of a FOIA request, a memorandum is sent to the requester informing them of receipt of the request and that a determination will be made within 20 workdays from receipt of the request. The releasing authority or a designee must either disclose or deny the request. As previously covered, it is DOD policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions.

The nine exemptions are:

1. Classified in the interest of national security or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations.
2. Related to the internal personnel rules and practices of the DOD or any of its components.
3. Concerning matters a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by statute for withholding or referring to particular types of matters to be withheld.
4. Containing trade secrets or commercial or financial information that a DOD component receives from a person or organization outside the government with the understanding the information or record will be retained on a privileged or confidential basis in accordance with customary handling of such records.
5. Containing information considered privileged in litigation, primarily under the deliberative process privilege.
6. Information in personnel and medical files, as well as similar personal information files that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy.
7. Records or information compiled for law enforcement purposes (i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law).
8. Containing in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.
9. Containing geological and geophysical information and data (including maps) concerning wells.

If a record meets the exemption criteria of the FOIA, it may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or provided in response to a FOIA request. Some exemptions allow for discretionary release; therefore, DOD components are encouraged to exercise discretionary releases whenever possible.

Appeal process

If a request is denied, the requester may appeal to a designated appellate authority within *60 calendar days* from date of initial denial. FOIA requesters seeking Air Force records must address appeals to the Office of the Secretary of the Air Force, through the FOIA Requester Service Center (RSC) of the initial denial authority (IDA) that denied the request. Requestors may also submit appeals online at the Air Force Public Access Link. Air Force IDAs may reconsider any prior denials and may grant all or part of an appeal. If denied, the IDA will include a statement that the issues raised in the appeal were considered and rejected in full or in part.

All appeals to IDA decisions at the wing level are sent through the MAJCOM FOIA RSC to the Secretary of the Air Force's designated appellate authority, the Secretary of the Air Force General Counsel, Fiscal, Ethics, and Administrative Law (SAF/GCA), through the General Litigation Division (AFLOA/JACL). The Air Force then has *20 workdays* to decide the appeal. If the denial is upheld, the requester can file a suit in federal district court in an attempt to compel release. A requester may also file suit when a DOD component has failed to respond within the time limits prescribed by the FOIA and applicable regulations.

Electronic Freedom of Information Act amendments

On 2 October 1996, President Bill Clinton signed the Electronic Freedom of Information Act amendments. The changes created by the amendments include:

- An expansion of the type of information that is subject to a FOIA request.

- A requirement for agencies to make records available through computer telecommunications or other electronic means.
- An opportunity for requesters to specify the form or format in which they desire the record to be released.
- An extension of the 10-day SAF/GCA response period to 20 days.

Privacy Act

The PA, on the other hand, applies to records retrieved by name or other personal identifier of a US citizen or alien lawfully admitted for permanent residence, and are subject to Privacy Act requirements and are referred to as a Privacy Act system of records. The Privacy Act of 1974 defines the term “record” as any item, collection, or grouping of information about an individual that is maintained by an agency. Under the PA, not only can you request copies of documents pertaining to you, but you can also request a determination to be made whether any files, records, or any other information exists under your name. If such documentation does exist and you feel it is in error, you can also use the PA to amend that documentation.

Time requirements for providing a response to PA requests depends on whether first party access is being given to an individual for their PA records or whether individuals are requesting an amendment to personal information in his or her records. For first party access, response to all PA requests shall be made within *20 workdays* of receipt. The requester will be informed of the status of the request after ten workdays have elapsed, informing them of the status of their request and providing an approximate completion date of no more than 20 workdays from the date of initial receipt of the request. For amending PA records, acknowledge requests within ten workdays of receipt, to include expected completion date. Final decisions must, unless extended by the appropriate authority, take no longer than *30 workdays*.

No information may be released to anyone other than the individual it pertains to without written permission. When PA requests are made and a request is complied with, strict records must be kept on the identity of the requester.

When soliciting information for the Air Force from individuals (information that must be kept in a system of records), the solicitor must first inform the individual of the following:

- The authority (whether granted by statute or executive order of the President) which authorizes the solicitation of the information.
- The principal purpose(s) for which the information is intended to be used.
- The routine uses which may be made of the information.
- Whether disclosure of the information is voluntary or mandatory.
- The affects, if any, of not providing all or any part of the requested information.

When a PA record will not be released under the PA, the request must be processed under the FOIA and its governing procedures. For PA denials not processed under the FOIA, send a copy of the request, a record copy, and why denying access is recommended to the denial authority through the legal office and the privacy act office. The legal office will provide a written legal opinion to ensure legal sufficiency and will include factual details and an analysis of the law and applicable regulations. The PA officer reviews the file and makes a recommendation to the IDA. If the denial authority grants access, release the record copy; however, if the denial authority refuses access, send the requester a memorandum explaining the reasons for denial and his or her right to appeal.

Appeal process

The appeal process for PA access or amendment requests is very similar to the FOIA appeal process. Individuals who receive a denial, in whole or in part, to their access or amendment request may request an appeal to the Air Force privacy officer within 60 calendar days of the date of the initial

denial letter. The Air Force privacy officer will review the denial and provide a final recommendation. The Air Force privacy officer is the final authority on appeals and will provide the requester the final Air Force decision and explain judicial review rights.

Managers and monitors

Documentation managers at all levels of the Air Force are designated as FOIA managers. The same individual, at base level, is normally appointed the job of PA manager. The FOIA/PA manager has the overall responsibility of processing requests for information that cite either act. He or she records the date and time requests are received, assigns suspense dates, and monitors the requests to ensure strict compliance of time constraints are kept. Other duties include the referral of requests to the office that has possession of the record, information, or files, and the coordination with any other office that should be consulted in determining whether to disclose the records or deny the request. The FOIA/PA manager also collects the fees for the reproduction of any documents.

Disclosure authority

TJAG is the disclosure authority for all trial records for litigation and other investigations. TJAG has delegated this authority to other levels within the TJAG Corps (i.e., on summary courts-martial, the SJA exercising GCM jurisdiction is the disclosure authority). Many times, the SJA at the base level is requested to supply legal advice to other disclosure authorities or to supply information on inquiries by higher levels. As a paralegal, become familiar with DODM 5400.07_AFMAN 33-302, and AFI 33-332, as well as AFI 51-201.

Disclosure authorities make final decisions on providing releasable records within the time limits and provide recommendations to the IDA on proposed denials and partial denials after coordination with the appropriate FOIA and legal office. Disclosure authorities are normally division chiefs or higher at Air Staff level. MAJCOMs designate their disclosure authority levels. Contractors who are the functional office of primary responsibility (OPR) for official government records are not authorized to make decisions to disclose government records.

A key point to remember is the request must be answered within a specified time limit. If the disclosure authority determines the Air Force may make the material available, take one of these actions:

1. If the requester asked to inspect the record, tell the requester where and when it may be inspected. Inform the requester of the amount of the fee, if applicable.
2. If the requester asked for a copy of the record, inform the requester of the fee and explain that the FOIA/PA manager will furnish the copy upon receipt of the fee. If the request is urgent, you may send a copy before payment.

If the disclosure authority is not authorized to deny such a request, it is returned to the FOIA/PA manager, who sends the request to the proper denial authority for a decision. The package should include the case file and a statement of reasons for not disclosing the requested material. This referral must be given the highest priority, again, due to the prescribed time limits.

FOIA and PA requests, as you can see, are quite important and must be handled within strict rules. If you receive such a request, work closely with the FOIA/PA manager or, if your base has one, the special monitor for requests made under these provisions. Serious penalties can be levied on the person responsible for processing and handling a request for not complying with the law.

225. Release of information for litigation The information we have access to, whether classified or not, is for the use of Air Force personnel in the performance of their official duties. The release of such information for use in litigation is of great concern to the Air Force because of its possible uses both for and against the government.

Policy

AFI 51-301, *Civil Litigation*, covers releasing information in litigation, testifying, and serving on state and local juries. Air Force members may be required to provide witness testimony in private litigation, civilian criminal proceedings, litigation involving the US, state or local legislative hearings, or serve on a state or local jury. In such cases, it is extremely important Air Force members seek guidance to prevent release of prohibited or classified information. Except as otherwise provided, the SJA is responsible for determining whether official factual information is made available for use in litigation, unless the information is classified or privileged. In addition, the SJA provides legal advice to Air Force personnel under subpoena to appear and testify concerning official information.

When records are requested for release in litigation, we must follow the applicable instructions and regulations for their release. For example, AFI 51-301 does not supersede or modify how official information is released under the FOIA or the release of PA records. Whether it is actual testimony or a record, it is important to ensure the release is authorized under the governing instruction or regulation.

Applicability

Keep in mind, this section covers release of information in civil litigation and does not impact our internal day-to-day operations. AFI 51-301, does not apply to releasing official information or testimony by Air Force personnel in the following situations:

- Courts-martial by military departments or in administrative proceedings conducted by or on behalf of a DOD component.
- Administrative proceedings for the Equal Employment Opportunity Commission (EEOC), the Merit Systems Protection Board, the Federal Labor Relations Authority (FLRA), or a negotiated grievance procedure under a collective bargaining agreement to which the government is a party.
- The Defense Office of Hearing Appeals (DOHA) or the DOHA Board.
- Disclosing information to federal, state, and local prosecuting and law enforcement authorities for use in a criminal investigation by a DOD organization.

Just as important as it is to know what situations this applies, it is equally important to know to whom it applies. The release of information for litigation applies to Air Force personnel; however, it is not simply active duty members. When referring to Air Force personnel within this chapter, we also include these:

- Present and retired US Air Force military personnel, including Reserve and ANG personnel when in federal service.
- Former US Air Force military personnel.
- US Air Force Academy cadets.
- Present, retired, and former civilian employees of the Air Force, to include NAF employees, non-US nationals who perform services overseas for the US under a Status of Forces Agreement (SOFA), and other individuals hired through contractual agreements by or on behalf of the Air Force.

Release authorities

SJAs are the release authority for official, unclassified factual information in private litigation cases. Medical Law Consultants are the release authority for official unclassified factual information for

private litigation; to the extent it involves the release of medical and other records and information within the custody, control, or knowledge of their permanent station hospital and its personnel. The responsible AFLOA civil litigation division or United States Air Force Headquarters Operations & International Law Division (HQ USAF/JAO) (for official information to be released to or used in foreign courts) releases all official unclassified Air Force information in cases in which the US is a party or has a direct or indirect interest. In addition, they also make all such release decisions for cases in which the information could be used in a claim or litigation against the US.

Release authorities must ensure requesters state, in writing, the nature and relevance of the official information he or she wants. Then, each releasing authority, will determine whether to release or deny official information or testimony. In making this determination, releasing authorities must consider the following:

- Demand is unduly burdensome or otherwise irrelevant.
- Disclosure is inadmissible under the rules of evidence or otherwise inappropriate under the applicable court rules.
- Disclosure is appropriate under the rules of procedure governing the case and under the relevant substantive law concerning the appropriate privilege.
- Disclosure violates any statute, executive order, regulation, or directive.
- Disclosure, except when in camera and necessary to assert a claim of privilege, would reveal classified or other restricted information. (Camera sessions will be covered in the Military Justice volume.)
- Disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the circumstances.

Releasing classified information

Classified information cannot be released under any circumstances to courts or unauthorized persons unless proper authority first declassifies the material. If classified information, which cannot be declassified at lower levels, is requested, notify the appropriate civil litigation division of AFLOA or HQ USAF/JAO (if a foreign court is involved). Pending a final decision as to the release of the classified information, furnish the requester, court, or other authority a copy of Title 32 Code of Federal Regulations (CFR) 97 (DODD 5405.2, *Release of Official Information in Litigation and Testimony by DOD Personnel as Witnesses*) and of AFI 51-301. Also inform the requester or court where the request is being reviewed and seek a stay of the request until final determination is made on the request.

Release options

An SJA, upon receiving a request for information, has basically three options:

1. Approve or deny (within his or her authority) the request.
2. Consult the responsible AFLOA civil litigation division or HQ USAF/JAO for a decision.
3. Forward the request to the appropriate authority (FOIA or PA) to deny the request in accordance with the guidelines in DODM 5400.07_AFMAN 33-302 and AFI 33-332.

If you request a decision or a release of information from an AFLOA civil litigation division or HQ USAF/JAO, you must provide:

- Name of litigation and parties.
- Name and location of the court or tribunal.
- Date litigation began and date of requested appearance.
- Name and address of requester and of party who has the requested official information.

- Type of action, subject matter, and a statement of the relevancy of the requested information.
- Copies of documents requested or a complete description of them if they are bulky or numerous.
- Recommendations on the release and any other pertinent information.

What if the SJA or appropriate civil litigation division denies the release of information and the Air Force member has received a subpoena? If a court subpoenas a military member and the release of the requested material is prohibited by instruction, the member, with the assistance of the legal office, will attempt to resolve the matter with the attorney requesting the information or the member will appear before the court and explain the situation. If the requesting attorney or court is not satisfied, the member should request time to refer the request to the appropriate AFLOA civil litigation division or HQ USAF/JAO. If needed, JAG will accompany the member and advise the member concerning any problems with the release or nonrelease of the official information.

As you can see, there are many situations in which an Air Force member may be required to release information for litigation. It is imperative the correct procedures are followed to ensure a member is not inadvertently advised to release prohibited information.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

224. Freedom of Information Act and Privacy Act

1. What information is covered by the FOIA?
2. What are reasons an FOIA request can be denied?
3. When a FOIA request is denied, within what maximum time period may a requester appeal to the SAF?
4. If the denial of a FOIA request is upheld by SAF/GCA, what is the next step the requester may take?
5. What information is covered by the Privacy Act?
6. For first party access, what is the maximum time period to respond to all PA requests?
7. When soliciting information protected by the PA for the Air Force from an individual, what requirement must be met?

8. What is the next step in the process if a PA record will not be released under the PA?
9. When a PA request is denied, within what maximum time period may a requester appeal to the AF privacy officer?
10. What is the overall responsibility of the FOIA/PA manager?
11. Who is the disclosure authority for all trial records for litigation and other investigations?
12. What action(s) are taken if the disclosure authority determines the Air Force may make material available under the FOIA or PA?

225. Release of information of litigation

1. Except as otherwise provided, who is responsible for determining whether official factual information is made available for use in litigation, unless the information is classified or privileged?
2. Under AFI 51-301, what situations do not apply to releasing official information or testimony by Air Force personnel?
3. What agency is authorized to release all official unclassified Air Force information in cases in which the US is a party or has a direct or indirect interest?
4. When may classified information be released for litigation?
5. What options does an SJA have upon receiving a request for information for litigation?
6. What information must be provided when requesting a decision from an AFLOA civil litigation division or HQ USAF/JAO regarding release of information?

7. What action is taken when a military member is subpoenaed and the release of requested information is prohibited by regulation?

3-3. Legal Reviews

So far, we briefly covered the importance of legal research and writing and provided a sample legal review for an administrative separation. We will now dive a little deeper into your duties as a paralegal assigned to the general law division of your legal office. We will cover how to draft various types of legal reviews. Legal reviews are written to help commanders make informed decisions about pending issues. Commanders rely on legal reviews for concise legal analysis and use them to decide the particular issue confronting them and their organizations. Legal research is very important in this area because commanders rely on sound legal advice to do what is right and what is legal. We cannot give sound legal advice if we have not done the research required to enable us to properly advise a commander.

226. Legal review overviews

The civil law/general law section of your legal office is responsible for many different programs such as preventive law, legal assistance, and magistrate's court. This lesson focuses on some of the issues you will have to deal with and how to write the legal reviews that inevitably go with them. In the Paralegal Apprentice Course, you learned how to write a legal review and it is this method of writing used throughout this lesson. However, the process and formatting of the legal review may vary from base to base and you will need to follow the guidelines set forth by your SJA. In order to accomplish a thorough and accurate legal review, you must have a general understanding of each of these processes.

Line of duty determinations

Federal law requires a line of duty (LOD) determination to determine if certain injuries, diseases, or deaths suffered by military members occurred while a member was in the line of duty or as the result of the member's misconduct. LOD determinations are often used as material evidence by a physical evaluation board to determine a member's eligibility for benefits. Failure to take fast action in processing LOD and misconduct determinations can result in delays in processing disability retirement and separation actions under AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*. Delays in processing also cause overpayments, especially in cases involving drug- and alcohol-related diseases. These can result in an indebtedness that prompt action would have avoided.

As an example, a member who has been unable to perform duties for eight days because of an injury from alcohol abuse may be found to be "not in line of duty status due to own misconduct." Therefore, the member would not be entitled to receive pay for those absent days.

You can easily see the documentation pertaining to the injury must be quickly processed through MPS and Finance for deduction of pay or recovery action. This is especially important when the member has already been paid and has not yet been discharged from the service. AFI 36-2910, is the governing directive for processing LOD actions.

When determinations are required

A LOD determination is required when a member, whether hospitalized or not, has an illness, injury, or disease that results in the following:

- Death of a member.
- Inability to do military duties for *more than* 24 hours.

- The likelihood of a permanent disability.
- Medical treatment of a member of the Air Reserve Component (ARC) regardless of the member's ability to perform military duties.
- The likelihood of an ARC member applying for incapacitation pay.

In every case where a member dies on active duty, at a minimum, an AF Form 348, Line of Duty Determination, must be completed. An administrative determination is not sufficient in a case of death. If a member without qualifying dependents dies during an LOD or misconduct investigation, further action is suspended and the case will be processed under AFI 36-3002, *Casualty Services*. If a member with qualifying dependents dies before or during a LOD or misconduct investigation, the investigation continues to its normal conclusion.

As specified in AFI 36-2910, the LOD determination and its objective is a finding made after an investigation into the circumstances of a member's illness, injury, disease, or death. The findings of the investigation will conclude: (1) whether the illness, injury, or disease existed *prior to service* (EPTS) and if the EPTS condition was aggravated by military service, (2) whether the illness, injury, disease, or death occurred while the member was absent from duty and (3) whether the illness, injury, disease, or death was due to the member's own misconduct.

Findings available

Once the preceding determinations have been made, one of the three findings will be applied to the member's illness, injury, disease, or death:

Line of Duty Determinations	
Determination	Description
In line of duty	This finding is reached when it is clear the illness, injury, disease, or death did not occur while the member was absent without authority and was not due to the member's own misconduct. For example, a member is injured while present at his or her duty section and no misconduct is involved.
Not in line of duty, <i>not</i> due to own misconduct	This finding is reached when the member was absent from duty; however, the illness, injury, disease, or death was not caused by the member's misconduct. For example, Airman Jane Smith was injured in a commercial bus accident while she was absent without leave (AWOL).
Not in line of duty, due to own misconduct	This finding is used when the illness, injury, disease or death was proximately caused by the member's own misconduct; regardless of whether or not the member was AWOL. For example, a member who may be present for duty was injured while engaged in "horseplay" or a member who was AWOL, was involved in an accident while drinking and driving.

Processing requirements

Medical officers, commanders, SJAs, and the MPS all play an active role and have a responsibility to ensure the LOD determination process runs smoothly. It is extremely important to understand this process will vary depending upon whether the member is active duty or a member of the ARC. Here, LODs are covered as they pertain to active duty members. The process will begin with a medical officer's review of the illness, injury, disease, or death. The review should be done by the medical officer who first provided treatment or who is assigned to a facility nearest to the civilian facility that first provided treatment.

Action by the medical officer

When an LOD is initiated, the medical officer will play a role in one of two ways; as an administrative determination or an informal determination (AF Form 348). For example, a medical officer would initiate an administrative determination if the illness, injury, disease, or death was found to have existed prior to service. Other examples may include characterized as a hostile casualty,

incurred as a passenger in a common carrier or military aircraft, or an illness or disease clearly not involving misconduct or caused by abuse of drugs or alcohol; just to name a few. It is important to note that if an LOD is completed through the administrative determination process, it is finalized and no further inquiry is required.

The informal determination process is a little bit different. This determination is used when the administrative process is not appropriate. When this occurs, the medical officer will initiate an AF Form 348. For example, this must be accomplished in every case of a member dying on active duty. Another important difference is the medical officer will not make an LOD determination; they will only provide a narrative description of the member's medical condition and then forward the AF Form 348 through the proper channels for processing. The medical officer signs the AF Form 348 and forwards it to the line of duty-medical focal point (LOD-MFP); this completes the informal determination for the medical officer.

However, further processing is still required. The LOD-MFP will send the original AF Form 348 to the member's immediate commander through the MPS Customer Support Element.

Action by the immediate commander

The commander investigates the case to determine if the illness, injury, disease or death occurred while the member was absent without authority or was due to the member's own misconduct. If the evidence does not support either of these circumstances, then the commander will find the case to be "In the Line of Duty." The commander enters the required information on the AF Form 348 and forwards it to the SJA for a legal review. The SJA reviews the commander's recommendation for legal sufficiency and if the SJA agrees with the immediate commander's findings, the informal determination process is complete and the finalized AF Form 348 is returned to the commander.

At this point, what if the commander finds "Not in Line of Duty" or there is some other strange circumstances surrounding the case? The process will continue, right? The answer is "yes." Not all LOD cases are as cut-and-dry as the examples. In special circumstances, a formal determination may be required. The formal determination is made by higher authorities and is based upon a thorough investigation. DD Form 261, Report of Investigation, Line of Duty and Misconduct Status, is used to supplement the AF Form 348.

Remember, as part of the commander's review, the immediate commander must determine if the member was absent without authority or the illness, injury, disease or death was due to member's own misconduct. In cases where the commander finds either of these to be true, a "Not in Line of Duty" finding is recommended. Under these circumstances, a formal determination is required. In addition, the immediate commander will recommend a formal determination when the circumstances surrounding the case are strange or doubtful, or simply, if the commander believes the case should be fully investigated. The immediate commander enters the investigation recommendation on the AF Form 348 and forwards it to the SJA for legal review. The SJA completes their review and forwards it to the appointing authority.

Action by the appointing authority

In the early stages of the investigation process, the appointing authority's job is quite simple; appoint an IO to investigate the circumstances. Later, you will see further involvement from the appointing authority.

Action by the investigating officer

Investigating officers should be disinterested officers in the grade of captain or above, and who are senior in grade to the member being investigated. Should anyone be appointed who does not meet this requirement, the appointing authority must justify the IO appointment with a separate memo.

After the IO completes his or her investigation, the SJA will conduct a legal review. Upon completion of the legal review, the entire package; the investigation report and all supporting attachments is

forwarded to the appointing authority. The appointing authority will review the investigation and may make one of two decisions: (1) return the file to the IO for further investigation, or (2) complete a DD Form 261 and forward the complete file to the reviewing authority.

Action by the reviewing authority

The reviewing authority's responsibility is just that; review the complete investigation file. Upon the completion of this review, the reviewing authority may take several actions: (1) return the file to the IO for further investigation, or (2) complete a DD Form 261 and forward the complete file to the approving authority. It is important to note here, the reviewing authority and the approving authority can be the same person and, in such cases, the formal determination is finalized.

Action by the approving authority

The approving authority will review the complete investigation file and may: (1) return the file to the IO for further investigation, or (2) approve a final determination by completing a DD Form 261 and return the complete file to the immediate commander. This is the last step in the determination process; however, keep in mind the immediate commander and the servicing FSMPS has further processing responsibilities.

Legal review

As you can see, the LOD process can be quite complex and an SJA legal review is required during different stages depending upon whether it is an administrative, informal, or formal determination. It is your duty to understand the LOD process as a whole and when our services are required for a legal review; your ability to do a thorough and accurate legal review is depending on it. We will take a look at a sample legal review (figs. 3-1, A-C) and cover some of the contents.

Remember, the sample legal review provided in this career development course (CDC) uses the format you learned during the Paralegal Apprentice Course. If your base happens to write these differently, the content should include *at least* a summary of facts, identification and discussion of issues, and opinion of legal sufficiency/correctness of finding.

- The first section of the review is to document that you have reviewed the LOD determination, find it legally sufficient for making a determination, the IO complied with their requirements, and whether you concur or nonconcur with the findings.
- The next section of the review, you need to outline the facts of the case, being as specific as necessary to give the reader a good foundation.
- The third section addresses the issues in the case. Whether a formal LOD is required and the AFI requirements for LOD determinations and findings.
- Next, discuss the rules that apply to your particular case. In the case covered in figures 3-1, A-C, TSgt Smart covers the rules that apply to this LOD by defining proximate cause and outlining the rule that the intentional wrongful or negligent operation of a motor vehicle may result in member being found to have engaged in misconduct.
- In the fifth section, you will apply the facts and the rules to your particular case. Outline whether a formal LOD determination is required and apply each fact to the rules that require being addressed. In the case covered in figures 3-1, A-C, TSgt Smart covers the reasons a formal LOD determination is required, how LOD is measured, and how the facts of A1C Doe's accident apply.
- Finally, conclude by providing your recommendations to the approval authority, reiterating your concurrence or nonconcurrence from the first paragraph.

23 May 2011

MEMORANDUM FOR 77 MSG/CC

FROM: 77 ABW/JA
50 Beach Street
Eglin AFB FL 32542

SUBJECT: Legal Review regarding Line of Duty (LOD) Misconduct Determination
Airman First Class John B. Doe

1. I have reviewed the LOD Determination on Airman First Class John Doe and find it legally sufficient for making a determination in this case. The Investigating Officer (IO) substantially complied with all applicable requirements. Finally, I agree with the Investigating Officer's finding that A1C John Doe be found In the Line of Duty.
2. FACTS: On Saturday, 7 May and Sunday, 8 May 2011, A1C John Doe was attending a party at a coworker's house in Fort Walton Beach, FL. SrA Jack Daniels, a witness at the party, later informed Trooper Ivan Smalls that A1C Doe had won a bottle of tequila. A1C Doe departed the party at approximately 0330 on 8 May 2011. At approximately 0335, Florida State Trooper, Ivan Smalls noticed the member's car upside down in a ditch and found A1C Doe still restrained inside his vehicle by the seatbelt. Trooper Smalls approached the vehicle and noticed a smell of alcohol coming from the member and a broken tequila bottle in the vicinity. The member was treated on the scene by paramedics and transported to FWB medical center in Fort Walton Beach, FL. Ms. Janet I. Saw, a witness to the accident, stated she witnessed A1C Doe swerve to avoid logs that had fallen off of a logging truck and strike the cement barrier. The attending emergency room physician, Dr. Eian Big, treated the member for his head trauma and as a matter of protocol when alcohol is suspected in an accident, performed a Blood Alcohol Count (BAC) level on the member. The result of the test revealed the member's BAC level was zero. The member remains in a coma in the Intensive Care Unit at FWB medical center in critical but stable condition. Dr. Big anticipates a lengthy recovery period for the member.
3. ISSUE(S): Whether a formal line of duty determination is required based on the facts presented. If yes, then whether A1C Doe was in the line of duty when he lost control of his vehicle and struck a cement barrier resulting in serious injuries to his person.

Figure 3-1A. LOD legal review concurring with in line of duty determination.

AFI 36-2910 addresses LOD Determinations and allows four possible findings in an LOD determination: 1) In Line of Duty; 2) Not in Line of Duty, Not Due to Own Misconduct; 3) Not in Line of Duty, Due to Own Misconduct; and 4) Existed Prior to Service, LOD Not Applicable. There is a presumption that a member's illness or injury is ILOD, unless that presumption is overcome by a preponderance of the evidence.

4. RULE(S):

a. Proximate Cause: The cause that, in a natural and continuous sequence unbroken by an independent and unforeseeable new cause, results in the injury and without which the injury would not have occurred. As a general rule, to warrant a finding that an act was the proximate cause of an injury, it must appear that, in light of all attending circumstances, it could reasonably have been anticipated by the member that injury or death might result from such misconduct.

b. Operating a motor vehicle in an intentionally wrongful or negligent manner: If the member operated a motor vehicle in an intentionally wrongful or negligent manner that was the proximate cause of an injury or death, the member may be found to have engaged in misconduct.

5. APPLICATION:

a. Is a formal LOD determination required? AFI 36-2910, paragraph 1.5 requires an LOD determination under several conditions. Among them are: the inability to perform military duties for more than 24 hours, and the likelihood of a permanent disability. Airman First Class John Doe has been hospitalized for 17 days and is unable to perform military duties. He is currently in a coma as a result of his accident. Therefore, a formal LOD is appropriate for this case.

b. Having established the requirement for a formal LOD, the next issue is whether A1C Doe's injuries were proximately caused by his own misconduct. AFI 36-2910, paragraph 1.6 tells us to assume the injuries were "In the Line of Duty" and not due to the member's own misconduct unless the preponderance of the evidence shows they were "proximately caused by the member's own misconduct; or occurred while the member was absent without authority."

1) The case file contains absolutely no evidence the member was absent without authority at the time of the incident. He was returning from a party, near his assigned duty station, during his weekend off.

2) Was A1C Doe's intentionally wrongful or negligent operation of his vehicle the proximate cause of his injuries? Based on the preponderance of the evidence standard, the member's injuries were not due to his intentionally wrongful or negligent operation of his vehicle. The sworn statements of the State Trooper, SrA Daniels, Ms. Saw, and the attending emergency room physician support these facts, and there are no other statements or facts to contradict this point.

3) Did A1C Doe operate a motor vehicle in an intentionally wrongful manner? The member did not operate his motor vehicle in an intentionally wrongful manner. According to

Figure 3-1B. LOD legal review concurring with in line of duty determination.

Ms. Saw's witness statement, A1C Doe was merely trying to avoid logs that had fallen off of a logging truck. Furthermore, Dr. Big confirmed the member did have a BAC of zero. Based on the evidence, the member did not operate his vehicle in an intentionally wrongful manner and was not the proximate cause of the accident.

6. CONCLUSION: Based on the facts presented, I concur with the IO's "In Line of Duty" finding, that, A1C Doe was not the proximate cause of his injuries. I recommend you find A1C Doe was In the Line of Duty. This package is legally sufficient and supports the finding.

IMA R. SMART, TSgt, USAF
NCOIC, Civil Law

I concur with TSgt Ima R. Smart's analysis and recommendation in this case.

PATTY A. CAKE, Lt Col, USAF
Staff Judge Advocate

Attachment:
LOD – A1C John Doe

Figure 3-1C. LOD legal review concurring with in line of duty determination.

In review of the LOD determination process and the sample legal review, you can begin to see just how valuable you are to your legal office and, this is just the tip of the iceberg! Your SJAs and attorneys rely on you to know how the LOD determinations are conducted and to present the facts and circumstances of the case in a professional and organized legal review.

Report of survey

You may be familiar with the basic procedures for conducting a report of survey (ROS) and processing the DD Form 200, Financial Liability Investigation of Property Loss. The ROS is conducted to determine if a member will be held monetarily liable when government property is lost, damaged, or destroyed. The ROS is another process you will need to become familiar with in order to accomplish a proper legal review.

Authority

You will find the following statement in Title 37 U.S.C. § 1007, *Deductions from Pay*, (e):

The amount of any damage, or cost of repairs, to arms or equipment caused by the abuse or negligence of a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, who had care of, or was using, the property when it was damaged, shall be deducted from his pay.

The Department of Defense has issued DOD Financial Management Regulation (DOD FMR) 7000.14-R, Volume 12, *Special Accounts, Funds and Programs*, Chapter 7, *Financial Liability for Government Property Lost, Damaged, Destroyed, or Stolen*. The report of survey system is used by the Air Force to:

- Research and investigate the cause of loss, damage, or destruction of property and determine if it was attributable to an individual's negligence or abuse.
- Assess monetary liability against individuals when government property is lost, damaged, or destroyed.
- Relieve individuals from liability when there is no evidence of negligence, willful misconduct, or deliberate unauthorized use of government property.
- Provide documentation used to support the adjustment of accountable records.
- Provide commanders with case histories; enabling them to take corrective action to prevent recurrence of the incident.

DD Form 200 is used to record and present facts in support of a determination of financial liability and is also used to adjust property control records, as appropriate.

General policy

Air Force, Air Force Reserve (AFR), and ANG personnel (including civilian employees and AFR/ANG technicians) have the responsibility to properly care for and safeguard Air Force property. Air Force members and its employees can be held financially liable for property lost, damaged, or destroyed that is proximately caused by their negligence, willful misconduct, or deliberate unauthorized use. Liability is based upon the preponderance of the evidence. In other words, financial liability cannot be assessed unless, after considering all relevant factors, it appears more likely than not, that an individual's actions, or failure to act, constituted negligence, willful misconduct, or deliberate unauthorized use, and proximately caused the loss, damage, or destruction.

Financial liability is assessed in accordance with DOD FMR 7000.14-R, Volume 12, Chapter 7 and is outlined as follows:

- The full amount of loss or damage to personal arms or equipment.
- The full amount of damage to, or value of, lost or damaged items of military supply.
- The full amount of loss or damage to government housing, equipment, and furnishings therein; if the loss, damage, or destruction was proximately caused by gross negligence or abuse by the military member, dependent or guest.
- In all other cases, up to the full amount of the loss, damage, or destruction of government property or housing, but in no case, more than one month's regular military compensation as defined in Title 37 U.S.C. § 101, *Definitions*, (25); essentially, liability is limited to one month's basic pay in effect at the time loss or damage occurred. Although liability is normally limited to the one month's basic pay, there are certain instances where the member may be responsible for more, and up to the full amount of loss and/or damage.

If an Air Force member loses, damages, or destroys military property will they get into trouble? The answer is "yes" they may receive some sort of disciplinary action. Keep in mind; however, assessing financial liability is not used instead of, or as a form of disciplinary action. Commanders should take appropriate disciplinary action regardless of whether financial liability was assessed. On the contrary, relief from financial liability should not affect any decision about disciplinary action.

Guidelines

Up to this point, we have learned what codes and regulations govern the ROS program and who can be held financially responsible. However, how do we know when a ROS is mandatory and when it is not? DOD 7000.14-R, *Department of Defense Financial Management Regulation (DOD FMR)*, Volume 12, Chapter 7, *Financial Liability for Government Property Lost, Damaged, Destroyed, or Stolen* specifically outlines whether ROSs are mandatory or not. Here are examples of both:

Examples of Mandatory and Non-mandatory Reports of Survey	
Mandatory	Not Mandatory
Controlled or sensitive items, weapons, or classified items that have been damaged or destroyed.	An individual voluntarily wishes to pay for property that was lost, damaged, or destroyed and the item(s) is not one that requires a ROS and is valued at \$500 or less.
Evidence of abuse, gross negligence, willful misconduct, or deliberate unauthorized use, fraud, theft, or if negligence is suspected in the case of supply system stocks or property book items.	Air Force property is damaged from the operation of privately owned vehicles, boats, aircraft, or conveyances. Usually handled under AFI 51-306, <i>Administrative Claims For and Against the Air Force</i> , and other publications.
Hand tools or other pilferable items over \$100 unit cost or \$500 total cost are lost.	Loss, damage, or destruction caused by acts of God.
As requested by an accountable officer.	Items become unserviceable due to fair wear and tear.

Personnel responsibility

Before covering the actual ROS process, you need to understand the roles of particular individuals who may be involved and their levels of responsibility throughout this process:

Personnel Responsibility	
Level of Responsibility	Explanation
Investigating Official	An officer, senior NCO (E-7 or above), or a civilian employee (GS-7, WG-9, WL (wage leader)-5, or WS (wage supervisor)-1 or above) appointed to determine the facts in the case and make findings and recommendations whether or not to assess financial liability against an individual.
Responsible Officer	An individual (wing/installation commander, group, squadron commander, or officers in command positions) appointed by proper authority to exercise custody, care, and safekeeping over property entrusted to their possession or supervision.
Accountable Officer	Maintains item and, or financial records in connection with government property; responsible for establishing and maintaining financial property control records, controlling the processing of supporting documentation and, maintaining supporting document files. Examples: the chief of supply, medical supply officer, munitions officer, fuels officer, chief of information processing center, civil engineer, etc.
Financial Liability Officer	Formally appointed to conduct an investigation to determine responsibility for loss, damage, or destruction of government property.
Appointing Authority	Appoints the financial liability officer, if required; approves/disapproves recommendations of the responsible officer or financial liability officer; and recommends actions to the approving authority. NOTE: The appointing authority may act as the approving authority.
Approving Authority	Determines whether to relieve involved individuals from responsibility and, or accountability or approve assessment of financial liability. NOTE: The approving authority may act as the appointing authority or designate an appointing authority in writing.
Property Custodian	Responsible for the custody, care, and safekeeping of Air Force property and can be held financially liable for failure to exercise this obligation. Normally issues equipment to authorized users.

Processing

Upon notification of lost, damaged, or destroyed property, the unit commander appoints an investigating official. The investigating official must have no interest in the custodianship, care,

accountability, or safekeeping of the property. The investigating official is responsible for, at a minimum, answering six questions:

1. What happened?
2. How?
3. Where?
4. When?
5. Who was involved?
6. Was there any evidence of negligence, misconduct, or deliberate unauthorized use or disposition of property?

The investigating official will make his or her findings and recommendations as to liability. Next, the ROS will be referred to the accountable officer for any adjustments to the records. At this time, the investigating official will allow the individuals involved to review the case and provide any verbal or written statements prior to further processing of the ROS.

The DD Form 200, supporting documents, and statements are then forwarded to the appointing authority for financial responsibility against the individual(s) involved or relief from responsibility. If financial responsibility is to be assessed, the ROS is forwarded to the legal office for a legal review. Once the legal review is complete, it becomes part of the record and will accompany the ROS and all supporting documents forwarded to the approving authority for final action. The approving authority will either assign financial responsibility or relieve the individual(s) of responsibility. Finally, the ROS is forwarded to the individual(s) involved who are notified of the decision and the right to appeal.

Legal review

When a legal review for any ROS is required, start by ensuring the DD Form 200 and all noted attachments are received. Thoroughly review all blocks of the DD Form 200 for accuracy and ensure all applicable blocks have been filled out (through block 13). Once this is accomplished, you can begin drafting your legal review. Follow along in figures 3-2, A-C, as the contents of this legal review are covered, they should look familiar to you:

- The first section is used to document that you have reviewed all documentation pertaining to the ROS, find it legally sufficient for making a determination, the IO complied with his or her requirements, and whether you concur or nonconcur with the findings.
- You need to outline the facts of the case in the second section, being as specific as necessary to give the reader a good foundation.
- The next section addresses the issues in the case. Whether the loss or damage was caused by the individual(s) negligence, willful misconduct, or deliberate unauthorized use; whether the individual(s) should be held financially responsible; and for how much he or she should be responsible.
- You will discuss the rules that apply to your particular case in the fourth section. Define the governing rule establishing the requirement for a ROS to be accomplished, outline applicable definitions, and discuss evidence.
- In the fifth section, you will apply the facts and the rules to your particular case.
- Finally, provide your recommendation to the approving authority.

23 May 2011

MEMORANDUM FOR 77 ABW/CC

FROM: 77 ABW/JA
50 Beach Street
Eglin AFB FL 32542

SUBJECT: Legal Review, Report of Survey Number 11-015

1. I have reviewed the accompanying documentation and find it legally sufficient for making a determination in this case. The Investigating Officer substantially complied with all applicable requirements. I agree with the Investigating Officer's finding that Captain Davis be held liable for the loss of the government owned external hard-drive.

2. FACTS:

a. On 15 April 2011 Captain Tom B. Davis, who works at the base hospital, was using a government owned Lacie external hard-drive to back up patient files. After he was finished using the hard-drive, Capt Davis placed the hard-drive in the top drawer of Staff Sergeant Ricky Bobb's desk. SSgt Bobb's desk is located in the reception area of the section where both Capt Davis and SSgt Bobb work.

b. When Capt Davis reported to work on 18 April 2011, the hard-drive he had placed in SSgt Bobb's desk was missing. After several searches, no one was able to find the missing hard-drive. The Medical Squadron commander decided a Report of Survey needed to be initiated to account for the missing hard-drive.

c. The make and model of the hard-drive is a Lacie, Model number 12345. The depreciated value of the hard-drive is \$250.00.

d. Capt Davis admitted he was aware of theft problems in the hospital, several individuals have a key to the office the hard-drive was left in, and he does not normally leave his hard-drive in SSgt Bobb's desk.

e. SSgt Bobb also admitted he was aware of theft problems in the hospital. He was also aware that several individuals had a key to the office his desk is located in. During the time the hard-drive was discovered to be missing, the office was locked. SSgt Bobb had briefed his personnel on taking extra precautions because of the thefts in the hospital.

Figure 3-2A. Report of Survey legal review.

3. ISSUES:

- a. Was Capt Davis' and/or SSgt Bobb's negligence, willful misconduct, or deliberate unauthorized use the proximate cause of the loss of the government owned hard-drive?
- b. Should Capt Davis and/or SSgt Bobb be held financially liable for the loss of the government owned hard-drive?
- c. If Capt Davis and/or SSgt Bobb are found financially liable for the loss of the government owned hard-drive; how much should each be held liable for?

4. RULES:

a. **REPORT OF SURVEY REQUIREMENT:** Air Force Manual 23-220, paragraph 3.1.4. states a report of survey is mandatory when pilferable items valued over \$100.00 unit cost are lost. The missing hard-drive is valued at over \$100 (approximately \$250.00); then a report of survey is required in this case.

b. **LIABILITY – SIMPLE NEGLIGENCE:** When determining liability, it must first be determined the parties responsible for the missing items were negligent. Also, negligence must be the proximate cause of the loss of the items. Simple negligence is the failure to act as a reasonably prudent person would have acted under similar circumstances. In this case, Capt Davis appears to have been negligent in his responsibility to reasonably protect the government property entrusted to his care. A reasonable person would have taken more precautions in securing a small, expensive, pilferable item such as a hard-drive. A reasonable person would have stored such an item in a locked drawer or cabinet with limited access, especially if that person knew there was a serious theft problem in the location the item was to be stored in. Therefore, under the "reasonably prudent person" standard, Capt Davis was negligent by not properly securing the hard-drive he was responsible for.

c. **LIABILITY – PROXIMATE CAUSE:** Not only must negligence be shown to determine liability, but for liability to be assigned to an individual for a missing item, that individual's actions must be the proximate cause for the loss of the item. The test for proximate cause is to determine whether the cause; which in a natural and continuous sequence, unbroken by a new cause, produces the loss or damage, and without which the loss or damage would not have occurred. Basically, but for the concerned cause or behavior, the loss or damage would not have occurred. It can be reasonably assessed that, but for Capt Davis leaving the hard-drive in an unsecured state in a high theft area, the loss of the hard-drive would not have occurred. Therefore, one could reasonably find the proximate cause for the loss of the hard-drive was the negligence of Capt Davis. If Capt Davis is found to be liable for the missing hard-drive he can be liable for up to one month of his pay in reimbursing the Air Force for the missing hard-drive. Since the hard-drive is valued at \$250.00, Capt Davis can be held liable for the full value of the hard-drive.

Figure 3-2B. Report of Survey legal review.

d. EVIDENCE: Capt Davis submitted statements showing he left the hard-drive in an unsecured state in a high theft area and admitted he was aware the hard-drive was left in a high theft area. Therefore, there is a sufficient amount of evidence to show, by a preponderance of the evidence, Capt Davis' actions were negligent and proximately caused the loss of the hard-drive.

5. APPLICATION: Capt Davis knew or should have reasonably known how pilferable a small, valuable item such as a hard-drive was. He should have reasonably known such a pilferable item needed to be secured in a locked area, such as a cabinet or secure drawer only they had access to. The hard-drive is now missing and lost to the Air Force because Capt Davis proximately caused the negligence by not securing the item properly.

6. CONCLUSION: Capt Davis' own admission he did not return the hard-drive to SSgt Bobb when he was finished using it, and placing it in the top drawer of SSgt Bobb's desk unlocked, directly caused the loss of the hard-drive and he should be held liable for the depreciated value of \$250.00. Even though Capt Davis was in a hurry, he did not act as a reasonably prudent person would have acted given the nature of the item and the recent theft problems in the hospital.

7. This legal opinion is a privileged document and is provided for 77 ABW/CC use only. It should not be released to the public in general or to any respondent in this report of survey.

JACK A. SMITH, TSgt, USAF
NCOIC, Civil Law

I concur with TSgt Jack Smith's analysis and recommendation in this case.

STEVEN C. ROADS, Capt, USAF
Chief, Civil Law

Attachments:

1. DD Form 200
2. Witness Statements

Figure 3-2C. Report of Survey legal review.

As you may have noticed, the legal review for the ROS is very similar to that of the LOD. All of your legal reviews should follow this same organizational pattern unless your SJA or legal office directs otherwise.

Private organization charters and by-laws

In accordance with AFI 34-223, *Private Organizations (PO) Program*, private organizations must submit a written constitution, by-laws, or other similar documents through the force support squadron/private organization monitor (FSS/FSR), force support squadron commander or civilian leader (FSS/CC/CL), and SJA for consideration by the installation commander. When reviewing these documents for a legal review; familiarize yourself with AFI 34-223 and the *Private Organization Guidance Handbook* provided by your command/base.

You must ensure the constitution and by-laws:

- Address the nature, function, objectives, membership eligibility, and sources of income of the private organization.
- Provide certification to FSS/FSR indicating that private organization members have been notified and understand their personal financial liability for obligations of the private organization, as provided by law.
- Describe the responsibilities of private organization officers for asset accountability, liability satisfaction, and sound financial and operational management.
- Provide specific guidance on disposition of residual assets upon dissolution.
- Include documentation that ensures the constitution and by-laws are updated every two years or when there is a change in the purpose, function, or membership eligibility of the private organization, whichever comes first.

Your legal review for private organization charters and by-laws should be written just as we have already outlined in the LOD and ROS. There will certainly be differences in the facts, issues, and governing rules; however, will still be written with the same methodology. In fact, the remaining legal reviews we will cover also follow the same pattern.

Fundraising requests

Throughout your time in the Air Force, you may have been a part of raising funds for your organization through bake sales, car washes, or other similar functions, or perhaps contributed to the Combined Federal Campaign (CFC) or the Air Force Assistance Fund (AFAF). AFI 34-223, provides guidance and procedures for establishing and operating private organizations (PO) on Air Force installations and AFI 36-3101, *Fundraising*, sets forth the guidelines for the CFC, the AF Assistance Fund (AFAF), and many other fundraising events. Since you will be required to do legal reviews on fundraising requests, it is important to be familiar with these AFIs. We will focus our attention on local fundraising requests other than the CFC and AFAF, which are national fundraisers.

The responsibility of approving the organizing and conducting fundraising events at the local level falls to installation commanders. These fundraising events may include seasonal, traditional, and unique human-care projects that assist nonmilitary members of the local community. For example, food drives to help the homeless, toy collections for children during the holidays, and food and clothing drives to help victims of natural disasters. Fundraising activities may also include events that are strictly for the benefit of Air Force members, such as a squadron special event, benefit food sale for the unit Christmas party, or a collection to assist fellow employees in need.

Commanders will ensure these fund drives are truly voluntary and that no employee is coerced in any way to participate or contribute to the campaign. In addition, commanders will guarantee any gaming devices or games of chance used complies with federal, state, and local laws and DOD 5500.07-R, *Joint Ethics Regulation (JER)*. The fundraising business can be complicated and there are numerous guidelines to follow and questions to ask. For example:

- Is the solicitation to take place at the workplace or outside of it?
- Is the fundraising for an internal program or an external organization?
- Who is the approval authority and what are the governing directives?
- Can the fundraising take place during the annual AFAF and CFC?

There certainly are many questions to be answered and it takes a thorough knowledge of the process to complete a legal review. We must ensure we are supporting our commanders and giving them sound legal advice on all fundraising events.

Although the installation commander is the final approval authority for all fundraising requests, this duty is normally delegated to the mission support group commander (MSG/CC) or force support

squadron commander/civilian leader (FSS/CC/CL). When an organization wants to participate in a fundraising event, they will forward their request to the military personnel flight, customer support where it is reviewed to ensure the fundraising event falls within established guidelines and that no more than two per calendar quarter have already been accomplished. Once the military personnel flight, customer support has completed his/her review and made his/her recommendation, it is sent to our office for a legal review. Our legal review ensures the fundraising event falls within established AFIs, the JER, and other applicable laws and guidance. In addition, we will ensure we have covered all relevant facts, issues, law, and conclusions to include our recommendation. Last, the fundraising request is sent to the installation commander (MSG/CC if delegated) for his or her final decision.

Offers of gifts to the Air Force

Your office may receive the question from a client on whether he or she may keep or receive a gift on behalf of the Air Force. 5 U.S.C 7353, *Gifts to Federal Employees* and 5 CFR 2635, *Standards of Ethical Conduct for Employees of the Executive Branch* states that we are not allowed to solicit or accept gifts from prohibited sources or if given because of your official position. Prohibited source is defined as any person seeking to do business with your agency, if the source is regulated by the employee's agency or any person whose interest may be substantially affected by the performance or non-performance of your official duties.

The general gift rule found in 5 CFR 2635 is the gift would not have been given, solicited, or offered but for the employee's status, authority, or duties associated with his or her federal position. Clients are allowed to accept a gift if it is from a person other than a subordinate and there is a personal relationship that would justify the gift.

Air Force members are often given things that are not considered to be gifts, including:

- Modest items of food and refreshment.
- Items with low intrinsic value (e.g., greeting cards).
- Loans from financial institutions.
- Discounts available to the public or class of employees (e.g., military appreciation days at amusement parks).
- Reward and prizes in contest open to the public.

There are exceptions to some gifts that are given to Air Force personnel. Gifts that are:

- Gifts of \$20 or less, not to exceed \$50 per year from the same source.
- Based on personal relationships as long as the gift is unconnected with your official status.
- Based on outside business or employment relationships as long as the gift is unconnected with your official status.
- Awards and honorary degrees if they are part of bona fide award program for meritorious public service, given by group who does not stand to benefit by employee's performance or non-performance of official duties, and if the non-cash value does not exceed \$200.
- Widely attended gatherings with free attendance at social, civic, or entertainment events in official capacity;
- Official speaker: there shall be no compensation for speaking of official duties. Compensation does not include meals, conference fee waivers, minimally valued items \$20 or less.

When drafting a legal review, you may need to advise our clients that even if a gift is covered by one of the exceptions, our legal recommendation is to not accept if it will undermine government's integrity. Offered gifts must be accepted or rejected in writing. A memorandum must acknowledge receipt of offer and explain why the gift cannot be accepted and be signed by the person authorized to reject the gift. Gifts may be rejected for the following reasons:

- Involves expenditure or use of funds in excess amounts appropriated by Congress.
- Gift is dangerous.
- Gift is in poor taste.
- Raises questions of impropriety in light of donor's present or prospective business relationships with the Air Force.
- The cost of acceptance and maintenance is disproportionate to any benefit.
- Not in the best interest of the Air Force.

A legal review may be required when SJA makes recommendation for acceptance or rejection of gift for individual authorized to take such action.

Base supplements and publications

Your office may be required to complete a legal review on a base supplement or publication and you may be asked to draft. Formal coordination must occur on departmental publications between AF/Administrative Law Directorate (JAA) and the local legal office on legal implications identified. The offices of primary responsibility (OPR) of each proposed base supplement or publication should consult legal counsel for legal sufficiency advice. Publication OPRs *must* send all proposed punitive publications to the servicing legal office for review before issuance.

Debarments

Under the authority of 50 U.S.C. 797, *Penalty for Violation of Security Regulations and Orders* and DODI 5200.08, *Security of DOD Installations and Resources and the DOD Physical Security Review Board (PSRB)*, and as subject to any host-nation agreement, installation commanders may deny access to the installation through the use of a debarment order. Installation commanders may not delegate this authority. Debarment letters will be coordinated through the servicing legal office in which a legal review will be completed. Debarment orders should be in writing and contain sufficient details to support prosecution by civilian authorities. The debarment order must also state a specific, reasonable period of debarment. Oral debarment orders should be given only when time constraints prevent preparing a written order, or the severity of the crime warrants immediate debarment. Oral debarments must be documented in the Security Forces (SF) blotter with the time, date and name of the commander giving the order.

When completing a legal review for a debarment consider:

- Offense for which the debarment is being based.
- Whether the debarment is warranted.
- How long the debarment order shall be legally in effect for (using local installation debarment matrices).

Any person who fails to comply with a debarment order shall be subject to prosecution under 18 U.S.C. § 1382, *Entering Military, Naval, or Coast Guard Property*.

Off-duty employment

DOD 5500.7-R requires preapproval of off-duty employment only for personnel who are required to file a financial disclosure report and who wish to engage in a business activity or in compensated outside employment with a prohibited source. If required by local or command policy, personnel should obtain approval from his/her commander prior to engaging in outside employment by using an AF Form 3902, Application and Approval for Off-Duty Employment. The AF Form 3902 is the only required document submitted to the installation SJA for review of off-duty employment. However, if the Air Force member notes the potential employer is a defense contractor (question 8c on AF Form 3902) or has potential involvement in conducting business with the DOD (question 24 on AF Form 3902), the member should provide additional information about the off-duty employment by offering responses to these questions:

- Has the member had any dealings with the prospective contractor employer while performing his/her duties as an Air Force member or employee? If yes, the member needs to explain.
- Has the member ever performed quality assurance duties that required the member to rate the performance of the prospective contractor employer? If yes, the member needs to explain.
- Has the member ever “participated personally and substantially” in a matter that might have had a financial impact on the prospective contractor employer? If yes, the member needs to explain. The definition of “participated personally and substantially” include the following conditions:
 - Making *decisions* regarding the matter.
 - Giving *advice* to others about the matter.
 - Making *recommendations* to others about the matter.
 - Giving an *approval/disapproval* regarding the matter.
 - Conducting *evaluations* regarding the matter.
 - Assigning *work or tasking* to others in connection with the matter.
 - Participating in an *investigation* regarding the matter.
- Has the member ever been involved in any federal procurement involving the prospective contractor employer? If yes, the member needs to explain.
- If the member is an officer seeking employment during terminal leave, will the contractor employment involve representing the prospective contractor employer in front of a federal agency? If yes, the member needs to explain.

After reviewing the AF Form 3902 (including the additional questions stated above) and any possible ethics concerns, you should draft a brief legal review. Again, your legal review should follow the same method as outlined above in figures 3-1, A-C. However, as your base may have a different method for drafting these legal reviews, it should have at least two sections: background and discussion. The background section should indicate if there are relevant issues regarding the member’s off-duty employment that should be taken into consideration, and the discussion section should offer the most appropriate action for the SJA regarding approval or disapproval of the member’s request. In the background section, you should reference any ethics issues or other reasons that support disapproval. If there are no apparent ethics issues involved, there is no need to initiate a complete review of the situation; simply write a statement expressing no ethics issues or other reasons are applicable. In the discussion section, write a brief statement that indicates whether the SJA should recommend approval or disapproval for off-duty employment for the member.

G-series orders

"Commander" means a commissioned officer who, by virtue of rank and assignment, exercises primary command authority over a military organization recognized as a command. *Command authority* is determined based on an officer holding a billet to command and being placed on G-series orders. Command is exercised by virtue of office and the special assignment of officers holding certain military grades and who are thereby eligible by law to exercise command.

An officer may command an organization to which he or she is assigned or attached, in which he or she is present for duty, and for which he or she is otherwise eligible and authorized to command. An officer is assigned to an organization for considerations of command through PCS orders or PCA orders. He or she may be attached to an organization for considerations of command by TDY (temporary duty) orders or detail if such is specifically ordered by competent authority. TDY with or detail to an organization does not entitle an officer to assume command unless competent authority specifically appoints the officer to command.

An Air Force officer who has assumed or been appointed to command of an Air Force organization IAW AFI 51-509, *Appointment to and Assumption of Command*, is a “commander” under this AFI. Enlisted members cannot exercise command. Civilians may lead a unit, and can perform all functions normally requiring action by the respective unit commander, however, civilians do not have authority under the UCMJ to exercise command over military members within a unit.

Use of government resources

Most legal reviews for use of government resources stem from an organization needing an answer to a question concerning whether an employee is authorized to use government resources. A legal review is required when there is unauthorized use of government resources.

The JER establishes the standards of conduct for all Air Force personnel—both military and civilian. Your first step in preparing a legal review for use of government resources should include a review of DOD 5500.07-R.

The JER breaks down use of government resources into two major categories:

1. Communications systems.
2. Other federal government resources.

For both categories, there are provisions for proper use; some of these include:

- The use does not adversely affect the performance of official duties by the DOD employee or his or her organization.
- The use is of reasonable duration and frequency, and made only during the DOD employee’s personal time, such as after duty hours or lunch periods.
- The use serves a legitimate public interest.
- The use does not put federal government resources to uses that would reflect adversely on the DOD or the DOD component.
- The use creates no significant additional cost to DOD or the DOD component.

When completing your legal review, you will need to take these provisions into consideration and determine if the request is for a proper or improper use of government resources.

The initial section should state that a legal review was done as well as a short version of the recommendation. You will explain the recommendation in full in the final paragraph.

The second section covering the background of the legal review, should state who has requested an opinion regarding the use of government resources. This paragraph is required to identify the organization requesting the opinion and the government resources for future reference.

The third section discussing the legal review should include any joint ethics regulation, instructions, or policies that identify the proper use of government resources. This paragraph cites the joint ethics regulations and sets the standard that government employees have a duty to protect and conserve government property and shall not use such property, or allow its use, for other than authorized purposes. If there are any other policies or instructions that support employees use of government resources, they should be included in this paragraph. It should also include any policies or instructions that give justification for employees to use government resources. As you provide the information from the various sources, you should explain how the information is pertinent to the use of government resources.

In the final section, recommendation, you should summarize your findings as to whether an employee is authorized or not authorized to use the government resources under review. This section summarizes the questions and restates the regulations that either prohibit or allow employees to use government resources.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

226. Legal review overviews

1. What is the purpose of an LOD determination?
2. How are LOD determinations used?
3. What is the governing directive for processing LOD actions?
4. In what ways may a medical officer initiate an LOD determination?
5. The content of a legal review for a LOD determination should include at least what three things?
6. What is the purpose of a ROS?
7. What guidance does a paralegal use for processing a ROS?
8. Can commanders take disciplinary action regardless of whether pecuniary liability is assessed against a member in a ROS?
9. What six questions must an investigating official answer during the initial investigation for a ROS?
10. In order to operate on base, through whom do private organizations submit a written constitution and by-laws for consideration by the installation commander?
11. Which AFI governs private organizations?
12. Who has the responsibility of approving the organizing and conducting of fundraising events at the local level?

13. What should you consider when completing a legal review for a debarment?
14. What form is used for the application and approval of off-duty employment?
15. The legal review for an off-duty employment form should have at least what two sections?
16. What is the purpose of the off-duty employment legal review?
17. Where do most legal reviews for use of government resources stem from?
18. When is a use of government resources legal review required?
19. What guidance establishes the standards of conduct for all Air Force personnel—both military and civilian?

Answers to Self-Test Questions

219

1. Inquiry and investigation.
2. An inquiry is an examination into facts or principles and an investigation is a properly authorized, systematic, detailed examination to uncover the facts and determine the truth of a matter. An inquiry is adequate if the subject of the inquiry is not complex or of a serious nature, and the matter can be resolved through routine channels and procedures, whereas the investigation is appropriate for determining facts in a serious or complex matter.
3. MAJCOM commander.
4. Any commander or other competent authority.
5. Any of the following ways: referred to a subordinate command for inquiry/investigation upon which the Air Force may make a reply; referred to the responsible Air Force agency; investigated by the USAF IG for processing; or referred to the field for action.
6. Report of Review, Report of Inquiry, and Report of Investigation.

220

1. COs are classified as either Class 1-0, a person, by reason of conscientious objection, sincerely objects to participation of any kind in war in any form, or as Class 1-A-0, which is a person, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions or beliefs will permit him/her to serve in a noncombatant status (i.e., medical).
2. The member must establish by clear and convincing evidence that: the nature or basis of the claim falls under the definition of conscientious objections as defined in AFI 36-3204, which is the firm, fixed, and sincere objection by reason of religious training and belief to participation in war in any form, or the

bearing of arms; the member's belief is honest, sincere, and deeply held; the member's belief is by virtue of religious training or another belief system similar to religion; and the member opposes participation in war in any form for the bearing of arms.

3. Chaplain and psychiatrist.
4. Judge advocate, in the grade of captain or higher.
5. Officers is the SAF or designated representative and the final approval authority for enlisted personnel is HQ AFPC (active duty Airmen), ANGRC/DPM (ANG Airmen), HQ AFRC/CV (Reserve Unit Airmen), or HQ ARPC/CC (all other Reserve Airmen).

221

1. A discretionary act or omission by a commander that adversely affects the member personally.
2. Complaints relating to military discipline under the UCMJ, including Article 15 nonjudicial punishment; a performance report or evaluation system; a suspension from flying status; or assessment of pecuniary liability.
3. His or her commander.
4. Within 90 days of the discovered wrong.
5. GCM authority over the officer the complaint was made against.

222

1. To cooperate fully with Congress and give a full and timely response to congressional inquiries.
2. Only with the consent of SAF and in accordance with applicable DOD and AF regulations.
3. Because this information may have an impact on state and congressional districts.
4. Fax a copy of the written inquiry to the SAF/LLI.

223

1. Accident and safety investigations.
2. The MAJCOM commander who convened or would have convened the preceding safety investigation under AFI 91-204, also convenes the accident investigation. If two or more MAJCOMs are involved in the accident, the MAJCOM commanders must determine which command will assume investigative responsibility. In general, the command whose asset initiated the mishap will assume investigative responsibility.
3. For on-duty, Class A accidents involving Air Force aircraft, unmanned aerial systems, missiles, or space accidents.
4. Within 30 calendar days after the start of the investigation, unless an extension is granted.
5. The convening authority's SJA coordinates with the convening authority's PA for AIB report distribution.
6. A paralegal or a judge advocate.

224

1. Government records.
2.
 - (1) Classified in the interest of national security or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations;
 - (2) related to the internal personnel rules and practices of the DOD or any of its components;
 - (3) Concerning matters a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by statute for withholding or referring to particular types of matters to be withheld;
 - (4) Containing trade secrets or commercial or financial information that a DOD component receives from a person or organization outside the government with the understanding the information or record will be retained on a privileged or confidential basis in accordance with customary handling of such records;
 - (5) Containing information considered privileged in litigation, primarily under the deliberative process privilege;

- (6) Information in personnel and medical files, as well as similar personal information files that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy;
 - (7) Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law;
 - (8) Containing in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, and
 - (9) Containing geological and geophysical information and data (including maps) concerning wells.
3. Within 60 calendar days from date of initial denial.
 4. The requester can file a suit in federal district court in an attempt to compel release.
 5. Records retrieved by name or other personal identifier of a US citizen or alien lawfully admitted for permanent residence and are subject to Privacy Act requirements and are referred to as a Privacy Act system of records.
 6. Within 20 workdays of receipt.
 7. The authority (whether granted by statute or executive order of the President) which authorizes the solicitation of the information; the principal purpose(s) for which the information is intended to be used; the routine uses which may be made of the information; whether disclosure of the information is voluntary or mandatory; and the affects, if any, of not providing all or any part of the requested information.
 8. The request must be processed under the FOIA and its governing procedures.
 9. Within 60 calendar days from date of initial denial.
 10. Processing requests for information that cite either the FOIA or the PA.
 11. TJAG.
 12. If the requester asked to inspect the record, tell the requester where and when it may be inspected and inform the requester of the amount of the fee, if applicable. If the requester asked for a copy of the record, inform the requester of the fee and explain that the FOIA/PA manager will furnish the copy upon receipt of the fee. If the request is urgent, you may send a copy before payment.

225

1. SJA.
2. Courts-martial by military departments or in administrative proceedings conducted by or on behalf of a DOD component; administrative proceedings for the EEOC, the Merit Systems Protections Board, the Federal Labor Relations Authority, or a negotiated grievance procedure under a collective bargaining agreement to which the government is a party; the DOHA or the DOHA Board; and disclosing information to federal, state, and local prosecuting and law enforcement authorities for use in a criminal investigation by a DOD organization.
3. The responsible AFLOA civil litigation division or HQ USAF/JAO (for official information to be released to, or used in foreign courts).
4. Classified information cannot be released under any circumstances, unless proper authority first declassifies the material.
5. Approve or deny (within his/her authority) the request; consult the responsible AFLOA civil litigation division or HQ USAF/JAO for a decision; or forward the request to the appropriate authority (FOIA or PA) to deny the request in accordance with the guidelines in DOD 5400.07_AFMAN 33-302 and AFI 33-332.
6. Name of the litigation and parties; name and location of the court or tribunal; date litigation began and date of requested appearance; name and address of requester and of party from whom the request was made; type of action, subject matter, and a statement of the relevancy of the requested information; copies of documents requested or a complete description of them if they are bulky or numerous; and recommendations on the release and any other pertinent information.
7. The member, with the assistance of the legal office, will attempt to resolve the matter with the attorney requesting the information or the member will appear before the court and explain the situation.

226

1. To determine if certain injuries, diseases, or deaths suffered by military members occurred while a member was in the line of duty or as the result of a member's misconduct.

2. As material evidence by a physical evaluation board to determine a member's eligibility for benefits.
3. AFI 36-2910.
4. Administrative or informal determination.
5.
 - (1) A summary of facts.
 - (2) Identification and discussion of issues.
 - (3) Opinion of legal sufficiency/correctness of findings.
6. To determine if a member will be held monetarily liable when government property is lost, damaged, or destroyed.
7. *DOD Financial Management Regulation 7000.14-R. Volume 12.*
8. Yes; although pecuniary assessment must not be used instead of or as a form of disciplinary action, relief from pecuniary liability should not affect any decision about disciplinary action.
9. (1) What happened; (2) how; (3) where; (4) when; (5) who was involved; and (6) was there any evidence of negligence, misconduct, or deliberate unauthorized use or disposition of property.
10. FSS/FSR, FSS/CC/CL, and SJA.
11. AFI 34-223.
12. Installation commander.
13. Offense for which the debarment is being based, whether the debarment is warranted, how long the debarment order shall be legally in effect for (using local installation debarment matrices).
14. AF Form 3902.
15. Background and discussion.
16. To indicate if there are relevant issues regarding the member's off-duty employment that should be taken into consideration, and to make a recommendation to the SJA regarding approval or disapproval of the member's request.
17. An organization needing an answer to a question concerning whether an employee is authorized to use government resources.
18. When there is unauthorized use of government resources.
19. *DOD 5500.07-R.*

Unit 4. General Law Programs and Directives

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AS THE RANGE OF DUTIES in the general law section are quite extensive, this unit further acquaints you with these areas; as this unit will cover a wide range of actions that fall under the general law section of your legal office. For example, what do you do when a civilian employee has a complaint? What happens when a civilian shoplifts from the Base Exchange? How do you handle an Article 15 for a member of a tenant unit? Questions like these and others will come up when you work in the general law section. The following lessons will help you to answer or know where to find the answers to these types of questions.

4-1. General Law

While assigned to the general law section of your legal office, you will have an opportunity to be exposed to many different areas of the law. This is where you can expand your paralegal skills in a wide variety of areas. This lesson begins with the Magistrate Court system.

227. Federal Magistrate Court System

Active duty military members are subject to prosecution under the UCMJ when they commit criminal offenses on base. But, how can we effectively enforce the law against civilian offenders since they are not bound to the UCMJ? Many military installations have received approval to dispose of misdemeanor offenses committed by civilians through the federal Magistrate Court.

Policy

AFI 51-206, *Use of Magistrate Judges for Trial of Misdemeanors Committed by Civilians*, establishes the policy and procedures for the prosecution of civilians in magistrate courts who commit minor offenses (misdemeanor) on military reservations under Air Force control. This instruction does not apply to active duty members since they fall under the purview of the UCMJ.

Misdemeanors

United States magistrate courts may try only misdemeanor or petty offenses. A misdemeanor is an offense for which the authorized penalty does not exceed imprisonment for one year. A petty offense is a misdemeanor for which the authorized penalty does not exceed imprisonment for six months, a fine of \$5000, or both. Charges against civilians should be brought for trial before US magistrate judges in cases involving minor violations of federal law, including assimilated state criminal law. In addition, local installation traffic rules declared under the authority delegated to installation commanders in DODD 5525.4, *Enforcement of the State Traffic Laws on DOD Installations*, as violations of Title 40 U.S.C. § 318c, *Penalties*, may be brought to trial. However, under these rules, a punishment of a fine, not to exceed the amount of the maximum fine for a like or similar offense, imprisonment for not more than 30 days, or both, for each violation may be imposed.

Jurisdiction

Before the installation commander refers a case to the magistrate court, the court must have jurisdiction to hear it. Criminal actions committed by a civilian on an installation, which has federal or concurrent federal/state jurisdiction, for any petty offense or misdemeanor may be addressed in a federal court, such as federal magistrate court. Accordingly, your first step in a magistrate court case

is going to be determining jurisdiction. If the installation has a mixture of jurisdictions, it is imperative to be able to prove that the offense occurred in federal or concurrent jurisdiction.

Exclusive jurisdiction

If the installation is owned by the federal government or the state where the installation is located has given up exclusive jurisdiction to the federal government, the state may not prosecute offenses committed on the installation. Federal courts provide the only remedy. Under exclusive federal jurisdiction, federal courts will prosecute crimes that violate a specific federal statute or only violate a state statute.

Unlike state criminal statutes, federal statutes do not provide for every kind of crime. For example, there is no federal vehicle and traffic law. However, there is a federal statute called the Assimilative Crimes Act, Title 18 U.S.C. § 13, which provides adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction if the crime is not punishable under federal law. In other words, it makes violating a state statute a federal offense if the act was committed on federal land. It is by virtue of the Assimilative Crimes Act that civilians on military installations with exclusive federal jurisdiction can be tried in federal magistrate courts for committing a traffic offense on the installation. The magistrate court judge uses the state law to try the offense, and the authority (or what gives the jurisdiction) to do so is the Assimilative Crimes Act.

Concurrent jurisdiction

If both the federal and state government have jurisdiction on the installation, either may prosecute offenses committed on the installation unless state law prohibits a state prosecution after there has been a federal prosecution. Usually, commanders with installations that have concurrent jurisdiction develop a memorandum of understanding (MOU) with state or local prosecutors. The MOU covers which offenses will be tried in which court.

Proprietary jurisdiction

If the installation has only proprietary jurisdiction, the only offenses that may be tried in federal magistrate court are a few federal crimes that do not rely on territorial jurisdiction, such as counterfeiting, espionage, sabotage, and bribery of federal officers.

Responsibilities

There are several levels of responsibility with federal magistrate court. Let's look at those who play a major part in the magistrate court process.

Installation commander

Installation commanders are responsible for maintaining good order and discipline on the installation. They must respond to misconduct of civilians as well as military members. It is imperative that commanders be equipped with alternative response options in order to effectively deal with and deter civilian misconduct. The term *civilian* is quite broad. It includes dependents of military personnel, civilian employees, retired military personnel and their dependents, and other civilian visitors on base.

On installations that have federal jurisdiction, the installation commander may refer offenses to the magistrate court for trial when administrative action is inadequate or inappropriate. Administrative action can include denial of shopping privileges (for shoplifting), loss of driving privileges (for traffic offenses), or barring one from entering the base (for serious or continued offenses). The administrative measure available will vary substantially depending on the particular status of the civilian offender, for example; civilian employee, dependent, guest, and so forth. Commanders may do this either on a case-by-case basis, or if safety, discipline or other considerations warrant, commanders may make a "blanket determination" which means the commander can establish a policy that all similar violations will be automatically referred to US magistrate courts because the

administrative disposition of certain offenses committed by civilians on base is not adequate or appropriate.

The installation commander designates the SJA to prepare and file misdemeanor complaints with the US magistrate on behalf of the installation.

Magistrate

The US attorney for the judicial district in which an Air Force installation is located, will notify the installation commander of the name of the appointed US magistrate. The US magistrate is appointed by the US District Court. The magistrate may try and sentence persons who commit misdemeanors in places under the exclusive or concurrent jurisdiction of the US and in the judicial district for which they are appointed. The magistrate has the authority to issue warrants for arrest based on a properly filed complaint. Execution of such warrants is usually performed by US marshals or their deputies. Under no circumstance will Air Force personnel be used to execute warrants.

Staff judge advocate

Before any complaint is filed, the SJA (or his or her designee) must review the case to ensure the offense is triable by the magistrate court. The SJA will advise the installation commander on appropriate disposition of cases. The SJA is responsible for nominating a JAG to the US attorney for appointment as a Special Assistant United States Attorney (SAUSA) to prosecute cases where a representative of the DOJ is not available.

If the US Attorney requests that an Air Force attorney assist in prosecuting a case before the US District Court, instead of federal magistrate court, because the case rises to a felony level, or if the defendant elects to be tried before the US District Court, the installation commander must get permission from TJAG through appropriate command channels before proceeding. This is true even if the judge advocate is authorized to prosecute the case before a US magistrate judge.

Special Assistant United States Attorneys

SAUSAs are judge advocates nominated by the SJA and appointed by the US attorney for the district in which the base is located. They generally handle criminal matters in magistrate court. JAGs must attend training and be sworn in prior to undertaking SAUSA duties.

The process

A Central Violations Bureau (CVB) Form 1805, United States District Court Violation Notice, is normally issued by security forces and is used to refer petty offenses committed by civilians on base to the US magistrate judge. Frequently, there is no accompanying report of investigation (ROI) or other documentation. The citations, with or without SJA review, are forwarded to the Central Violations Bureau for placement on the magistrate court docket.

For other incidents that may arise as a result of a response by security forces or OSI, an ROI may be prepared and submitted to the legal office for recommended disposition. The SJA or designee will review the ROI and recommend an appropriate disposition of the incident. If administrative action is warranted, a staff package is prepared to get approval of the installation commander. If prosecution is warranted, the installation commander prepares a complaint for filing with the US District Court. Before filing; however, the SJA must review the complaint.

Research State and Federal Law

As you are building your case, you will need to research the applicable state and federal law that applies to the evidence. For example, if you have a magistrate case that has charged a speeding violation, you would need to research the state laws regarding vehicular and pedestrian traffic laws. You would find 18 U.S.C. 13 states that the state vehicular and pedestrian traffic laws are expressly adopted and made applicable on military installations having concurrent or exclusive federal jurisdiction. Or you may find through your research that in your state, violations of traffic laws are

not considered criminal offenses and cannot be assimilated so DODD 5525.4 adopts the vehicular and traffic laws of such states and makes these laws applicable to military installations having concurrent or exclusive federal jurisdiction. This is just one example of why legal research, of both applicable state laws and federal laws, will be an important part of building your case for magistrate court.

Assembling court files

Assembling files for magistrate court is very much like assembling any other case file, such as a discharge case. You will need to include all evidence, correspondence, and so forth. Many offices will also include a cover sheet for the SAUSA to keep track of the case and any developments at a glance. This cover sheet would include such information as the case name, date the information was filed, continuations, and spaces for dates, contacts, and conversations.

The defendants in these types of cases have a choice of whether he or she wants to be tried in federal magistrate court or in US District Court. Either way, there has to be a consent form in the file in order to proceed. This should be your first step in assembling your folders, because if the defendant elects to be tried in US District Court for his or her offenses, then the consent form is the only requirement for the Magistrate Court file.

After obtaining consent from the defendant to be tried in federal Magistrate Court, in place of US District Court, prepare a complaint or “information” for misdemeanor offenses. The US attorney’s office, criminal division, in the local district will usually provide examples of how they want the information to be formatted and worded. The information is accompanied by an affidavit made by someone with knowledge of the event, affirming sufficient facts to support the charge. The complaint may also contain a “Limits of Punishment” statement that defines the range of available punishments for the offense. The facts of the offense to complete the information, as well as name, location, statute violated, and so forth can be found on the CVB Form 1805.

Coordinating the case docket

Following the appropriate review of the complaint, it is filed with the US District Court clerk’s office. You do this by either faxing or emailing the information to the clerk, depending on how the system is set up. Once this has been done, keep the information in your file until you receive a copy back from the US District Court clerk’s office stamped with “Received.” It will also have the date it was filed in the same area as the stamp. The court clerk docket the case and the SAUSA is notified of the arraignment date. You will know the case has been docketed when you receive the information back from the clerk marked as previously described.

A day or two before arraignment, you will receive the docket from the clerk. This will tell you which cases will be heard for the next court session. Use this docket to gather your files and any other documentation for the session. Ensure your SAUSA has these files prior to the session so they may review the files. You may have as many as 15 cases or as few as one per court session.

On some installations, the magistrate comes to the base and hears only cases arising on base. At other installations, the SAUSA must travel to the US district courthouse and the cases are heard along with others unrelated to the installation.

Immediately following arraignment on petty offenses where the defendant pleads guilty, the magistrate will impose a sentence. The SAUSA will be expected to offer recommendations on the appropriate sentence. Following the arraignment on misdemeanors where the defendant pleads guilty, the magistrate may impose a sentence or may set a date for sentencing to allow time for a presentence report. If a presentence report is prepared, a representative from the preparing agency (pretrial services) may also be present to offer recommendations on an appropriate sentence.

Following arraignment, the magistrate may go immediately to trial if the defendant pleads not guilty and waives his or her right to 30 days to prepare for trial. In petty offenses, the defendant has no right to a jury or to have a public defender (if unable to afford an attorney).

A trial date is set if there is no waiver of the 30 days preparation time, if a jury is required in a misdemeanor case, or if the magistrate elects not to go immediately to trial. If there is a verdict of guilty, the judge imposes a sentence following the federal guidelines or state law if the offense is an assimilated crime.

In all cases of conviction by a US magistrate judge, the defendant may appeal to the US District Court for the district in which the offense was committed.

228. Host-tenant support agreements

If you have performed military justice duties since you entered the paralegal career field, you are familiar with the term *host-tenant support agreement*. Almost every Air Force installation has tenant units, such as the AFOSI and the Army and Air Force Exchange Service (AAFES). As part of our legal office duties, we will review and prepare host-tenant support agreements.

Purpose

The purpose of a support agreement is to formally identify the specific support functions and related responsibilities that are to be performed by the host and by the tenant. An example of a host-tenant relationship is: Maxwell Air Force Base, Alabama, belongs to the Air Education and Training Command (AETC). The Judge Advocate General's School is a tenant unit under the AFLOA, located on Maxwell AFB.

AFI 25-201, *Intra-Service, Intra-Agency, and Inter-Agency Support Agreements Procedures*, establishes the host-tenant guidelines, identifies support provided by various base elements, and determines the responsible organization. Where functional duplication is authorized, the respective host-tenant responsibilities for these functions also must be clearly defined in the agreement. This support agreement is printed on a DD Form 1144, Support Agreement. The support agreement, by itself, is not the means to transfer personnel or funds between the parties. Other directives prescribe the procedure for such transfers; also, the MAJCOM can provide special guidance to the local-level units. (**NOTE:** Interservice, intragovernmental, and Air Force to non-federal activities are governed by DODI 4000.19, *Support Agreements*, and the financial aspects of Air Force intraservice, interservice, and interagency support are covered in AFI 65-601, Volume 1, *Budget Guidance and Procedures*.)

Processing

The process begins with the *receiver* support agreement manager (SAM) informing the installation *supplier* SAM of their support needs. The installation supplier SAM is responsible for administering the support agreements program and preparing support agreements in accordance with all applicable instructions and directives. SAMs produce the initial or revised draft of an agreement and ensure it is coordinated in writing by all parties concerned. They will staff the agreement to Manpower, Financial Management, the Environmental Planning Function, Security Forces, and SJA offices for coordination and DD Form 1144 continuation statements and signatures, as appropriate. The SJA or designee performs a legal review of the agreement after all comments and changes from other organizations are completed.

Once the DD Form 1144 has been reviewed by the SJA, the form is sent to the *supplier* comptroller for signature. From there, it is sent to the *receiver* comptroller for approval authority signatures. The signed agreement will then be sent back to the supplier SAM. Last, the supplier SAM will staff the agreement for the supplier's approval authority signature. Once signed, the supplier SAM will distribute the agreement to the appropriate agencies.

All agreements must be signed by MAJCOM or a designated representative. This is to verify the agreement does not conflict with DOD or Air Force directives, the appropriate base-level host and tenant coordination has been effected, and the agreement will be fulfilled. Amended support agreements must be reviewed at MAJCOM level. Minor revisions (pen and ink changes) may be

made at the base level between the host and tenant as long as they do not significantly affect manpower or funds.

Military justice and administrative actions

In addition to the guidelines in AFI 25-201, other applicable AFIs provide for jurisdictional authority over members of tenant units.

- In accordance with AFI 51-201, all members of a tenant unit or Air Force element, whether designated a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of courts-martial convening authority.
- According to AFI 51-202, *Nonjudicial Punishment*, all members of a tenant unit or Air Force element, whether designated a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of NJP authority under Article 15, UCMJ. Commanders of tenant units, and other Air Force element officers authorized to impose nonjudicial punishment pursuant to AFI 51-202, retain concurrent authority to take action under Article 15, UCMJ. Any appeal from NJP is made to the superior authority (in the command channel) of the officer who imposes punishment, or to the appeal authority otherwise designated by Air Force Legal Operations Agency, Military Justice (AFLOA/JAJM). Regardless of who imposes punishment or acts on appeal, the action is administratively processed through the host command's SJA.
- In a joint command, if NJP is imposed on an Air Force member by a commander of a different service, the decisions as to collateral administrative actions (e.g., entry into a UIF or selection record) will be made by the senior Air Force officer or commander of the Air Force element in the joint command.
- All enlisted members assigned to a tenant unit are attached to the host command for administrative separation actions initiated under AFI 36-3208. The tenant command retains administrative separation jurisdiction over the officers assigned to the unit.

General legal services

All members of a tenant unit or Air Force element without its own legal office are attached to the host command and its appropriate subordinate and higher commands for claims processing, legal assistance, and general legal services that are usually provided by the host base legal office for host command units on that base.

229. Contract Law

The last three lessons covered in this unit, Contract Law, Labor and Employment Law, and Fiscal Law may be unfamiliar to you. Traditionally, these areas were left to the expertise of judge advocates and civilian attorneys within your base legal office and the field support centers. However, paralegals are now becoming more involved in these areas of the law. For example, the Air Force Judge Advocate General's School (AFJAGS) conducted its first ever Contracts for Paralegals Course in August 2011. This course was designed to assist paralegals in understanding contract law research, base level contracts, contingency contracting, contract litigation, and other areas associated with the contract process. As you can see, paralegals are now given the opportunity to expand their knowledge and expertise and prove a valuable asset to base legal offices and attorneys.

Terminology

The federal government's procedures for contracting, particularly within the DOD and the Department of the Air Force, are very structured and formal. Rules and regulations governing federal procurement are set forth in various statutes, federal regulations, and departmental directives and instructions. Because this area of the law can be quite extensive, we will only introduce you to some of the basic terms, and briefly discuss legal reviews and financial disclosure reports. To help understand the basic governmental contract process we will begin with an introduction to some of the applicable statutes and regulations and follow up with some common terms.

There are many statutes and regulations that affect government contracting. The following table contains the primary statutes and regulations. This list is by no means all-inclusive.

Statutes and Regulations	
Reference	Explanation
Federal acquisition regulations (FAR)	Sets forth uniform policies and procedures for federal acquisitions. Its role in the government contracting process is similar to the MCM's role in military justice. It is the principal resource for government contract questions. Each federal agency is authorized to supplement FARs with its own regulations.
Defense FAR supplements (DFARS)	Supplements the provisions of FARs for all DOD activities, including the Air Force.
Air Force FAR supplements (AFFARS)	Supplements both DFARSs and FARs.
MAJCOM FAR supplements	In addition to DFARSs and AFFARSs, some MAJCOMs have adopted supplements that provide specific guidance and procedures for certain contracting issues within that MAJCOM.

Senior procurement executive

In accordance with Air Force Policy Directive (AFPD) 64-1, *The Contracting System*, the senior procurement executive (SPE) is the Assistant Secretary of the Air Force (Acquisition) (SAF/AQ). This individual is responsible for the overall management of the Air Force acquisition and contracting system.

Contracting officer

The contracting officer (CO) is an individual specifically appointed by the Secretary of the Air Force or designee with the authority to enter into, administer, or terminate contracts and execute related determinations and findings within the limits of the authority delegated. Only a properly warranted CO has the authority to contractually bind the government on behalf of the Air Force. The CO's authority is limited by the terms of the CO's certificate of appointment (warrant). These limitations are usually based on dollar values.

Contingency contracting officer

In accordance with AFI 64-102, *Installation Contracting*, the contingency contracting officer is a person with delegated contracting authority to enter into, administer, and terminate contracts on behalf of the Government in support of local contingency, steady-state deployments, or other contingency operations. The contingency contracting officer also acts as the primary business advisor to the deployed/incident commander or the emergency operations director.

Head of the contracting activity

The head of the contracting activity (HCA) is the person delegated overall responsibility for managing all contracting activities for a particular agency or element. In the Air Force, the HCA is the deputy assistant secretary (Contracting).

Solicitation

As defined by the FAR 2.1, *Definitions*, solicitation means any request to submit offers or quotations to the government. Solicitations under sealed bid procedures are called "invitations for bids." Solicitations under negotiated procedures are called "requests for proposals." Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer. In other words, this is the method by which the government tells potential contractors what the government is interested in acquiring and sets forth the procedures for submitting a bid or offer. A solicitation is generally a written document, but in some instances it may be conducted orally, particularly for micro purchases.

Occasionally, the amount allowed for a micro purchase is updated, and can be found in FAR 13.2, *Actions At or Below the Micro-Purchase Threshold*, and within FAR 2.1, which can be found on the Internet at <http://www.acquisition.gov>. AFI 64-117, *Government Purchase Card Program*, prescribes the micro purchase (currently \$10,000 using the government purchase card (GPC) within the United States. If there is a disagreement between the FAR and AFI 64-117, contact your base contracting squadron, who will be able to provide the most current information and reference.

Competitive procurement

The Competition in Contracting Act (CICA) of 1984, Title 41 U.S.C. § 253, *Competition Requirements*, revised the FAR to encourage competition for the award of all types of government contracts. The purpose was to increase the number of competitors and increase savings through lower, more competitive pricing. Contracting officers shall provide for full and open competition through the use of the competitive procedure or combination of competitive procedures contained FAR 6.101, *Full and Open Competition Policy* that is best suited to the circumstances of the contract action.

Fixed price contracts

There are many subtypes of fixed price contracts, but the most common contract type is the firm-fixed-price (FFP) contract. The FFP contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. The contract price is the price bid, with no incentives or fees added. Cost responsibility is placed wholly on the contractor and provides maximum incentive for the contractor to control costs and perform effectively. This type of contract is preferred when the cost risk is minimal, or can be predicted with an acceptable degree of certainty.

Cost reimbursement contracts

These types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. The contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling the contractor may not exceed (except at own risk) with the approval of the contracting officer. Of the various types of cost reimbursement contracts, the cost plus fixed fee (CPFF) contract is the most common. The CPFF requires the contractor to perform the work and the government to reimburse the contractor for allowable, allocable costs. The contractor's profit is fixed; however, the contract (total amount paid to the contractor) is not fixed. For example, the contractor incurs a cost of \$100 to do the job (the allowable, allocable cost), plus a \$5 fixed fee (contractor's fixed profit), for a total cost of \$105, to be paid by the government. These contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

Terminations

In many instances it may be necessary to terminate a government contract before performance is completed. In some cases, the contract will be terminated in its entirety, while in others only certain aspects of the contract will be terminated.

- Termination for convenience - The exercise of the government's right to completely or partially terminate performance of work under a contract when it is in the government's interest.
- Termination for default - The exercise of the government's right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.
- Termination inventory - Any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are

subject to a separate contract or to a special contract requirement governing their use or disposition.

- **Terminated portion of the contract** - The portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

Contract disputes

Congress enacted the Contract Disputes Act (CDA) of 1978, 41 U.S.C. 71 setting forth a comprehensive statutory scheme for contract dispute jurisdiction and procedures. The act allows federal government contractors to sue the US government for monetary damages related to their contractual dealings. The “disputes clause,” set forth in FAR 52.233-1, *Disputes*, implements the requirements of the CDA and obligates the contractor to continue performance pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the CO.

Bankruptcy

A government contractor filing for bankruptcy can substantially alter the contractual relationship and limit the government’s rights. Bankruptcy law, in general, is a complex area governed by a mix of statutes, regulations, and case law. Bankruptcy is governed by U.S.C. Title 11.

As a paralegal in the legal office, you will be directly involved in researching and reviewing government contracts. You will be challenged in this area of general law, as Air Force paralegals assume responsibility for tasks previously performed solely by judge advocates.

Legal reviews

According to AFFARS 5301.602-2, *Responsibilities*, the supporting legal office shall review operational contract actions and Space and Missile System Center contract actions expected to exceed \$500,000 and review Air Force Materiel Command (AFMC) non-operational contract actions expected to exceed \$1,000,000. The preferred legal review template can be found within AFFARS 5301.602-2. However, a standard legal review will also suffice as long as it addresses the items outlined in AFFARS 5301.602-2.

The top of the legal review has the contract number, contractor, sup agreement number, change order number, amendment number, POC name, POC phone number, change order number if applicable, branch chief and phone number, amendment number if applicable, and JAG and phone number. The legal office and contracting office are responsible for annotating their remarks, review date, and signature on the legal review. Simple legal reviews may all be accomplished on the document provided; however, in some cases you may see a separate legal review attached to the form.

Confidential financial disclosure report and public financial disclosure report

It is important to understand if a government employee (civilian and military personnel in certain job positions or “covered positions”) touches money or makes decisions concerning money, he or she may need to file a financial disclosure. In these cases, the SJA is the ethics counselor who administers this program and reviews the disclosure forms. The ethics counselor is appointed in writing by the DOD component designated agency ethics official (DAEO) or alternate DAEO.

The Ethics in Government Act requires certain military and civilian employees to file financial disclosure reports. The JER lists 14 principles of ethical conduct required by government employees, one of which prohibits employees from holding financial interests that conflict with “the conscientious performance of duty.”

There are two types of disclosure forms: (1) the Office of Government Ethics (OGE) Form 450, Executive Branch Confidential Financial Disclosure Report, and the (2) OGE Form 278, Executive

Branch Personnel Public Financial Disclosure Report. A person may file one form or the other, but *never both* forms. If both forms apply, the OGE Form 278 takes priority; if a general officer meets the filing requirements of both forms, the officer would only follow the OGE Form 278 filing requirements. Whether an individual needs to file one of these forms depends on the person's rank/grade and responsibilities held in his/her official position. Everyone that is required to file either an OGE Form 278 or OGE Form 450 must also complete annual government ethics training.

OGE Form 450

Certain executive branch employees whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-federal entities are required to file *confidential financial disclosure reports*. The OGE Form 450 is used by executive branch employees who are less senior than public filers to report his or her financial interests as well as other interests outside the Government. The purpose of this report is to assist employees and their agencies in avoiding conflicts between duties and private financial interests or affiliations.

For government employees in "covered positions," and their spouses, the OGE Form 450 lists their assets, liabilities, outside positions, arrangements, travel benefits, federal government income, Thrift Savings Plan (TSP), diversified mutual funds and so forth, to prevent financial conflicts of interest.

People required to file this form include:

- Commanding officers, heads and deputy heads, and executive officers of Navy shore installations with 500 or more military and civilian DOD employees and all Army, Air Force, and Marine Corps installations, bases, air stations, or activities.
- Special Government employees.
- All military members (below O-7) and all civilian employees (at or below General Schedule/General Manager [GS/GM]-15) only if the duties and responsibilities of a position require the employee to participate personally and substantially through decision or the exercise of significant judgment, and without substantial supervision or review in taking a government action regarding certain actions.
- Individuals serving on detail under the Intergovernmental Personnel Act, from state or local governments, institutions of higher education, or other eligible organizations.
- Any person holding a position for which the supervisor determines the duties and responsibilities require the employee to file such a report to avoid an actual or apparent conflict of interest and to carry out any statute, Executive Order, or regulation applicable to or administered by the reporting individual.

Some examples provided by the OGE (<http://www.oge.gov>):

- A contracting officer develops the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests. By engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.
- As a senior investigator for a criminal law enforcement agency, an employee often leads investigations of suspected felonies, with substantial independence. The investigator usually decides what information will be contained in the agency's report of the suspected misconduct. Because he participates personally and substantially through the exercise of significant judgment in investigating violations of criminal law, and because his work is not substantially supervised, the investigator should be required to file a confidential financial disclosure report.

The report must provide sufficient information about the individual, as well as the individual's spouse and dependent children, so that an informed judgment can be made regarding compliance with conflict of interest laws.

No disclosure of amounts or values is required. The OGE Form 450 must be filed within 30 days after assuming a covered position and annually thereafter, and the annual report is submitted by 15 February each year. An abbreviated form (the OGE Form 450-A, Executive Branch Confidential Certificate of No New Interests) can be filed to fulfill the annual requirement *if* the filer can certify there have been no new financial interests in the last year, and who work for agencies that allow the use of this form. As the title of the form indicates, this report is *confidential*—it is not a public record—therefore, it must be safeguarded by a secure filing system!

Once the form has been filled out, the person filling out the form must sign it and have his or her supervisor provide an initial review and sign it. The supervisor will forward the form, with any comments, to the local ethics counselor for further review. In accordance with HQ USAF/JAG message 291400Z Oct 93, MAJCOM and FOA SJAs are appointed by Secretary of the Air Force General Counsel (SAF/GC) as ethics counselors. They have the authority to redelegate within their commands/FOAs as needed to assist in implementing and administering their command's or organization's standard of conduct and ethics programs.

Ethics counselors *must* be either judge advocates or civilian attorneys and are allowed to sign on an OGE Form 450 as agency reviewers when delegated by the SJA. Paralegals *cannot* sign these forms as the agency reviewer! The OGE Form 450, Appendix C of the JER, and a complete record of all action taken shall be retained for a period of six years in a central location within the agency, command, or activity to which the reporting individual was assigned at the time of filing.

OGE Form 278

The Ethics in Government Act requires employees in certain positions to file *public reports* of their financial interests, as well as other interests outside the government. The purpose of this report, just like the OGE Form 450, is to assist employees and their agencies in avoiding conflicts between duties and private financial interests or affiliations.

Again, if an employee is unable to use the Financial Disclosure Management (FDM) Website (<https://www.fdm.army.mil>) to file his or her disclosure report, instructions on completing this form are found in the instructions that are attached to the form, as well as in JER, Chapter 7, *Financial and Employment Disclosure*. Generally, this report requires more detailed disclosure than the OGE 450. Although specific amounts are not required on the report, individuals must indicate the value of assets within a given value range and type.

The time constraints for filing the report are covered under three separate report categories:

- *New entrant report* must be filed within 30 days of assuming a covered position.
- *Annual report* must be filed anytime after January 1 and not later than May 15 for reporting individuals who served in a covered position for more than 60 days during the preceding calendar year.
- *Termination report* must be filed no sooner than 15 days before, but not later than 30 days after terminating a covered position, unless the individual assumes another covered position within 30 days.

As mentioned with the OGE Form 450, once the form has been filled out, the person filling out the form must sign it and have his or her supervisor provide an initial review and sign it. The supervisor will forward the form, with any comments, to the local ethics counselor for further review. The OGE Form 278, Appendix C of the JER, and a complete record of all action taken shall be retained for a period of six years by the DOD component DAEO or designee, and a copy of the report shall be forwarded to OGE, when required. As the title of the form indicates, an OGE 278 is a *public* financial disclosure form and therefore may be released to the general public upon proper request.

Both the OGE Form 450 and OGE Form 278 may be electronically filed on the FDM Website at <https://www.fdm.army.mil>. The FDM Web application helps filers prepare the annually required financial disclosure reports by guiding them through entering reportable financial information. Filers submit their reports online using an electronic or digital signature. Reviewers (supervisors and ethics counselors) can review the report online and electronically sign it. The FDM Website offers a learning center, which offers various learning tools available and covers areas such as, managing user registration, amending a financial disclosure report, and reviewing a financial disclosure report. In addition, many other “tabs” are provided to assist with filing and reviewing reports.

Preliminary review

DOD has mandated that all confidential financial disclosure report filers must file these reports electronically using the FDM system beginning in the 2017 filing season. Both OGE Form 450 and OGE Form 278 can be reviewed by the supervisor and ethics counselor via the FDM Website. Once the report is filed, an email notification is triggered for the reviewers to complete their required reviews, and allows them to electronically sign and date the report.

For an OGE Form 450, after the initial supervisor review, the ethics counselor will review the report and determine each item is completed by checking the form against the instructions printed on the form, and ensuring no interest or position on the report violates or appears to violate applicable laws, regulations, or directives. OGE Forms 450 must be reviewed within 60 days of receipt, so ensure the forms are dated when received in your office. The date will automatically be recorded for those filed electronically. Ethics counselors will record the date of the initial review and, after the initial review, will obtain additional information, as necessary, seek remedial action, or sign and date the report. If the form is not complete, the reporting individual shall be notified of the additional information required and the date which it must be submitted. If the form is complete, and the ethics counselor agrees with the supervisor’s evaluation that no item violates, or appears to violate, applicable laws or regulations, then the ethics counselor will sign and date the report.

Annual report

Reporting your office’s OGE Form 450 numbers is part of the annual ethics report. This report is submitted to the AF General Counsel/Fiscal, Ethics, and Administrative Law Division (SAF/GCA). The information collected is filed with the Office of Government Ethics as outlined in 5 CFR Section 2638.602, *Annual Agency Reports*, and is to be included in the annual report to Congress. Field offices must submit their reports on or before 1 February of each year.

Payments from a non-federal source

Title 31 U.S.C. § 1353, *Acceptance of Travel and Related Expenses from Non-Federal Sources*, permits non-federal sources, such as organizations, associations, or businesses, to pay the government for travel, subsistence, and related expenses incurred by government personnel while in their official capacities to attend meetings, conferences, seminars, symposiums, speaking engagements, training courses, and other similar functions.

Before travel payments are accepted from a non-federal source, prior approval must be granted from the travel approving authority (official who signs travel orders), who must make the following determinations in writing:

- Payment is for attendance at a meeting, conference, seminar, speaking engagement, symposium, training course, or receipt of an award or honorary degree related to official duties. This authority does not permit acceptance of payments for promotional vendor training or other events in which the primary purpose is marketing the non-federal source’s products or services, or events required to carry out an agency’s statutory and regulatory functions, such as inspections, audits, site visits, or negotiations. In addition, the event need not be a “widely attended gathering.”

- Payment is for travel related to the employee's official duties, and the employee must be in a travel status. Payments or benefits offered by a non-federal source may be limited by qualifying acceptance to attend only a portion of the function that is deemed to be in the government's interest.
- Payment may be accepted only from a non-federal source that is not disqualified because of a conflict of interest. A "conflicting source" of payments is a non-federal organization that "has interests that may be substantially affected by the performance or nonperformance of the employee's duties." The approving authority must consider the circumstances to determine that acceptance would not cause a reasonable person with knowledge of all the relevant facts to question the integrity of the government's programs or operations.
- Approval of payments from a non-federal source should take into consideration the identity of other expected participants.
- Travel is primarily for the benefit of the government and not the organization paying for it.

Payment in kind (transportation, lodging, food) is preferred. Cash may not be accepted by DOD employees. If benefits are provided by reimbursement of expenses, checks must be made payable to the US Treasury or the DOD component, not to the employee.

Since these travel benefits are provided to the government, they should not be listed as gifts on the financial disclosure reports (OGE Form 278 or OGE Form 450) of the affected government employee.

Requests

For travel benefits to be accepted from a non-federal source, the travel approving authority must generally approve the acceptance *prior* to the travel. The travel approving authority must be an official at the highest practical administrative level who can evaluate the requirements under 41 CFR § 304-5.2, *Who Must Approve Acceptance of Payment from a Non-Federal Source for Travel Expenses to a Meeting* to adequately consider whether it is proper to accept the travel benefits. The sole exception to prior approval allows the travel approving authority to approve, within seven working days after the trip ends, acceptance of transportation, lodging, and meals (not any related expenses) within the maximum allowed on the travel authorization. If an employee accepts travel benefits after DOD rejects the offer, the employee is personally responsible for reimbursing the non-federal source.

Semiannual reports

After the travel has been completed, if the total value of the travel benefits for that trip exceeds \$250, a report must be forwarded to the ethics counselor by the traveler for inclusion in the semiannual report to SAF/GCA and the Office of Government Ethics. Standard Form (SF) 326, Semiannual Report of Payments Accepted from a Non-Federal Source, and SF 326A, Semiannual Report of Payments Accepted from a Non-Federal Source—Continuation, are the forms used for the semiannual reports. These reports include such information as the name of the traveler, a description of the event, location and travel dates, the source and description of the benefit received, whether it was a check or payment in kind, and the amount of the benefit.

A memo may be used for the report, with the following information included: name, grade or rank, position, office address, telephone, event, sponsor of event, location of event, date of event, travel dates, nature of participation, non-federal source of payment, nature of payment (check or in kind payment), total value of benefits received, lodging, transportation, meals, and miscellaneous.

230. Labor and Employment Law

Labor and Employment Law can be difficult and is often a confusing area of the law. The Labor Law Field Support Center (LLFSC) was created to provide the highest quality labor and employment law expertise throughout the Air Force in the most efficient manner possible. As a rule, the LLFSC

handles most labor and employment law issues and provides Air Force representation at locations across the United States and overseas. Much of the work is done at the main office at Joint Base Andrews, Maryland; however, they also maintain a number of regional offices at various locations throughout the country. These LLFSC regional offices provide support to their assigned installations. Lastly, the three Air Logistics Centers, Wright-Patterson AFB, and the Air Reserve bases retain their own group of experienced professionals in the labor and employment law area.

With the LLFSC in place, you may be wondering what role you will play in this area. Although the LLFSC exists, there will be many issues or cases an installation legal office wishes to handle. In these cases, between agreement with the installation's SJA and the LLFSC, an installation attorney can represent the Air Force in a particular case. This is when you will have the opportunity to assist the attorney you have been teamed with in these unique cases. In addition, even where the LLFSC handles a particular case, they will need your assistance and support with actions generating from your base.

Labor and employment law includes GS employees and deals with Equal Employment Opportunity (EEO) cases, Merit Systems Protection Board (MSPB) cases, as well as several others. Because of the complicated nature of these cases, this lesson will only cover some basic terminology, followed by a brief discussion on processing case files.

Terminology

The following table gives some general terms you may be exposed to while assisting in Labor and Employment Law cases:

Term	Definition
General Schedule (GS)	A pay system covering most white collar civilian federal employees whose pay grades range from GS-1 to -15 positions. Civilian attorneys in the legal offices usually start at GS-11. GS employees are usually covered by the MSPB system at higher levels.
Wage Grade (WG)	A pay system covering federal blue-collar civilian employees. The Federal Wage System was developed to make the pay of federal blue-collar workers comparable to prevailing private sector rates in each local wage area. These employees are usually represented by unions.
Senior Executive Service (SES)	A pay grade in the civil service of the US federal government. This includes civil service employees in GS positions 16 and above, and is similar in some respects to the ranks of general or admiral in the US Armed Forces.
Nonappropriated Fund (NAF)	Persons paid from nonappropriated funds of instrumentalities of the United States. Generally, these employees work in organizations that are responsible for the enhancement of the quality of life for personnel of the Armed Forces.
Federal Civil Service employees	<p>Includes all appointed positions in the executive, judicial, and legislative branches of the government of the US, except positions in the uniformed services. The US Civil Service includes both competitive service and excepted service.</p> <p>Employees who receive a career or career-conditional appointment, and who have not previously completed probation serve a one-year probationary period. This probation extends and continues the merit system competitive examination process for initial entry into federal civilian service. Upon successful completion of the probationary period, employees will then be categorized as a "career conditional" employee for two years before becoming a permanent federal civil service employee.</p> <p>NOTE: An employee may be required to complete another probationary period if they change job series.</p>

Term	Definition
Civil Service Reform Act (CSRA) of 1978	Reformed the Civil Service of the US federal government. The CSRA became effective 11 January 1979 and replaced the Civil Service Commission with three new independent agencies: Office of Personnel Management (OPM), Federal Labor Relations Authority (FLRA), and the Merit Systems Protection Board (MSPB).
Office of Personnel Management	The OPM primarily provides management guidance to the various agencies of the executive branch and issues regulations that control federal human resources. The OPM is responsible for personnel management, which includes insurance, retirement, examinations, job classifications, and administration of the Fair Labor Standards Act (FLSA).
Merit Systems Protection Board	In accordance with the MSPB at http://www.mspb.gov , the Board's mission is to protect Federal merit systems and the rights of individuals within those systems. MSPB carries out its statutory responsibilities and authorities primarily by adjudicating individual employee appeals and by conducting merit systems studies. The MSPB hears the appeals of federal employees who are disciplined or otherwise separated from their positions. In addition, the Board reviews the significant actions of OPM to assess the degree to which those actions may affect merit.
Federal Labor Relations Authority	In accordance with the FLRA at http://www.flra.gov , the FLRA exercises leadership under the statute to promote stable, constructive labor relations that contribute to a more effective and efficient government. Its mission is to carry out five primary statutory responsibilities as efficiently as possible and in a manner that gives full effect to the rights afforded employees and agencies under the statute. <ol style="list-style-type: none"> 1. Resolve complaints of unfair labor practices (ULP). 2. Determine the appropriateness of units for labor organization representation. 3. Adjudicate exceptions to arbitrator's awards. 4. Adjudicate legal issues relating to the duty to bargain. 5. Resolve impasses during negotiations.
US Office of Special Counsel (OSC)	An independent federal investigative and prosecutorial agency. Basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act. In accordance with OSC at http://www.osc.gov , the primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.
Equal Employment Opportunity Commission (EEOC)	Responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. NOTE: Each base will have an equal opportunity (EO) office which handles civilian complaints.
Equal Opportunity Director	An individual (military or civilian) who reports directly to the installation/center commander to manage the EO complaints program for which the commander/director is responsible.
Equal Employment Opportunity Individual Complaint	A written complaint of discrimination filed by an individual employee who believes he or she has been discriminated against because of race, color, sex, national origin, religion, age, disability, or reprisal.

Term	Definition
Equal Employment Opportunity Class Complaint	In accordance with 29 CFR § 1614.204, <i>Class Complaints</i> , a class is a group of employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of race, color, religion, sex, national origin, age, disability, or genetic information. A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class.
Alternative Dispute Resolution (ADR)	According to AFI 51-1201, <i>Negotiation and Dispute Resolution Program</i> , the purpose of ADR is to maintain a productive work environment in which disputes are avoided or settled quickly and at the lowest possible organizational level, and is essential to the effective functioning of the Air Force and the accomplishment of its national security mission. It is Air Force policy to voluntarily use ADR and other early mutual dispute resolution processes to the maximum extent practicable and appropriate to resolve workplace disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level.
Collective Bargaining	Negotiations between organized workers and their employer concerning wages, hours, etc. Both the Agency and the Union have the duty to bargain in good faith regarding conditions of employment.
Unfair Labor Practice (ULP)	U.S.C. Title 5, Chapter 7, <i>Judicial Review</i> , defines the relationship among federal agencies, represented employees, and the unions representing those employees. A ULP is basically a violation of provisions set forth in the code.
Contractor Labor Relations	AFI 64-106, <i>Contractor Labor Relations Activities</i> , details the authorized union activities on installations and the duties and responsibilities of Air Force personnel when a labor dispute occurs. In addition, discusses what the Air Force does about labor dispute demonstrations on Air Force installations and at overseas commands and activities.
Administrative Grievance System (AGS)	The Air Force AGS establishes a process under which an employee, or a group of employees acting as individuals, may request personal relief in any matter of Air Force management. The AGS covers requests for personal relief in any matter of concern not excluded by DODI 1400.25-V771_AFI 36-706. For example, grievances <i>do not</i> include matters subject to review outside the Air Force or which are authorized complaints or appeals systems, such as the MSPB or IG.
Worker's Compensation	The Federal Employees' Compensation Act (FECA) provides benefits to federal employees who sustain disabling injuries as a result of their federal employment. FECA also provides for a fixed payment for the deceased employee's funeral expenses and for compensation benefits to qualified survivors of the decedent in cases of employment related death.
Unemployment Compensation (UC)	The Department of Labor has entered into agreements with all of the states and jurisdictions, including the District of Columbia, Puerto Rico, and the Virgin Islands. The agreements provide for the states to administer the UC programs and allow the State Employment Security Agencies to determine and pay UC claims, review appeals, and conduct due process hearings based on the applicable State UC law.
Adverse Action	AFI 36-704, <i>Discipline and Adverse Actions of Civilian Employees</i> , provides instructions for maintaining discipline and for taking disciplinary and adverse actions against certain civilian employees paid with appropriated funds only. It defines adverse action as a removal, suspension, furlough for 30 days or less, or reduction in grade or pay. These actions do not include those resulting from reduction in force and may or may not be for disciplinary reasons.
Disciplinary Action	As defined by AFI 36-704, disciplinary action is an action management takes to correct an employee's delinquency or misconduct. Included are oral admonishments, reprimands, suspensions, removals, and in some cases, reductions in grade or pay. Except for oral admonishments and reprimands, these disciplinary actions are also adverse actions.

Process case files

In the Labor and Employment Law area of practice, there are many complex rules and guidelines. For our purposes, we will briefly touch on two types of cases and their processing procedures.

Equal Employment Opportunity cases

In most cases, once a DOD civilian employee's complaint becomes formal, the EO director will forward the case and any supporting documents and evidence to the LLFSC. However, you will play a significant role in these cases prior to the complaint ever reaching its formal stage. In the best interest of the complainant and the Air Force, the parties (the Agency, which is the Air Force and the complainant along with his or her attorney if one is retained) will try to reach a negotiation prior to the complaint ever reaching that point. The process in this lesson will focus on an EEO individual complaint.

An EEO case originates when an employee contacts the installation-level EEO counselor because the employee believes that he or she has been discriminated against because of race, color, sex, national origin, religion, age, disability, or reprisal. With limited exceptions, this contact *must* occur within 45 days of the time that the employee believes or has reason to believe that discrimination occurred. After initial contact, an EEO counselor will meet with the employee to clarify the issues, explain the process, conduct an informal inquiry into the facts, and explore the possibility of informal dispute resolution. Normally, the counselor must complete these actions within 30 days.

If the complaint is unable to be resolved at the informal complaint stage, the counselor will issue a notice of final interview (NOFI) letter. The complainant has 15 days from receipt of this letter to file a formal complaint. If a complaint is filed, a determination is made by the EEO office as to whether there are any grounds to dismiss the complaint (partially or fully) or whether the complaint should be accepted. The EO office will send a copy of the formal complaint directly to the LLFSC immediately upon receipt, and a courtesy copy to the appropriate SJA. At this stage, the legal advice will be rendered by the assigned LLFSC attorney regarding acceptance or rejection of the complaint. Such advice should come from an attorney other than the attorney assigned to represent the agency during the complaint process. If a complaint is dismissed, a complainant may appeal to EEOC Office of Federal Operations (OFO). An attorney must defend the appeal. Normally, if the complainant appeals a dismissed allegation, the Air Force Civilian Appellate Review Office (AFCARO) will notify the LLFSC. If the complaint is partially dismissed or accepted, it is referred for investigation. If the EEO counselor is able to settle the complaint at the informal state, he or she must coordinate the proposed negotiated settlement agreement (NSA) with either the local attorney, or the LLFSC attorney to ensure legal sufficiency.

If the complaint or any part thereof is accepted, the complaint is referred to the DOD, Civilian Personnel Management Service (CPMS), Investigations and Resolutions Division (IRD) (formerly Office of Complaints Investigations or OCI) for investigation. The IRD investigator will conduct an investigation, interview all the relevant witnesses, and compile a report which contains all the evidence and testimony used to make his/her recommendation. An agency representative will be appointed to represent the Air Force in this process. The completed report is posted on the IRD Website which can be accessed by AFCARO and some EO offices.

Following the investigation, the complainant may request a hearing before an EEOC administrative judge (AJ). The AJ will normally issue an Acknowledgement Order which directs settlement discussions, requests designation of representatives, and sets forth time limits for discovery and motions. A hearing is held and a decision is rendered by the AJ. If the complainant does not request a hearing, the agency renders a *final agency decision* (FAD). AFCARO is responsible for ensuring a FAD is issued. After a FAD is issued or a decision is rendered by the AJ, the complainant may appeal to the EEOC OFO. The agency representative must then prepare a written brief in defense of the decision. Both the agency and the complainant have the right to appeal an AJ's decision.

Following a decision by the EEOC OFO, either party may request reconsideration. The complaint process is long and can be difficult, but once the administrative process is exhausted, the complainant may file a lawsuit in the appropriate US District Court. An agency attorney will act to protect the interests of the Air Force in such litigation and will assist the DOJ in the Air Force's defense.

The EEO process can be quite complicated and having a general knowledge of the process can prove quite beneficial for both your legal office and in support of the LLFSC. As you will see, much of the support we provide the LLFSC is administrative, and is an area where you can become greatly involved. Throughout this process, the installation legal office is responsible for the following:

- Pre-formal (informal) complaint activities, such as advice to installation commanders, EO staff, managers, and supervisors.
- Securing potential evidence, to include securing electronic evidence such as emails once there is a reasonable probability of litigation.
- Providing desired input to the LLFSC regarding disposition of the formal complaint.
- Coordinating reasonable administrative assistance during the subsequent processing of the EEO complaint.

The LLFSC has these responsibilities:

- Providing advice on EEO matters in general, and specifically, as needed during the pre-complaint (informal) counseling phase of an EEO case.
- Coordinating on proposed acceptance/dismissal letters for the appropriate official's signature.
- Providing an agency representative for the formal complaint process and all subsequent phases of the EEO process.

MSPB proceedings

As previously defined, the MSPB is empowered to hear and decide complaints for corrective or disciplinary action when an agency is alleged to have committed a prohibited personnel practice. There are 12 prohibited personnel practices, such as reprisal for whistle-blowing, which are defined by law at Title 5 U.S.C. § 2302(b), *Prohibited Personnel Practices*, discrimination for or against any employee or applicant for employment on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964; and to deceive or willfully obstruct any person with respect to such person's right to compete for employment; and take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation. These are just a few of the prohibited practices you may see come through your office. A complete list can be found at Title 5 U.S.C. § 2302(b).

Actions which may be appealed to the MSPB are removal, reduction in grade or pay, suspensions for greater than 14 days, or furlough for 30 days or less for cause, and other cases as set forth in 5 CFR § 1201.2 and 1201.3. The appeal process begins when an employee or former employee files an appeal with the MSPB. The agency has the burden of proof in MSPB cases, and the employee has the burden of proof with respect to any affirmative defenses. An employee has 30 days from the effective date of the adverse action to file his or her appeal. For installations serviced by the LLFSC and for reserve installations, the LLFSC Rosslyn office is normally served an acknowledgment order by the MSPB regional office, notifying the agency that a management representative needs to be designated and that a response is due from the agency. The order also directs settlement discussions and sets a time for discovery and other matters.

After designation, the representative takes actions as directed by the acknowledgement order. Among those actions are submitting the agency's initial response; submitting appropriate motions; answering appellant's discovery; conducting settlement discussions; conducting agency discovery; interviewing witnesses; arranging for agency and other federal witnesses; and arranging for a hearing location as

directed by the MSPB AJ. If jurisdiction exists, appellants have an absolute right to a hearing with rights to call witnesses, present evidence, and confront the agency witnesses. This hearing is normally held with all parties present. An employee may choose to waive this hearing.

The AJ normally issues a written decision. This decision can be appealed to the full MSPB by either party or can be appealed to a court. Subsequent to the appeal, a request for reconsideration may be filed. The agency attorney represents the agency throughout the process. There is generally no hearing during this process. The full MSPB's decision is final if the agency loses, but if the appellant loses, he or she may appeal the MSPB decision to the US Court of Appeals for the Federal Circuit. The LLFSC Rosslyn office or applicable regional office handles all Federal Circuit appeals of Air Force MSPB decisions in conjunction with the DOJ Commercial Litigation Division.

The installation legal office also plays an important role in MSPB cases and, in coordination with the installation civilian personnel section (CPS), is responsible for:

- Submitting all proposed actions potentially appealable to the MSPB to the LLFSC for legal review prior to issuing proposals.
- Ensuring the LLFSC is provided a copy of the acknowledgement order, if not directly served on the LLFSC, as soon as it is received.
- Securing potential evidence in coordination with the LLFSC.
- Providing LLFSC administrative assistance as necessary.

The LLFSC has these responsibilities:

- Advising the installation legal office as necessary.
- Reviewing proposed actions that may be appealable to the MSPB.
- Ensuring the base legal office and civilian personnel office (CPO) are provided a copy of the acknowledgement order as soon as it is received.
- Representing the Air Force at settlement discussions, MSPB hearings before the MSPB AJ, petitions for review before the full MSPB, and related lawsuits before federal courts.
- Keeping the installation SJA informed of case progress.

While the above procedures summarize the MSPB appeal process, it is important to remember that the legal office must honestly evaluate each case with the commander and/or supervisor and never assume it has a "winner." Always ensure settlement options are discussed with the client and make a realistic assessment of these options, and you will help the agency successfully defend the majority of MSPB cases where you have teamed with an attorney.

231. Fiscal Law

The federal government has procedures for spending funds collected from the American public, and you must follow these rules when purchasing anything with government funds. Previously you learned about contract law, which goes hand-in-hand with this fiscal law lesson.

Terminology

The origins of fiscal law can be traced back to the signing of the Constitution, which authorizes Congress to collect taxes and provide for the defense and welfare of the country. The Constitution prohibits spending any money from the treasury unless authorized by law and requires a published accounting of all public funds. Problems occurred as the federal agencies spent funds before Congress gave it to them and failed to use the funds for the purposes Congress intended. To stop the mismanagement of funds, Congress passed a series of statutes known as the Anti-Deficiency Act (ADA). The ADA prohibits federal agencies from obligating or expending federal funds in advance or in excess of appropriation, apportionment, or certain administrative subdivisions of those funds (Title 31 U.S.C. § 1341, 1517(a), *Limitations on Expending and Obligating Amounts*). These statutes contain administrative and criminal sanctions for persons misusing appropriated funds.

Your office may be asked to provide legal advice to a unit concerning its intended use of appropriated funds. This lesson gives you a basic introduction to the principles of fiscal law.

General principles

In order to understand how fiscal law affects the Air Force, you will need to know the major participants. They are the Congress, various federal agencies (for our purposes, we will use DOD in the explanation), the Government Accountability Office (GAO), and the Supreme Court.

Participant	Responsible For
Congress	Charged with collecting funds from the American public, then appropriating the funds to the President.
DOD	Receives appropriated funds from Congress via the Office of Management and Budget (OMB) who acts on behalf of the President. The funds are often designated for a particular kind of use. The DOD, and in turn the Air Force, must ensure that they spend the money in accordance with any requirements and restrictions established by Congress.
Government Accountability Office (GAO)	Works for Congress and the American people. The GAO studies the programs and expenditures of the federal government. It is known as the investigative arm of Congress or the congressional watchdog and is independent and nonpartisan. GAO gives advice to Congress and the DOD on ways to make more effective and responsive government. The GAO evaluates federal programs, audits federal expenditures, and issues legal opinions. When GAO reports its findings to Congress, it recommends actions, which lead to laws and acts that improve government operations and save billions of dollars.
Supreme Court	Serves as the final arbiter over fiscal law matters contested through the US judicial system, and matters that frequently involve the application and interpretation of federal statutes. In 1976, the court issued a landmark decision, <i>US v. MacCollom</i> , 426 US 317. The court ruled “the established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.”

Fiscal law analysis

To analyze whether the Air Force may spend appropriated funds on a certain object or service, we need to consider the purpose, time, and the amount rules.

The purpose rule

When determining a fund’s purpose, you must look at the appropriation and/or authorization act controlling the funds in question (i.e., the purpose for which Congress intended the money to be used). According to Title 31 U.S.C. § 1301(a), *Application*, “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” This statute is referred to as the “Purpose Statute.”

Statute	Explanation
Appropriations Act	Statutory authorization to incur financial obligations and make payments out of the US Treasury for specified purposes. In other words, the appropriations act provides budget authority to the agency.
Authorization Act	Authorizes the appropriation of funds for programs and activities. This act does not provide budget authority. The authorization acts frequently contain restrictions or limitations on the obligation of appropriated funds. In short, they authorize the creation or continued existence of a particular program or agency.

You will probably hear the law office superintendent/NCOIC mention the phrase, “color of money” or the “pot of money,” as he or she works the office budget. These terms illustrate different purposes for different funds. As such, people often say that one type of money (such as “personnel money”) is

in a different pot or has a different color than another type of money (such as military construction money). As outlined in 63 Comp. Gen. 422, 427--428 (1984), the Comptroller General has determined that the following conditions must be met in order to expend appropriated funds:

- The expenditure must be for a particular statutory purpose or necessary and incident to the proper execution of the general purpose of the appropriation.
- The expenditure must not be prohibited by law.
- The expenditure must not otherwise be provided for in a more specific appropriation (i.e., it must not fall within the scope of some other appropriation). If two appropriations are available, but one is more specific, use the more specific. However, if two appropriations are equally available, then the agency must choose which one to use. The agency must choose wisely because it will be required to use the appropriation originally selected for the remainder of the fiscal year.

The time rule

Congress sets time limits for the use of a particular appropriation; however, the clock does not start running until the President signs the Appropriations Act. These terms are important to understand:

Term	Explanation/Definition
Fiscal Year (FY)	An accounting period of 12 months. It begins on 1 October and ends on 30 September of each year.
Period of Availability	The period of time for which appropriations are available for obligation. If funds are not obligated during their period of availability, then the funds enter an "expired" status for five years and are unavailable for new obligation. Different funds have different periods of availability (e.g., Procurement funds - three years; Operations and Maintenance (O&M) funds - one year; Personnel Funds - one year; Research, Development, Test & Evaluation Funds - two years; Military Construction Funds - five years).
Obligation	Any act that legally binds the government to make payment. Obligations represent the amount of orders placed, contracts awarded, and services received, that will require payment.
Bona Fide Needs Rule	The balance of an appropriation is available only for payment of expenses properly incurred during the period of availability, or to complete contracts properly made during the period of availability. Generally, bona fide needs are determined by when the government actually requires (will be able to use or consume) the supplies being acquired. Therefore, with the Bona Fide Needs Rule, we talk about spending "current money for current needs." There are two major exceptions to this rule: (1) Lead-Time Exception, which considers delivery time and or production time. (2) Stock Level Exception, which allows agencies to purchase sufficient supplies to maintain adequate and normal stock levels. However, it doesn't permit the agency to stockpile supplies in excess of normal usage requirements.
Expired Appropriations	Appropriations that have expired and cannot be used for new obligations. They retain their fiscal identity and allow for adjustments to previous obligations.
Closed Appropriations	Appropriations no longer available for any purpose. An appropriation becomes "closed" five years after the end of its period of availability as defined by the applicable appropriations act

The amount rule

This rule stems from the ADA which, in part, prevents agencies from spending more money than is released from Congress. To ensure agencies behave in a fiscally responsible manner, the ADA exerts the following three levels of fiscal control over appropriated funds.

Appropriations (Title 31 U.S.C. § 1341)

This statute prohibits obligations or expenditures *in excess of or in advance of* an appropriation. One big exception is Title 41 U.S.C. § 11, *Establishment of Office and Authority and Functions of Administrator* (also known as the Feed and Forage Act), which allows obligations in advance/excess of an appropriation for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies. However, these shall not exceed the necessities of the current year. This authority requires Congressional notification and does not permit actual expenditures until Congress provides an appropriation of the required funds. Another key exception is the Availability of Funds Clause in FAR 52.232-18, *Availability of Funds*, in which contracting may initiate certain contract actions, contingent on the availability of appropriated funds, if the solicitation and contract include the above-referenced FAR clause. No legal liability on the part of the government for any payment may arise until funds are made available to the contracting officer for this contract and until the contractor receives notice of such availability, to be confirmed in writing by the contracting officer.

Apportionment (Title 31 U.S.C. § 1512- 1513)

These statutes require the President to apportion Executive Agency appropriations. The President has delegated this authority to the OMB. OMB takes the money that is in an appropriation and distributes it for specified time periods, activities, projects and programs. The purpose of the apportionment is to prevent government agencies from obligating funds at a rate that would create a deficit, thereby requiring a supplemental appropriation—in other words, apportionment helps prevent deficiencies. The exception to this rule is found within Title 31 U.S.C. § 1515, *Authorized Appointments Necessitating Deficiency or Supplemental Appropriations*, that allows for an apportionment at a rate that would create a need for a supplemental appropriation for military and civilian pay increases, laws enacted after budget submission which require additional expenditures, or emergencies involving life or property.

Administrative subdivisions (Title 31 U.S.C. § 1514, 1517)

These statutes require agency heads to establish administrative controls that restrict obligations or expenditures to the amount of apportionments; and enable the agency to fix responsibility for exceeding an apportionment. Administrative subdivision of funds can be broken down into two areas:

Area	Explanation
Allocations and Allotments	These are “formal” administrative subdivisions prescribed generally by Title 31 U.S.C. § 1514, <i>Administrative Division of Apportionments</i> . The Air Force uses AF Form 401, Budget Authority/Allotment; Automated Funds Management System Document. Exceeding a formal administrative subdivision is a violation of the ADA.
Allowance/Target/Advisory Guide	These “informal” distributions do <i>not</i> create formal administrative subdivisions. Exceeding an “informal” administrative subdivision of funds does not necessarily violate the ADA.

The Anti-Deficiency Act

Government officials who spend appropriated funds for an improper purpose, at an improper time, or in an excessive amount may violate the ADA. However, these officials may be able to avoid the sanctions of the ADA if they charged with using funds for an improper purpose, but can show the following: (1) proper funds were available at the time of the erroneous obligation, (2) proper funds have been continuously available from the time of the erroneous obligation, and (3) proper funds are still available for the agency to correct the erroneous obligation.

Voluntary services

An officer or employee may not accept voluntary services or employ personal services exceeding those authorized by law, except for emergencies involving the safety of human life or the protection

of property. Acceptance of such services violates the ADA. However, the federal statutes provide several exceptions detailing when an officer or employee may accept voluntary services, even in nonemergency situations. Examples of voluntary services that officers or employees are authorized by law to accept include, but are not limited to:

- Alternative dispute resolution (Title 5 U.S.C. § 583, *Alternative Means of Dispute Resolution in the Administrative Process*).
- Student interns (Title 5 U.S.C. § 3111, *Acceptance of Volunteer Service*).
- Military departments may accept voluntary services for medical care, museums, natural resource programs, or family support activities.
- Red Cross (accepted by the President).

Gratuitous services

It is not a violation of the ADA to accept free services from a person who agrees, *in writing*, to waive entitlement to compensation. The key element with gratuitous services is that the person providing the free service agrees *in writing* not to seek compensation for his or her work. However, an employee may not waive compensation if a statute establishes entitlement, unless another statute permits waiver.

ADA sanctions

Now let's take a look at the ADA sanctions—adverse administrative actions and criminal penalties.

Adverse administrative actions

A military member or DOD employee who violates the ADA is subject to appropriate administrative action. Such action is considered on a case-by-case basis as determined by the appropriate authority. Both civilian and military personnel can receive adverse administrative action such as, among others, a written admonishment or reprimand, reduction in grade, suspension from duty without pay, or removal from office.

Criminal penalties

An officer or employee of the Air Force who knowingly and willfully commits a violation under the ADA or knowingly and willfully conceals a violation shall be fined not more than \$5,000, imprisoned for not more than two years, or both. These rules are strict and must be adhered to, as US taxpayers entrust us to spend their tax dollars wisely.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

227. Federal Magistrate Court System

1. What types of offenses may be referred to the magistrate court system?
2. What must a magistrate court have before the court can hear a case?
3. Which document is developed between installation commanders and state and local prosecutors when the installation has concurrent jurisdiction?

4. Who determines whether or not an offense is referred to the magistrate court?
5. What does *blanket determination* mean?
6. Who normally files complaints on behalf of the installation with the magistrate court?
7. Who appoints the US magistrate?
8. When may Air Force attorneys prosecute cases referred to the magistrate court system?
9. If the SJA determines prosecution is warranted in a case, what is the next action the installation commander takes?
10. For magistrate court cases, what is the *first step* in assembling court files? Why is this the first step?
11. After obtaining consent from the defendant to be tried in federal magistrate court for a misdemeanor offense, what is the *next step* in the process?
12. In magistrate court cases, once a complaint is reviewed by the SJA, how is it filed with the US District Court clerk's office?

228. Host-tenant support agreements

1. What is the purpose of a host-tenant support agreement?
2. What form is used for the host-tenant support agreement?
3. How does the host-tenant support agreement process begin?

4. Why must all host-tenant support agreements be signed by MAJCOM or a designated representative?
5. For nonjudicial punishment cases within a tenant organization, who administratively processes the action?

229. Contract Law

1. What is the principal resource for government contract questions?
2. Define contracting officer.
3. Define head of the contracting activity.
4. Define solicitation.
5. Which *Act* revised the FAR to encourage competition for the award of all types of government contracts?
6. Of the various types of fixed price contracts, which type of contract is the most common?
7. Of the various types of cost reimbursement contracts, which type of contract is the most common?
8. Define termination for convenience.
9. In what situations is the supporting legal office required to perform a legal review on contract actions?
10. What are the two types of financial disclosure forms?

11. Who is *required* to file *confidential* financial disclosure reports?
12. What happens after an employee's supervisor provides an initial review and signs the OGE Form 450?
13. Who can sign as agency reviewer on an OGE Form 450?
14. For an OGE Form 278, within what *maximum* time period must a new entrant report be filed?
15. What does the ethics counselor look for when reviewing an OGE Form?
16. Who is the annual ethics report submitted to?
17. Before travel payments are accepted from a non-federal source, what action must take place?
18. When receiving payment from a non-federal source, what is the preferred method of payment?
19. What may an employee be responsible for if they accept non-federal travel benefits after DOD rejects the offer?
20. If the total value of non-federal travel benefits exceeds \$250, what step must be taken after an employee's travel has been completed?

230. Labor and Employment Law

1. What term is used to describe the type of government workers usually represented by unions?
2. What does the category "Federal Civil Service employees" include?
3. What act reformed the Civil Service Commission and what three new independent agencies were created?

4. What are the responsibilities of the Merit Systems Protection Board (MSPB)?
5. What are the five primary statutory responsibilities of the Federal Labor Relations Authority (FLRA)?
6. What is the Air Force's policy with regard to Alternative Dispute Resolution (ADR)?
7. What are some examples of types of grievances *not* included in the Air Force Administrative Grievance System (AGS)?
8. For civilians, what is the difference between adverse actions and disciplinary actions?
9. When an employee believes they have been discriminated against because of race, color, sex, national origin, or religion, age, disability, or reprisal, within what *maximum* time period must an employee contact the installation-level EEO counselor?
10. Once a complainant receives a notice of final interview (NOFI) letter, within what *maximum* time period does a complainant have to file a formal complaint?
11. Following a decision by the EEOC Office of Federal Operations (OFO), who may request reconsideration?
12. What actions may be appealed to the MSPB?
13. Once the full MSPB decision is final, to what agency may the appellant appeal the MSPB decision?
14. In coordination with the installation civilian personnel section (CPS), what are the installation legal office responsibilities in MSPB cases?

231. Fiscal Law

1. What document authorizes Congress to collect taxes and provide for the defense and welfare of the country?
2. What should be considered when determining whether the Air Force can spend appropriated funds?
3. When determining a fund's purpose, what act(s) must be looked at?
4. What is meant by fiscal year?
5. What is an obligation of funds?
6. What does the ADA "amount rule" prevent?
7. How may officials avoid the sanctions of the Anti-Deficiency Act (ADA) if they are charged with using funds for an improper purpose?
8. What criminal penalties may an officer or employee of the Air Force receive for knowingly and willfully committing a violation under the ADA or knowingly and willfully concealing a violation?

Answers to Self-Test Questions**227**

1. Misdemeanor and petty offenses.
2. Jurisdiction.
3. MOU.
4. Installation commander.
5. The commander can establish a policy that all similar violations will be automatically referred to US magistrate courts because the administrative disposition of certain offenses committed by civilians on base is not adequate or appropriate.
6. An SJA designated by the installation commander.
7. US District Court.

8. Upon notification by the US attorney of the nonavailability of a prosecutor from the Department of Justice and after securing permission from TJAG through appropriate channels.
9. Prepares a complaint for filing with the US District Court.
10. Ensure there is a consent form in the file. A consent form must be in the file before proceeding and if a person elects to be tried in US District Court for his or her offenses, then the consent form is the only requirement for the magistrate court file.
11. Prepare a complaint or "information" for misdemeanor offenses.
12. By either faxing or emailing the information to the clerk, depending on how they have their system set up.

228

1. To formally identify the specific support functions and related responsibilities that are to be performed by the host and by the tenant.
2. DD Form 1144.
3. The process will begin with the *receiver* SAM informing the installation *supplier* SAM of their support needs.
4. To verify the agreement does not conflict with DOD or Air Force directives, the appropriate base-level host and tenant coordination has been effected, and the agreement will be fulfilled.
5. The host command's staff judge advocate.

229

1. Federal acquisition regulation (FAR).
2. An individual specifically appointed by the Secretary of the Air Force or designee with the authority to enter into, administer, or terminate contracts and execute related determinations and findings within the limits of the authority delegated.
3. The person delegated overall responsibility for managing all contracting activities for a particular agency or element.
4. Any request to submit offers or quotations to the government.
5. The Competition in Contracting Act (CICA) of 1984.
6. The firm-fixed price (FFP) contract.
7. The cost plus fixed fee (CPFF) contract.
8. The exercise of the government's right to completely or partially terminate performance of work under a contract when it is in the government's interest.
9. Operational contract actions and Space and Missile System Center contract actions expected to exceed \$500,000 and AFMC non-operational contract actions expected to exceed \$1,000,000.
10. The OGE Form 450, Executive Branch Confidential Financial Disclosure Report, and the OGE Form 278, Executive Branch Personnel Public Financial Disclosure Report.
11. Certain executive branch employees whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-federal entities.
12. The supervisor will forward the form, with any comments, to the local ethics counselor for further review.
13. A judge advocate or a civilian attorney, when delegated by the SJA.
14. Within 30 days of assuming a covered position.
15. The form is complete and that no item violates or appears to applicable laws or regulations.
16. AF General Counsel/Fiscal, Ethics, and Administrative Law (SAF/GCA).
17. Prior approval must be granted from the travel approving authority.
18. Payment in kind.
19. Personally responsible for reimbursing the non-federal source.
20. A report must be forwarded to the ethics counselor by the traveler for inclusion in the semiannual report to SAF/GCA and the Office of Government Ethics.

230

1. Wage grade employees.
2. Includes all appointed positions in the executive, judicial, and legislative branches of the Government of the US, except positions in the uniformed services. The US civil service includes both competitive service and excepted service.
3. Civil Service Reform Act of 1978. The agencies are Office of Personnel Management (OPM), Federal Labor Relations Authority (FLRA), and the Merit Systems Protection Board (MSPB).
4. Adjudicating individual employee appeals, conducting merit systems studies, hears the appeals of federal employees who are disciplined or otherwise separated from their positions, and reviews the significant actions of Office of Personnel Management (OPM) to assess the degree to which those actions may affect merit.
5. Resolve complaints of unfair labor practices, determine the appropriateness of units for labor organization representation, adjudicate exceptions to arbitrator's awards, adjudicate legal issues relating to the duty to bargain, and resolve impasses during negotiations.
6. To voluntarily use Alternative Dispute Resolution (ADR) and other early mutual dispute resolution processes to the maximum extent practicable and appropriate to resolve workplace disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level.
7. Grievances do not include matters subject to review outside the Air Force or which are authorized complaints or appeals systems, such as the Merit Systems Protection Board (MSPB) or inspector general (IG).
8. Disciplinary actions are also adverse actions, with the exception of oral admonishments and reprimands.
9. With limited exceptions, this contact must occur within 45 days of the time that the employee believes or has reason to believe that discrimination occurred.
10. 15 days from receipt of letter.
11. Either party (the agency or complainant).
12. Removal, reduction in grade or pay, suspensions for greater than 14 days, or furlough for 30 days or less for cause, and other cases as set forth in 5 CFR § 1201.2 and 1201.3.
13. The US Court of Appeals for the Federal Circuit.
14. Submitting all proposed actions potentially appealable to the MSPB to the LLFSC for legal review prior to issuing proposals, ensuring the LLFSC is provided a copy of the acknowledgement order, if not directly served on the LLFSC, as soon as it is received, securing potential evidence in coordination with the LLFSC, and providing LLFSC administrative assistance as necessary.

231

1. US Constitution.
2. The purpose, time, and amount rules.
3. The appropriation and/or authorization act controlling the funds in question.
4. Accounting period of 12 months beginning 1 Oct and ending 30 Sept.
5. Any act that legally binds the government to make payment.
6. Prevents agencies from spending more money than Congress releases.
7. If they can show proper funds were available at the time of the erroneous obligation, proper funds have been continuously available from the time of the erroneous obligation, and proper funds are still available for the agency to correct the erroneous obligation.
8. A fine for not more than \$5,000, imprisoned for not more than two years, or both.

Unit 5. International and Operational Law

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IN 1991, THE UNITED STATES led a coalition of nations against the Iraqi military in Operation Desert Storm. Since then, a wide variety of international crises and conflicts have resulted in a broader and more frequent use of US military forces to achieve national security objectives. Today's Air Force remains ready to respond with unmatched speed and efficiency to a wide range of contingencies around the world. The role of paralegals in deployments, operations, and contingencies has never been more crucial. The opportunity for paralegals to deploy in support of a variety of military operations is markedly greater with the advent of the Air and Space Expeditionary Force (AEF). It is imperative you know your role and are prepared to provide advice in an operational setting. This unit is divided into two sections; the first deals with the broad area of international matters, the second section of the unit introduces you to some of the many components of operations law.

5-1. International Law

Within military limitations, the power and authority is vested in the person who commands. Depending on the mission and size of a unit, the commander must be concerned with logistic and strategic planning, generation of directives and policies, duty assignments, and the overall morale and welfare of members of his or her command. As a member of the legal office, you will play a vital role assisting JAGs with interpreting and monitoring issues that affect the command. Within this section we will discuss international law and areas that fall under it, such as International Agreements, SOFAs, and the Foreign Criminal Jurisdiction (FCJ) Program.

232. General information

Regardless of where you deploy, there are always basic things you need to know that apply to everyone. In this lesson, we discuss general orders, situation reports, after action reports, contingency plans, classified communication technology, and sister services.

General orders

Judge advocates may be called on to draft a general order regulating the activities of both military and civilian personnel serving in a joint operations area. The purpose of such a punitive order is to prohibit or restrict conduct which might damage relations with a host country or undermine the

discipline and health of deployed US personnel. Such orders should be tailored to the needs and cultural context of each Joint Task Force and, if possible, remain unclassified to enhance their training and deterrent value. Possible topics to be addressed include alcoholic beverages, pornography, gambling, black market activity, privately owned weapons, consumption of local food/beverages, and entry into religious sites.

General Order No. 1 – Do not assume the same rules apply to all the personnel in the multinational force. While US commanders may habitually issue an overarching general order (or set of orders) detailing the minimum standards of behavior for members of the deployed force (dealing with such issues as alcohol, local customs, gambling, weapons, etc.), other multinational partners may decline to issue corresponding orders. Alternatively, your multinational partners may choose to address some, but not all of the issues covered in US orders or may even issue more harsh orders. Some forces may simply rely on catch-all military offenses provided by their military justice regulations to cover “unbecoming” or otherwise blameworthy conduct, rather than nominating a list of prohibited activities in a general order. Examples might include, where a member of the force is discovered intoxicated in a country where alcohol is strictly prohibited or where the member of the force behaves disrespectfully in a religious building.

Every major operation conducted within the last 23 years has included the promulgation of a “General Order No. 1.” Usually published by a joint task force commander or combatant commander responsible for an operation, its purpose is to maintain order and discipline among the deployed troops and avoid offending certain host nation sensitivities by outlining prohibitions against specific activities. The typical general order is punitive; its violation will subject service members to prosecution under the UCMJ. Judge advocates must be thoroughly familiar with the general order for the operation and provide extensive briefings prior to deployment. They must ensure refresher training on the general order upon arrival in the area of responsibility (AOR) and at regular intervals throughout the deployment.

Situation reports

In accordance with AFMAN 10-206, *Operational Reporting (OPREP)*, the purpose of the commander’s situation report (SITREP) is to keep the MAJCOMs, Services, Joint Staff, and the SecDef informed of existing political, military, and operational situations/plans and to keep commanders advised of a unit’s ability to meet requirements outlined in approved plans. The commander or designated alternate is responsible for timely and accurate SITREP reporting. However, commanders at all levels of command report as required by operations plans and directives or higher headquarters, or when ongoing events warrant SITREP reporting. Situation reporting will be accomplished for, but not limited to the following situations:

- Involvement in critical national or international situations.
- Involvement in natural or manmade disasters and/or emergency relief efforts.
- Significant operational deficiencies that affect mission readiness.
- Other activities or ongoing operations to include Defense Support of Civil Authorities (DSCA).
- Units receiving aircraft or personnel due to natural disasters evacuations.
- When directed by a higher headquarters (Combatant Command [COCOM], Joint Staff [JS], Headquarters Air Force (HAF), MAJCOM).

The SITREP is a narrative report that informs and enables higher levels of command to evaluate resources and prepare for potential effects of ongoing situations. Duplicate reporting is not desired; however, information available in another joint reporting structure (JRS) report will be referenced to ensure operational impacts are noted. Any higher headquarters level in the reporting chain may direct additional reporting requirements.

Air Force SITREPs will report significant factors relating primarily to readiness, mobilization personnel, force protection, and logistics. Report content should highlight key activities and build on previous reports. Brevity is of great importance in these reports. Use the following subparagraphs, as applicable, in your report: general, situation, operations, intelligence-reconnaissance, logistics, communications connectivity, significant political-military-diplomatic events, and the commander's evaluation.

Reports are submitted daily or more frequently if required, for the duration of the activity or operation. Unless otherwise specified by combatant commander directives, submit reports no later than 0800 Zulu (Z), reflecting data current as of 0600Z. The primary means for transmitting SITREPs is via the Strategic Knowledge Integration Web (SKIWeb). When primary means is unavailable, transmit reports by the fastest means available consistent with security constraints (i.e., Secret Internet Protocol Router Network (SIPRNet) email).

After action reports

AFI 10-204, *Air Force Service Exercise Program and Support to Joint and National Exercise Program*, and AFI 10-1302, *Air Force Lessons Learned Program*, sets forth the criteria for after action reports (AAR) for major exercises and operations. Specifically, AFI 10-1302 provides guidance for the Air Force Lessons Learned Program (AFLLP) and covers all activities associated with lessons learned (LL) support for operations, exercise, and wargame AARs. In answer to this requirement, the JAGC established and maintains an internal JAGC process for submitting best legal practices, addressing sensitive legal matters, and practical tips for the benefit of deploying judge advocates and paralegals. The After Action Reporting System (AARS) is a software program designed to capture and analyze lessons learned from JAG Corps personnel who have participated in a deployment or operational exercise. The AARS asks focused questions that allow the deployer to communicate essential information to properly prime those who will follow in later rotations.

The JAGC AARS is designed to improve legal expertise by sharing lessons learned from deployments and operational exercises. All JAGC personnel who deploy or participate in an operational exercise are required to submit an AAR within 30 days of returning home from the deployment or operational exercise. This report maximizes the benefits gained as a result of the exercise or operation by documenting ways to enhance readiness, bolster combat capability, streamline procedures, and improve reach-back support. Experience gained from deployed personnel serves to enhance the readiness of others who later face similar situations.

To begin an AAR, the member needs to sign into the JAGC homepage (<https://aflsa.jag.af.mil/>). Once in the homepage, mouse over the "Management Systems" tab and select "After Action Reporting". As you enter the program, you will see "AAR", "Reports", and "Help." When you first enter the program, you will need to create a new AAR by clicking on the drop down menu "AAR" and selecting "Create New" (fig 5-1). In creating an AAR, you will need to provide pertinent information about your deployment. Areas in the form include: Demographics, Predeployment Training; Readiness, Work Center, Areas of Law Practiced or Assisted In, Reach Back Utilization, Redeployment, and Personal Logistics. There is also an area for member comments. Within these areas, members are asked to provide details such as deployed location, duty description, top three things you were glad you knew before deploying, top three things you wish you knew before deploying, office structure, other agencies or Services worked with, living conditions, amenities, and significant events that occurred while deployed. The goal is to provide as much unclassified information as possible in the areas that are applicable.



Figure 5-1. Screen capture of the After Action Report home page.

Remember, do not include any classified information in your comments. You must click “Save Comments” after completing an area and “Submit Final AAR” when you have completed all of the areas. As you complete an area, a green check will appear on the tab showing it is completed. A red tab indicates unsaved data in that area. If you need to return to your AAR, click on “AAR” and you will see “Continue Current” in the drop down menu.

After a member completes an AAR, the member’s SJA reviews the submission, provides comments, and forwards it to the Operations and International Law Division (AF/JAO). AF/JAO will determine if the AAR should be published in the public database or not. All public AARs completed after May 2013 are available for review by any JAGC member. Any information classified Secret or Confidential must be transmitted to AF/JAO directly using the SIPRNet.

In order to search public AARs, you can go to the AAR homepage and select the “Reports” drop down menu (fig 5-2). Depending on the level of access you have, two or more search options will appear allowing you to search and review previously submitted AARs. In addition to the individual AARs, the JAGC also consolidates regular reports. The AFJAGS analyzes all individual AARs and submits quarterly summaries to AF/JAO. AF/JAO will also analyze the submissions and publish a synopsis of best practices and practical guidance for the entire JACG at least annually.

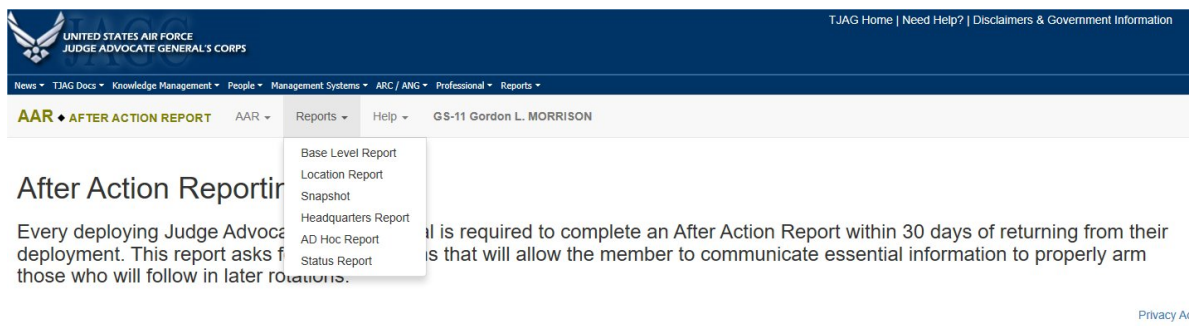


Figure 5-2. Screen capture of Reports menu on the After Action Report home page.

Contingency plans

According to the *World English Dictionary*, a contingency is a possible, but not very likely future event or condition. In preparation for future events or conditions, we must establish a plan to respond. A contingency plan is a plan devised for a specific situation when things could go wrong. Contingency plans are often devised by governments who want to be prepared for anything that could happen. They are sometimes known as “back-up plans,” “worst-case scenario plans,” or “plan B.”

Contingency plans include specific strategies and actions to deal with explicit variances to assumptions resulting in a particular problem, emergency, or state of affairs. They also include a monitoring process and “triggers” for initiating planned actions. They are required to help governments recover from serious incidents in the minimum time with minimum cost and disruption.

During times of crisis, contingency plans are often developed to explore and prepare for any contingency. For example, during the Cold War, many governments made contingency plans to protect themselves and their citizens from nuclear attack. In addition, there are contingency plans in place to deal with terrorist attacks or other catastrophes like hurricanes, tornados, and floods.

Almost any operation dealing with classified materials have some type of contingency plan to deal with “bug out” (transport/disposition of materials due to hostilities) due to hostilities.

Classified communication technology

In the deployed environment, as well as our everyday surroundings, certain communications need to be protected from unauthorized individuals. Commanders must have a means to communicate troop movements, equipment needs, and any number of other tactical and strategic information the enemy would use against us. The media could inadvertently cause great harm to our forces should information be overheard and broadcast for the world to hear. It is for these reasons that we have classified communications technology. A few examples of the technology we use to keep communications from being compromised include Voice-over Secure Internet Protocol (VoSIP), Secure Terminal Equipment (STE), and the Tactical Local Area Network Encryption (TACLANE). We will cover general information concerning the different types of classified communications you may be exposed to either at home station or deployed. When the need arises for you to use this type of equipment; you will be given specific training prior to use.

Voice-over Internet Protocol

According to the Federal Communications Commission (FCC), Voice-over Internet Protocol (VoIP) is a technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line. Some VoIP services may only allow you to call other people using the same service, while others may allow you to call anyone who has a telephone number, including local, long distance, mobile, and international numbers. In addition, while some VoIP services only work over your computer or special VoIP phone, other services allow you to use a traditional phone connected to a VoIP adapter. VoIP converts the voice signal from the telephone into a digital signal that can travel over the Internet. If you are calling a regular telephone number, the signal is then converted back at the other end. New wireless “hot spots” in public locations such as airports, parks, and cafes may also allow you to connect to the Internet, which may enable you to use VoIP service wirelessly.

VoIP may be used either on either an unsecure or secure network. When using this technology on a secure network, VoSIP, the general principles as described above are the same; however, you will be hooked into a network which is secure from one end to the other. This secure connection allows the capability to discuss classified information using VoIP technology. Many deployed locations are using VoIP for both unsecure and secure communications. Just like unsecure and secure messaging systems, a secure VoIP cannot place a call to an unsecure VoIP. This allows for integrity in the systems and helps prevent transmitting classified information over an unsecure system. This technology alleviates the need for running phone wires because the communications are placed through the internet; however, if the internet connection is down, you will be unable to communicate.

Secure Terminal Equipment

The STE is a secure voice and data equipment system designed for use on advanced digital communications networks, such as Integrated Services Digital Network (ISDN). The STE consists of a host terminal and a removable security core. The host terminal provides the application hardware and software. The security core of the STE, when used in the secure mode, is the Enhanced Crypto Card (KSV-21) which provides all the security services. When the cryptographic card is removed, the STE can still function similarly to a commercial telephone and provide nonsecure communication services.

In addition, the STE offers advanced features such as secure voice conferencing and fast auto-secure negotiation with other STEs on ISDN services. A tactical version of the STE provides connectivity to

tactical communication systems such as the Mobile Subscriber System (MSS) or Tri-Service Tactical Communications System (TRI-TAC) switches. With the addition of the optional Future Narrowband Digital Terminal (FNBDT) protocol, the STE will be able to negotiate secure sessions with future digital wireless handsets and other FNBDT products. With the appropriate cryptographic keying material in the KSV-21 card, the combination of KSV-21 and STE are approved to protect US government information up to and including Top Secret/Sensitive Compartmented Information (TS/SCI). Moreover, the STE is approved for installation in Sensitive Compartmented Information Facilities (SCIF).

A user who accepts the use of a KSV-21 card is solely responsible for safeguarding the card and cannot further transfer the card without the knowledge of the communications security (COMSEC) manager and the Terminal Privilege Authority (TPA). A user may allow or permit other people to use their card; however, the person must be cleared to the security level of the keys programmed on the card. The user card and/or carry card can be transported without written courier authorization unless prohibited by local security policy. An authorized person must supervise access by a person not having an appropriate clearance to a STE with a KSV-21 inserted.

Tactical Local Area Network Encryption

The TACLANE (short for “Tactical FASTLANE” or Tactical Local Area Network Encryption) is a network encryption device developed by the National Security Agency (NSA) to provide network communications security on Internet Protocol (IP) and asynchronous transfer mode (ATM) networks for the individual user or for enclaves of users at the same security level. A TACLANE is a low-cost, Type 1, key-agile, in-line network encryptor for deployment in the DOD tactical and strategic networks. TACLANes provide encryption for IP datagram traffic. ATM traffic and IP datagrams are encapsulated in ATM cells to support a variety of IP, ATM, and mixed network configurations. TACLANes can be used to overlay secure virtual networks on top of existing public and/or private network infrastructures.

These are just a small sample of the many types of communications technology you may have used or may be exposed to in the future. As you might imagine, with the advances in technology, more secure and advanced methods of communicating are being used. Some of the types you may have in your office now, such as the STU-III, are being phased out and are no longer manufactured. However, no matter what type of communications equipment you have, it is imperative you receive proper training on the use of the equipment, properly safeguard it, and never transmit classified information over an unsecure network.

Sister services familiarization

In the past, familiarization with our sister services only concerned us when we were getting ready for a deployment. This is still as true today as it was many years ago; however, it is even more important as we continue to integrate with our sister services. We not only deploy with many of our sister services, but we work with them on a daily basis. Many of our Air Force bases have consolidated into “joint” bases. For example, you may work with other services at joint base Pearl Harbor-Hickam, HI; joint base Lewis-McChord, WA; or joint base Charleston, SC, to just name a few. In these instances, you may find yourself at a base commanded by another service. Whether you are deployed or stationed at a “joint” base, it is imperative you understand the structure of our sister services to bridge the gap and build a successful working relationship.

In the Paralegal Apprentice Course, you already learned the basic organizational structure and rank structure of our sister services. In addition, the AF Handbook (AFH) 1, *Airmen*, along with many other resources, provides information on these basic structures. Now, we will focus our attention more specifically on sister service paralegal training. These areas are important because we may easily find ourselves assigned to a joint base. For example, joint base Lewis-McChord became operational as a joint base in 2010, and is now organized with an Army joint base commander, an Air Force deputy commander, and base services managed and provided by the Army. It has two separate

legal offices, one for the Army and one for the Air Force. Generally, the Army and Air Force take care of and handle all matters for their respective members. However, there are cases where these lines are crossed. For example, the Army legal office might be responsible for *all* legal assistance and contracting, while the Air Force legal office primarily handles military justice and civil law matters for Air Force members.

Aside from home station joint bases, our joint operations in the deployed environment, moves us even closer to working with our sister services. More likely than not, you will be working directly for a sister service commander and SJA. In addition, you will be exposed to working with paralegals from different services and will have the challenge of understanding each other's backgrounds and learning how to work together to complete your mission. To better prepare you for working in this environment, it is important to understand what the sister services bring to the fight and how we can work together.

Army

A paralegal in the Army is called a Paralegal Specialist (27D). Their duties and responsibilities are very similar to ours with providing paralegal and administrative support in all areas within a legal office. Requirements for becoming a Paralegal Specialist are an Armed Forces Qualification Test (AFQT) score of 31, or a 50 or above for those possessing a General Education Development (GED) or still attending high school; a minimum typing speed of 25 words per minute; no record of civilian conviction other than minor traffic violations, no courts-martial convictions or punishment under Article 15 proceedings and so forth, quite similar to our field. However, one difference we will see is in their training. It requires nine weeks of Basic Training where they learn basic Soldiering skills, and then ten weeks of Advanced Individual Training and on-the-job instruction.

In addition, the paralegal Military Occupational Specialty (MOS) in the Army has five skill levels 27D10 - 27D50. Skill levels are obtained by training, the ability to perform tasks, and pay grade. For example, the skill level 3 position requires the performance of more difficult tasks and involve first line supervision of soldiers in skill levels 1 and 2, and is obtained upon getting promoted to Staff Sergeant (E-6). What is important to understand here is a soldier at a skill level of 27D30 (skill level 3) is expected to supervise the operation of a command paralegal office, train and provide guidance to subordinates on complex paralegal administrative issues, coordinate tasking and training of a paralegal specialist and noncommissioned officers, conduct extensive paralegal research, and adjudicate personal property claims.

Marines

A paralegal in the United States Marine Corps (USMC) is referred to as a Legal Services Specialist (MOS 4421) and encompasses every facet of legal administration with the exception of courts-martial reporting. However, selected Marines may attend follow-on training at the Legal Services Court Reporter Course to receive court reporter training. Legal Services court reporters are responsible for the preparation and assembly of verbatim or summarized verbatim transcripts. To qualify as a Legal Services Specialist, a Marine must complete 11 weeks of Legal Services Basic Training; have a general technical (GT) score of 105 (waiverable to 102) or higher and a clerical (CL) score of 110 (not waiverable); demonstrate a typing proficiency of 25 words per minute; no nonjudicial punishment or convicted by courts-martial or civilian court for any offense involving controlled substances, nor convicted by courts-martial or civilian court for any offense involving moral turpitude; and completion of the Legal Services Specialist Course.

For training purposes, the Marines utilize a Systems Approach to Training (SAT) to establish training requirements. The *Training and Readiness Manual* (T&R) establishes the training standards, regulations, and policies regarding the training of Marines in the Legal Services occupational field. Duty areas in which Legal Services specialists are trained are: military justice, review, administrative law, basic common legal skills, basic common non-legal skills, administration, and value based training.

Navy

A paralegal in the United States Navy (USN) is known as a Navy Paralegal (Navy Occupational Specialty [NOS] code is B630). The duties of a Navy Paralegal also cover the broad spectrum of legal duties like our other services and include, preparing and processing legal documents in the areas of military justice, legal assistance, and administrative, civil, and operational law. Additional areas include humanitarian assistance, environmental law, law of the sea, refugee law and admiralty and maritime law. Furthermore, they may assist an attorney in a matter of case litigation or work for a Fleet Officer or Admiral in preparation of official reports and correspondence. A core competency for Navy paralegals is court-reporting.

Some requirements to become a paralegal in the Navy are: a high school diploma; a combined Armed Services Vocational Aptitude Battery (ASVAB) score; paragraph comprehension (PC) + arithmetic reasoning (AR) equal to 105; type at least 40 words per minute; have six college level English credits, have no record of nonjudicial punishment, courts-martial, or civilian convictions within 36 months of the date of the application, and no record of alcohol or drug abuse within 36 months of the date of the application; and have no current or prior financial or credit problems. In addition, they must attend an eight week Navy boot camp, and an 11-week training course (Paralegal Accession Course) in military justice, court-martial procedures, legal assistance, and administrative, civil, operational, and procedural law. The course includes classroom instruction and practical application. There is a degree requirement for all Navy paralegals to attain his or her Associates Degree in Paralegal Studies. Upon completion of the Accession Course, students stay an additional four months to complete his or her paralegal degree. Navy paralegals may not be advanced in rank without this degree and they are the only Navy specialty that currently requires a degree.

Unique to the Navy paralegal position, petty officers in the pay grade of E-3 through E-5 may apply to re-train into this Navy occupational specialty from other specialties. Advancement (promotion) opportunity and career progression are directly linked to a specialty's manning level (i.e., personnel in undermanned specialties have a greater promotion opportunity than those in overmanned specialties). Also unique to the Navy is the ability for a paralegals to work in a variety of billets to include, afloat commands. Additionally, the most experienced paralegals may be assigned to independent duty roles both in commands ashore and at sea.

Coast Guard

The US Coast Guard (USCG) is significantly different than the other branches of service, as the Coast Guard does not have a paralegal career field. However, enlisted yeomen (Navy petty officer) can be assigned to Coast Guard legal offices and staffs in Headquarters, Maintenance and Logistics Command (MLC) legal divisions, district legal offices, and several major shore commands. In addition to the standard administrative duties required of the rating, these yeomen perform a variety of specialized legal functions supporting and assisting Coast Guard attorneys. Yeomen may either be referred to as a legal technician, court reporter, or a Coast Guard paralegal. This course will only cover the legal technician and the Coast Guard paralegal.

The legal technician designation represents entry level competencies and reflects skills needed to provide basic legal assistant support in any legal office. Successful completion of the Coast Guard Legal Technician course is required unless waived by the Chief Counsel for those who possess an equivalent level of knowledge, skills, and ability. The Coast Guard paralegal designation represents the highest level of legal skill and competency for a yeomen assigned to the Coast Guard legal program. It reflects the level of skill and experience generally recognized for paralegals and legal assistants in government service or the private sector.

To qualify, a yeoman must first earn Legal Technician and complete two years in a legal billet (may be waived by the Chief Counsel). In addition, the yeoman must complete a formal course of instruction leading to a paralegal certificate, undergraduate or advanced degree in paralegal studies;

or, completion of a DOD JAG Corps program deemed equivalent; or a combination of completion of other training, education, and Coast Guard legal experience deemed equivalent by the Chief Counsel.

Yeomen may also attend Advanced (Class C) Legal Training, which are generally given at one of the three DOD JAG schools: Naval Justice School, Newport, RI; The Judge Advocate General's Legal Center and School of the Army, Charlottesville, VA; and our very own Air Force Judge Advocate General's School.

At this point, you may be asking yourself; why do I need to know this information? Let's take a step back, look at the big picture, and review. From the training described above, you can see our sister service paralegals perform the same duties, receive similar training, and have nearly the same criteria for entry into the career field (with exception of the Coast Guard). Understanding this can help us establish a better working relationship and ensure success in whatever mission we are given. Looking back at the Paralegal Apprentice Course, you learned basic information such as, sister service organizational structure and rank structure. In addition, you may already have your own experiences with sister services while deployed or at home station, and now you are familiar with the general training background of your fellow sister service paralegals. These areas combined give you the foundational knowledge you need to work successfully with other services.

233. International law and agreements

This lesson explains international law and agreements. It also defines and explains what they are and why they are important.

International law

International law is the application of international agreements, international customary practices, and the general principles of law recognized by civilized nations to military operations and activities. International law provides stability in international relations and an expectation that certain acts or omissions will affect predictable consequences. If one nation violates the law, it may be expected that other nations will reciprocate.

Most international law problems arise overseas in countries where we have forces permanently assigned or where we temporarily deploy or conduct exercises. There are also international law problems within the CONUS when North Atlantic Treaty Organization (NATO) and other foreign military personnel are assigned to US locations. Key US laws that apply to international operations include the UCMJ and those laws applying to procurement, fiscal matters, and conflicts of interest that may be applicable during international operations. Foreign laws and systems of justice may be radically different from those in the US. Laws that reflect host country customs, such as religious laws and customs regarding insults, may have a significant impact on exercise or deployment operations. Some countries, unlike the US, have integrated the civil and criminal systems of justice. In addition to a country's laws and customs, international law must be considered whenever US forces operate in a foreign country. International law includes treaties of all types, from major international agreements like the Geneva Conventions to local level MOUs.

International agreements

International agreements are commonly misperceived as elaborate documents signed at ceremonies by heads of state. While some agreements certainly are of this type, the majority of agreements with which you will be concerned are on a much lower level. If you are a paralegal stationed overseas, there may be times you will have the task of reporting and maintaining international agreements. In this lesson you will learn what constitutes an international agreement and who may negotiate and approve them.

Guidance

AFI 51-403, *International Agreements*, delegates the authority to negotiate and conclude certain categories of international agreements and sets guidelines for processing these agreements. It also

explains how to gain the approval to negotiate and conclude international agreements that are beyond the delegated authority of Air Force officials.

An international agreement is any agreement concluded with one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization, that:

- is signed or agreed to (including oral commitments) by personnel of any DOD component or by representatives of the Department of State (DOS) or any other department or agency of the US government;
- signifies the intention of its parties to be bound in international law; or
- is denominated as an international agreement or as a memorandum of understanding, memorandum of agreement, memorandum of arrangements, exchange of notes, or any other name implying a similar legal consequence.

For the purposes of AFI 51-403, these categories of agreements are *not* considered international agreements:

- Contracts made under the FAR.
- Foreign Military Sales Credit Agreements.
- Foreign Military Sales Letters of Offer and Acceptance.
- Standardization agreements that records the adoption of like or similar military equipment, ammunition, supplies, and stores or operational, logistic, and administrative procedures.
- Certain leases.
- Agreements concluded solely to establish administrative procedures.
- Acquisitions or orders pursuant to cross-servicing agreements made under the authority of the NATO Mutual Support Act (Title 10 U.S.C. § 2431 et seq.) and DODD 2010.9, *Acquisition and Cross-Servicing Agreements*.

International agreements can be as simple as a local agreement between the wing commander and the local mayor on authorizing the base fire department to respond to incidents off the installation or on a larger scale such as SOFAs.

Delegation

Commanders of MAJCOMs, FOAs, and the heads of HAF organizations have been delegated the authority to negotiate and conclude international agreements, or to approve the negotiation and conclusion of such agreements, involving predominantly Air Force matters that are within the authority and responsibility of such commanders and heads. These commanders and heads may further delegate authority to subordinate commanders, but must retain overall responsibility.

Delegating commanders must send copies of all directives, messages, or correspondence redelegating authority to Headquarters, United States Air Force/Operations and International Law Directorate.

Procedures

Air Force personnel will not make any unilateral commitment to any foreign government or international organization (either orally or in writing), tender to a prospective party any draft of a proposed international agreement, or initial or sign an international agreement, before obtaining the concurrence of either the Secretary of the Air Force Deputy General Counsel, International Affairs (SAF/GCI) or the responsible SJA.

International agreements that fall under the authority of MAJCOMs or FOAs (or their subordinate commands if properly redelegated) will be submitted to the SJA of that command or agency for concurrence.

The negotiation and conclusion of an amendment to an international agreement must be approved in accordance with the requirements in AFI 51-701 by the same US headquarters, office, or its successor that approved the original agreement, or by another US official who has been expressly delegated authority to approve amendments to the agreement.

Any oral agreement that meets the international agreement criteria set forth in AFI 51-403 is an international agreement and is fully subject to the requirements of the instruction and DODI 5530.3, *International Agreements*. The DOD representative who enters into an oral agreement *must* reduce the agreement to writing. Oral agreements should be the exception and not the rule.

Host nation support agreements

When a unit deploys overseas, some of its logistical requirements may be provided by the host nation. If so, it is desirable to have an international agreement specifying the material the host nation will provide and on what conditions, such as whether it is provided on a reimbursable basis.

Reporting requirements

Each organizational element of the Air Force that concludes an international agreement must send the original or certified copies (or both) of the international agreement, in time to arrive at the Office of the Assistant Legal Advisor for Treaty Affairs, DOS, not later than 20 calendar days after signature of the agreement.

Provide a copy of any annual list of terminated international agreements prepared by or for the air component of a unified command to HQ USAF/JAO.

Negotiating history

The organization that actually negotiates an international agreement is responsible for compiling, keeping, and being able to retrieve a complete negotiating history file on it. The organization must maintain this historical file at least for the duration of the agreement or until it no longer has legal significance.

Office of record

HQ USAF/JAO is the single office of record in the Air Force for maintaining international agreements. Each Air Force organization that exercises delegated authority under AFI 51-403 must name a single office to carry out the required record keeping and provide HQ USAF/JAO with one copy of its implementing directive.

Compliance

In accordance with DODI 5530.3, the Air Force must oversee compliance with those international agreements for which it is responsible and must keep the General Counsel of the Department of Defense (DOD/GC) up to date and fully informed on compliance with such international agreements.

234. Status of forces agreements

SOFAs play a vital role in preserving command authority, guaranteeing fair treatment of individual service members, and conserving scarce resources. SOFAs are the most commonly recognized international agreement for defining the legal status of US personnel and property in the territory of another nation. The purpose of such an agreement is to set forth rights and responsibilities between the United States and the host government focusing on two broad areas: criminal jurisdiction and civil law relief. Criminal jurisdiction establishes basic principles for sharing or receiving authority to exercise exclusive or primary rights of jurisdiction. Civil law relief addresses such issues as exemption from income tax, duties on importation of household goods and privately owned vehicles, and work permits. Other common issues addressed in a SOFA are wearing of the uniform, the carrying of arms, entry and exit of personnel and property, resolving damage claims etc. Foreign criminal jurisdiction and claims provisions in SOFAs are common and have a great impact on the workload of a legal office in an overseas location.

Types

SOFAs generally come in three forms:

1. Administrative and technical staff of an embassy under the Vienna Convention on Diplomatic Relations (commonly referred to as A&T status).
2. A mini-SOFA is often used for a short-term presence, such as an exercise.
3. A full SOFA is often used for longer durations.

The appropriate arrangement is dependent upon the nature and duration of US military activity within the host country, the maturity of our relationship with that country, and the prevailing political situation in the host nation.

Administrative and technical staff status

This type of SOFA is accomplished through an exchange of diplomatic notes which extend A&T status to the military participants of the sending state. A&T status is complete immunity from receiving state criminal jurisdiction and limited immunity from receiving state civil jurisdiction when arising from conduct in the performance of official duty. A&T status is appropriate in a number of situations, such as when US forces are sent abroad to participate in joint military exercises or humanitarian relief efforts lasting more than a few days.

Mini - status of forces agreements

These are usually negotiated and concluded as formal international agreements which are signed by each government rather than by exchange of diplomatic notes. Mini-SOFAs usually address a limited number of topics, such as pass and visa requirements, criminal and civil jurisdiction, customs and taxation. The mini-SOFA is ideal for small-scale deployments and those of short duration, not requiring large support services. It is excellent for use for exercises and is sometimes referred to as an “exercise SOFA.”

Full - status of forces agreements

The full SOFA is the most extensive of the three types of status arrangements and is most often used when there is a large temporarily-deployed military force or a permanently-deployed military force in the receiving country. They are negotiated and concluded as international agreements which are signed by each government. It contains all of the subject matter usually provided for in a mini-SOFA and in addition, addresses many more issues.

Coverage

Agreements providing more permanent SOFA coverage (any status arrangement intended to remain in force for at least one year) have expanded dramatically. Most of these agreements are unclassified, but a few are classified as to their content. In no case is the mere existence of any of these agreements classified. HQ USAF/JAO maintains a repository of most of these agreements. Unclassified agreements are available from HQ USAF/JAO in electronic form. The US enters into many “informal” agreements each year to provide SOFA coverage for activities of a short duration such as an exercise, disaster relief, humanitarian relief, de-mining operation, training event or other similar undertaking. US practice is not to send personnel into harm’s way without a SOFA or, at a minimum, a decision at the appropriate level to deploy without one.

Privileges

SOFAs provide certain privileges and immunities by granting varying degrees of exemption from criminal and civil jurisdiction. As a minimum, these agreements uniformly provide that the United States—and not the foreign government—has the primary right to exercise criminal jurisdiction over US personnel for offenses arising out of the performance of official duty. Claims provisions provide for prompt payment to third parties who have suffered loss or injury as a result of US military

activity, but within a formula of checks and balances that protects against excessive claims, while maintaining good host nation relations.

Application

The NATO SOFA and the Partnership for Peace SOFA, that incorporates the NATO SOFA by reference, are the only multilateral SOFAs to which the US is a party. Since the NATO SOFA applies within the territory of all of its parties, the NATO SOFA applies in the US and governs foreign NATO forces here. As such, it is the only reciprocal SOFA to which the US is a party and, to give it legal effect, it is a formal treaty entered into with the advice and consent of the US Senate. All other SOFAs to which the US is a party are bilateral and nonreciprocal (i.e., they do not apply in the US).

235. Foreign criminal jurisdiction program

Article 2 of the UCMJ provides for worldwide courts-martial jurisdiction over personnel serving with the armed forces. But what happens if an Airman commits a crime in a foreign country? FCJ issues arise when US forces' personnel and their dependents run into trouble with host nation criminal laws while stationed or deployed overseas. US Congress has an interest in ensuring the rights of the US and its forces are protected in matters involving FCJ and that the US forces maximize the opportunity to exercise jurisdiction over cases of misconduct alleged against US service personnel. Despite this policy, the US does not have agreements addressing FCJ with every nation. If there is no such agreement in place, US forces' personnel have no more protection than common tourists.

AFI 51-402, *International Law*, and Air Force Joint Instruction (AFJI) 51-706, *Status of Forces Policies, Procedures, and Information*, outline the procedures for assisting US personnel charged with criminal offenses under foreign laws and those confined in foreign penal institutions.

Designated commanding officer

At one time or another, most military personnel receive orders for assignment to a foreign country as either permanent party or TDY. The fact we are in a military-duty status does not exempt us, or our dependents, from the laws of that country. The designated commanding officer (DCO) in each foreign country has overall responsibility for implementing status of forces policies and procedures. That includes securing waivers of custody and jurisdiction, preparing country law studies, maintaining liaison with appropriate host nation legal authorities and US diplomatic missions, providing for trial observers, and initiating requests for DOS intervention as necessary. The DCO may appoint a senior US officer as the US Country Representative (USCR) for each of his or her countries of responsibility. The USCR will serve as the single point of contact with the host country and the US diplomatic mission regarding FCJ matters.

For each country in which US military forces are regularly stationed and are subject to the criminal jurisdiction of foreign authorities, the DCO will make a study of the criminal laws and procedures in effect, ensure studies are kept current, and that the studies are periodically reviewed. The DCO will forward copies of the studies and any significant changes in the criminal law of the foreign country to TJAG of each service.

Jurisdiction

Air Force members serving or deployed at overseas locations are subject to criminal proceedings by both the host nation (HN) and by the US for offenses they commit or are alleged to have committed. Primary jurisdiction of the case is normally governed by the terms of the specific SOFA with the particular HN. Although the terms of status agreements vary, the model for any shared jurisdiction framework involving the long-term presence of forces is the NATO SOFA. The NATO SOFA criminal jurisdiction formula provides for both exclusive and concurrent criminal jurisdiction. Exclusive criminal jurisdiction provides that each state has exclusive jurisdiction over those crimes that violate only its laws. Concurrent criminal jurisdiction comes into play when the offense violates the laws of both the sending and receiving states and, in this case, both nations have jurisdiction over the case.

Consistent with US policy to maximize jurisdiction, JAGs should try to maximize waivers of HN jurisdiction. The US military's experience is that many nations will usually surrender primary jurisdiction unless there is a particularly important reason not to. If an international agreement between the US and HN provides for the US to exercise pretrial custody, get approval from HQ USAF/JAO prior to posting bail bonds using US funds.

Despite best efforts to obtain jurisdiction, there are occasions when the HN will insist on prosecuting US members in its local court system. The military does not abandon its personnel once they become involved in a foreign criminal action. Efforts will be made in all cases, unless the circumstances of a case dictate otherwise, to secure the release of an accused to the custody of US authorities pending completion of all foreign judicial proceedings.

Overseas, military authorities will not waive US jurisdiction without first obtaining approval from TJAG. For example, if Airman James Smith is suspected of aggravated assault upon a foreign national while stationed in Korea, he should not be released to Korean jurisdiction for trial of that offense until it is approved by TJAG.

Transferring personnel

The Air Force will not transfer, curtail, or reassign Air Force personnel charged with criminal offenses in a foreign court until final disposition of the charges, except in accordance with that court's approved procedures or with approval of HQ USAF/JAO, and either the DCO or the country representative. The accused is personally responsible for attending all scheduled court hearings. When the accused is in US custody, the commander will make him or her available at all hearings as the court requests. Air Force commanders will establish international hold procedures to ensure the accused does not depart the country before the final disposition of charges.

Military legal advisors

When the HN insists on prosecuting US members in its local court system, the chief concern of the US is that its personnel and dependents be given minimum due process guarantees in the foreign courts. All US military personnel facing foreign criminal charges are entitled to the assignment, at their request, of a military legal advisor (MLA). It is the commander's responsibility to ensure all Air Force military members facing criminal charges in foreign court are promptly notified of their right to an MLA.

If requested by the member, the MLA is appointed by the local SJA. Under no circumstances will the SJA serve as the MLA. Only Air Force JAGs may serve as MLAs. JAGs assigned as ADC may be appointed MLAs if approved by the Chief, Trial Defense Division. The MLA provides legal advice to the member on all US-related matters arising out of criminal charges pending in a foreign court, including the following:

- The client's military status and any administrative actions that may be taken by or against that client.
- The rights guaranteed to the accused in applicable treaties or other international agreements between the US and the country concerned.
- DOD policies on personnel subject to FCJ.

The MLA may participate in pretrial discussions, facilitate communications between the client's foreign counsel and military authorities, and also help in obtaining documents and witnesses for the defense. The MLA must never seek to supplement the legal advice of the client's foreign counsel regarding the foreign proceeding. The MLA may communicate with and advocate the client's interests to the foreign counsel, the trial observer, the claims officer, the SJA, the client's commander, and other US officials; however, they must not make any official representations to foreign authorities without obtaining approval from the SJA. The MLA should not attend foreign trials or hearings unless the accused's right to adequate legal counsel would otherwise be deprived in a particular case. If they do appear, they should do so as an unofficial spectator.

Foreign criminal jurisdiction reporting procedures

Because of the importance of ensuring US military personnel, civilian employees, and dependents receive minimum due process and fair trial guarantees while in a foreign territory, it is important to keep the chain of command and other interested offices informed about FCJ cases. One of your primary duties in this is typing FCJ reports and trial observer reports. The legal office fulfills a monitoring role to a large extent. AFJI 51-706 governs the mandatory reports.

Serious incident reports

These reports are submitted immediately by electronic means to the appropriate service TJAG, with information copies to other offices as specified in AFJI 51-706. They are required in any case involving one or more of the following:

- US personnel placed in pretrial confinement by foreign authorities.
- US personnel actually or allegedly mistreated by foreign authorities.
- Actual or probable publicity adverse to the US.
- Congressional or other domestic or foreign public interest is likely to be aroused.
- A jurisdictional issue has arisen.
- The death of a foreign national is involved.
- Capital punishment might be imposed.

It is also wise to submit reports whenever an Air Force officer or senior NCO is the subject of a criminal case. Timely and complete supplemental reports are also required as significant developments occur.

Trial observer report

Trial observers are appointed to ensure foreign court proceedings provide minimum due process and fair trial rights to US personnel and dependents appearing before them. Trial observer reports are to be forwarded immediately upon completion of each hearing at the trial court level and for hearings on appeal. They are sent to the DCO and/or USCR, who in turn forwards them to TJAG of the accused's service. Reports are sent through the unified commander if the DCO believes procedural safeguards were disregarded or the accused did not receive a fair trial. AFJI 51-706, paragraph 4-6, *Trial Observer Report and Trial Observer Report on Appeal*, outlines the format for these reports.

Confinement report

The confinement report will include an alphabetical list of US military personnel, civilian employees, and dependents that, as of the last day of the reporting period, were held in post-trial confinement in foreign penal institutions pursuant to a sentence of confinement. The report is prepared quarterly for the periods ending 30 November, 28 February, 31 May, and 31 August.

Monthly visitation report

Monthly visitation reports are sent to the DCO no later than ten workdays following the visit. The report will include information on any failure by authorities of the visited institution to comply with established standards. The reports also provide information on which to base any corrective action. Additionally, visitation requests denied by foreign authorities without apparent cause, apparent prisoner maltreatment, and apparent substandard conditions of confinement which cannot be promptly resolved by foreign authorities should be immediately reported to the DCO for action. TJAG of the service concerned will be promptly notified of the matters involving denied visitation requests, prisoner maltreatment, and substandard conditions.

Annual foreign criminal jurisdiction report

The annual report is a statistical summary of all cases involving criminal jurisdiction over US personnel. The report must include a summary of all cases during the reporting period listed on DD

Form 838, Exercise of Criminal Jurisdiction by Foreign Tribunals over United States Personnel, a statement indicating the impact that local jurisdictional arrangements had upon mission accomplishment and the morale and discipline of forces during the reporting period; a statistical summary of expenditures made for counsel fees, court costs and bail; and a summary of the results of the prison visitation program. The annual report covers the period 1 December through 30 November and is sent through the DCO to TJAG of the service concerned no later than 15 workdays following the last day of the reporting period. Negative reports are required.

Host nation legal support

The NATO SOFA, as well as most other status arrangements, obligates sending and receiving states to provide each other mutual legal assistance in the investigation and prosecution of offenses. The US relies on this obligation to apprehend suspects outside its arrest jurisdiction in host nations or to obtain assistance with evidence production at courts-martial. Similarly, the receiving state relies on US cooperation in transferring custody of US personnel to them or producing information or evidence to support their prosecution.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

232. General information

1. What is the purpose of General Order 1?
2. Who is responsible for timely and accurate SITREP reporting?
3. What is the objective of TJAGC AARS?
4. Identify three examples of technology we use to keep communications from being compromised.
5. What is VoIP?
6. When used in the secure mode, what piece of equipment is the security core of the STE?
7. What is a TACLANE?
8. In the Army, how are skill levels obtained?

9. In the Marines, what is used to establish training requirements?
10. Provide two examples of why the Navy paralegal field is unique to the other services.
11. With regard to the paralegal field, how is the Coast Guard significantly different than the other branches of service?

233. International law and agreements

1. What is international law?
2. What does international law provide in international relations?
3. What kind of law issues may have a significant impact on exercise and deployment operations?
4. Which Air Force Instruction provides guidance for processing and reporting international agreements?
5. Where must delegating commanders send copies of all directives, messages, or correspondence redelegating authority?
6. How long must an organization negotiating an international agreement maintain a complete negotiating history on file?

234. Status of forces agreements

1. What is the purpose of a SOFA?
2. Which type of SOFA is accomplished through an exchange of diplomatic notes?
3. What is the most extensive type of SOFAs?

4. Which office maintains a repository of most SOFAs?
5. Name the only multilateral SOFAs to which the United States is a party.

235. Foreign criminal jurisdiction program

1. Who has the overall responsibility for implementing status of forces policies and procedures in each foreign country?
2. What office must provide approval to post bail bonds using US funds, if an international agreement provides for the US to exercise pretrial custody?
3. Who is entitled to a military legal advisor?
4. When and to whom are trial observer reports forwarded?
5. For monthly visitation reports, what matters require prompt notification to TJAG of the service concerned?
6. What reporting period does the annual foreign criminal jurisdiction report cover?

5-2. Operations Law

Operations law is a collection of diverse legal areas dealing with planning and executing the deployment and employment of US forces in both peacetime and combat military operations. By its nature, it transcends traditional military legal disciplines and incorporates relevant aspects of international law, criminal law, administrative law, acquisition law, and fiscal law. Judge advocates and paralegals assigned to operations law duties must be prepared to provide a wide range of informed legal advice to commanders, thus, contributing to the overall success of the mission.

Joint warfare is critical to successful military operations, as we saw in Desert Shield, Desert Storm, and the first year of Iraqi Freedom. It is important for you to know the fundamentals of joint warfare because one day you may find yourself on a joint operations legal staff. In the following lessons, you will be introduced to the organization of joint operations and operations law issues that may arise.

236. Fundamentals of joint operations

The term “joint operations” means two or more of the United States Armed Forces not only working together, but also assigned to the same unit. Today, joint operations are commonplace. Whether there

are years, months, or only a few days to prepare or plan, the Air Force must always be ready to operate in smoothly functioning joint teams. Joint doctrine offers a common perspective from which to plan and operate, and it fundamentally shapes the way joint forces think about and train for war. In this lesson, you will learn about joint operations and how they affect the legal staff. This will help you gain an understanding of the joint legal support doctrine.

Joint operations

As a paralegal, you may be deployed to a joint operational command and work either on the Joint Force Commander's (JFC) or Joint Force Air Component Commander's (JFACC) legal staff. According to Joint Publication (JP) 3-0, *Joint Operations*, joint doctrine recognizes the basic and beneficial effects of unity of command and the synergy that results from the integration and synchronization of military operations in time, space, and purpose. The fundamental principle for employing US joint forces is to take decisive action to ensure achievement of the objectives established by the National Command Authority (NCA) while finishing the operations in the shortest amount of time possible. The JFC is responsible for integrating the actions of air, land, sea, space, and special operations forces to achieve strategic and operational objectives. The JFC does this through the JFACC and the Commander, Air Force Forces (COMAFFOR).

Joint legal support for military operations

If you are assigned to a joint operational unit and working for a non-AF judge advocate, one of the most important things to remember is the attorney may not know the training you received or your experience level. The attorney may have never worked with an Air Force paralegal. It will be up to you to educate the judge advocate. The JAG will know that you meet the qualifications to deploy, but very little else. In times such as these, you will have to take the initiative and let the judge advocate know your paralegal skills.

Joint Force Air Component Commander

The JFACC is the principal air advisor to the JFC. In accordance with JP 1-02, *Department of Defense Dictionary of Military and Associated Terms*, the JFACC is the commander within a unified command, subordinate command, or joint task force responsible to the establishing commander for recommending the proper employment of assigned, attached, and/or made available for tasking air forces; planning and coordinating air operations; or accomplishing such operational missions as may be assigned. The JFACC derives authority from and is normally designated by the JFC. The JFC designates responsibilities to the JFACC that include, but are not limited to, planning, coordinating, allocating, and tasking, based upon the JFC's priorities. The JFACC is normally the component commander with the preponderance of aerospace assets and the capability to plan, task, and control joint aerospace operations. The JFACC can come from any of the services.

Judge advocates and paralegals supporting the JFACC focus on legal issues impacting aerospace operations. The legal staff provides legal advice on the availability and use of operational aerospace assets and supports the joint air operations center.

Commander, Air Force Forces

In any operation, a COMAFFOR is designated from the Air Force and serves as the commander of USAF forces assigned and attached to the USAF component. A COMAFFOR is normally the highest ranking Air Force officer (normally in the rank of colonel (0-6) to lieutenant general (0-9)) assigned to a JFC at the unified, subunified, and joint task force (JTF) levels. The COMAFFOR commands forces through two separate chains of responsibilities; operational and administrative. The operational chain runs through joint channels from the JFC and is expressed in terms such as operational control (OPCON), tactical control (TACON), and support. The administrative chain runs through service channels only, from the air and space expeditionary task force (AETF), up through the appropriate MAJCOM, Chief of Staff Air Force (CSAF), to the SAF; this authority is expressed as administrative control (ADCON). To a JFC, a COMAFFOR provides a single face for all Air Force issues. The JFC

conducts operations by delegating operational control of the Air Force component forces to the COMAFFOR.

Judge advocates supporting the COMAFFOR focus on legal issues affecting the COMAFFOR's ability to provide mission-ready aerospace capabilities. Judge advocates will advise the COMAFFOR on discipline and other legal issues relating to the deployment, reception, staging, onward movement and integration (RSO&I), sustainment, and redeployment of combat or combat support forces.

When the COMAFFOR has been designated as the JFACC, a single legal staff may support the commander in both capacities. In this case, it is critically important the commander makes decisions within the authority of each position. Judge advocates advising a "dual-hatted" commander will inform the commander what options he or she has within a particular capacity and what "hat" the commander is wearing while making the decision. For example, "In the capacity as the COMAFFOR, you may take the following actions regarding a nonjudicial punishment appeal" or "In the capacity of the JFACC, you have been delegated the authority to approve the following rules of engagement (ROE) supplemental measures." This procedure does not change the legal advice, but clearly informs the commander of the capacity in which he or she is making a decision. Clearly defining the authority inherent in each position simplifies the legal process to meet the commander's objectives.

Legal support

Air Force legal support is essential to successful air and space operations. In the Air Force, legal support consists of judge advocates, paralegals, and civilian employees who provide legal services to commanders on the legal aspects of military operations. They support operations through legal activities at home station, at forward operating locations, or through reach back to help the commander accomplish the mission in a lawful manner. The legal staff advises commanders on issues as diverse as fiscal and contract law, domestic matters, environmental law, and the lawful use of force under international law during the full spectrum of combat operations. As advisors, JAGs consider the full range of information pertinent to the operation and then advise commanders on the best way to lawfully achieve their objectives. Additionally, the UCMJ provides a disciplinary tool for commanders to use wherever they are. Commanders rely on you to provide them with support on the lawful options available to them. They want sound legal advice from their judge advocates and any additional information that will enhance their decision-making role.

NOTE: The Air Force Doctrine Document (AFDD) Annex 3-84, *Legal Support*, defines your role this way: the role of legal support is to analyze and evaluate circumstances, identify options, assess risks, and then provide timely and effective advice to commanders.

Armed with this advice, commanders then make better-informed decisions and take actions based on their knowledge, experience, and judgment. Against this backdrop, commanders may consider well-founded principles when making operational decisions. For example, it is well established—in law and policy—that suffering in war is to be limited by rules that protect the victims of war as much as possible. The ultimate objective is to achieve a "just war." The doctrine of just war developed over history and centers on two distinct schools of thought that regulate war: legal basis for the use of war, and regulation of hostilities.

Legal basis for the use of war

This concept, known as *jus ad bellum*, or "that which is right or just to engage in or resort to war," addresses the international legal parameters of war concerning when it is appropriate to go to war as a method of conflict resolution and to engage in legitimate war. The core elements are those principles recognized by medieval commentators on just war theory as being most central to the doctrine of just war. In this respect, for the use of force to be just, there must be a just cause and a competent authority with the right intention to authorize the use of force.

Regulation of hostilities

This concept, known as *jus in bello*, or “that which is right or just within war,” deals with what methods of warfare are permissible within the context of war that meet the criteria of the *jus ad bellum*. This aspect centers on the regulation of conduct during war and what methods are permissible, usually focusing on four aspects: military necessity, discrimination between combatants and noncombatants, humanity, and the use of force that is proportional to the desired result.

Principles of legal support

Legal support to air and space operations consists of a series of interlinked fields of practice to provide the commander, staff, and Airmen in general with the ability to focus on mission accomplishment. The legal staff relies on five bedrock principles of accuracy, timeliness, moral courage, analogy, and situational awareness.

Accuracy

Commanders should have complete confidence in the accuracy of the legal analysis that supports mission accomplishment. This confidence is born of an established record of accuracy, both in factual matters and in legal analysis. Legal advice to commanders and Airmen should be accurate. The mark of any skilled attorney is to provide relevant and thoroughly researched legal advice to the client. For us, the importance of accuracy is magnified both by the pace of events and the lethal nature of military operations.

Timeliness

The legal office is frequently expected to provide an opinion on the lawfulness of a proposed military action. This opinion should be provided in a timely manner that will permit the commander to consider it before making a decision.

Moral courage

The legal support staff may be required to advocate a difficult or unpopular course of action after a thorough analysis of alternatives. Commanders expect your office to prepare and deliver the appropriate legal advice without hesitation.

Analogy

Air and space operations, and combat operations in particular, tend to present commanders with unique and challenging decisions that do not fall squarely within existing law or precedent. The legal office staff is well equipped to analyze the situation and recommend a course of action (similar to a previous situation) that best applies available law and guidance to novel situations.

Situational awareness

A judge advocate will typically evaluate a pending issue not only in the legal context, but also in the broader context of policy, politics, and other considerations because he or she analyzes information provided by all elements of the staff. Commanders rely on their judge advocates to provide a broad perspective based not only on the law, but also on other relevant considerations to aid in critical decision making.

Legal support competencies

The Air Force executes its primary mission of air and space power by mastering its functional competencies. These operational capabilities are built upon the contributions of all Air Force disciplines. The following competencies are the basic areas of expertise that your office brings to all operations. Mastering legal competencies enhances the effectiveness of air and space operations. There are six legal support functional competencies: operational readiness, legal information mastery, authoritative counsel, compelling advocacy and litigation, fair military justice, and robust legal programs.

Operational readiness

Operational readiness is the ability to provide the war fighter with the complete set of legal capabilities at any place at any time. You should maintain the deployment skills necessary to survive and operate wherever the Air Force goes and the expertise to provide necessary legal support in various environments ranging from fixed facilities to austere deployed locations.

Legal information mastery

Legal information mastery is the ability to obtain, analyze, and communicate legal information rapidly. This realm is extensive, including educating and training, researching, managing electronic and other documents, transmitting analyses and advice to decision makers, and processing analytical data.

Authoritative counsel

Authoritative counsel is the ability to provide decision makers at all levels with the information and analysis they need to best evaluate options, assess risks, and make informed decisions within the bounds of international law and domestic law and policy. Advice and recommendations that are timely, accurate, balanced, ethical, and realistic and that reflect the Air Force mission, doctrine, and culture help leaders to resolve complex issues properly. Decisions based on authoritative counsel sustain the confidence of American and foreign citizens in the integrity of the United States Air Force.

Compelling advocacy and litigation

Compelling advocacy and litigation are the abilities to advocate, negotiate, mediate, and litigate in order to preserve command prerogatives so the Air Force can accomplish its mission. In a world which tends to take legal action, legal challenges to global military activities continue to grow. The legal staff employs, advocates, and negotiates alternative dispute resolutions and litigation measures as aggressively as required to ensure that desired outcomes are attained whenever possible.

Fair military justice

Operational success depends on the ability to field a disciplined force, which in turn is dependent on a fair military justice process. The legal office assists commanders in the administration of military justice as they maintain the morale, good order, and discipline of their forces. Judge advocates ethically and expertly fulfill advisory, judicial, prosecutorial, defense, appellate, and administrative roles in the military justice system. A military justice system that is fair, in fact and perception, bolsters Air Force core values by properly addressing allegations of misconduct, deterring other from wrongdoing, and maintaining the trust of fellow Airmen, host nations, and the American people.

Robust legal programs

Robust legal programs include the ability to provide valuable and responsive programs such as legal and income tax assistance, defense services, preventive law, claims, and legal training on a variety of subjects. These programs help Airmen and their families resolve legal problems so they can focus on their responsibilities and better prepare for deployments.

Organization of Air Force legal support

To meet the needs of the Air Force, legal activities are organized to directly support commanders and Air Force forces (AFFOR) throughout the administrative and operational branches of the chain of command. Air Force legal activities are integrated within the organizational structure at home station and forward-deployed AFFOR. These activities are designed to provide legal services independently while integrated within a larger military capability or as a supporting activity through reach back. Legal support functional managers provide configured capabilities depending on the level and mission of the supported command or function (i.e., there are generalists and a variety of specialists in legal support competencies).

Expeditionary legal support

Legal activities are configured to provide expeditionary legal services at each level of the expeditionary organizational structure. The legal office provides services to support missions defined by the supported commander. These forces may deploy as part of an AETF commanded by the COMAFFOR, in an Air and Space Operations Center (AOC), or in other expeditionary organizations. Expeditionary legal support is organized to support forward-deployed AFFOR and the command and control structure used to direct air and space operations.

Support to air and space expeditionary task forces

Legal services are configured to support two primary command levels: the COMAFFOR and AETF units. The scope and duration of the operation, the size of the supported population, and the requirements of the supported commander determine the amount and configuration of legal support available for an AETF and is organized to provide legal advice to the AETF commander. The SJA to the COMAFFOR is the single point of contact for the overall administration and management of expeditionary legal services provided to the AETF. The SJA is a member of the COMAFFOR's personal staff and focuses on Air Force issues (e.g., discipline, sustainment) that affect the COMAFFOR's ability to provide mission-ready air and space capabilities to the JFC.

Legal personnel must be flexible to support the operational requirements of any home station or forward-deployed organization both independently or concurrently. The SJA's staff is organized to provide legal advice and assistance to AFFOR within the AEF structure. The staff provides general legal services to commanders and personnel assigned or attached to air expeditionary wings (AEW), air expeditionary groups (AEG), and air expeditionary squadrons (AES). The SJA coordinates Air Force authority legal issues (e.g., discipline, force sustainment) through the administrative chain of command beginning with the COMAFFOR's SJA. Similarly, operational legal issues (e.g., LoW violations, requests to modify ROE) are coordinated and reported through the operational chain of command beginning with the JFACC's SJA. Within an AETF, the majority of the legal support staff is located within the air and space expeditionary force structure (i.e., AEW or AEG) as members of the supported commander's staff.

Supporting joint operations

Air Force legal support may be integrated at various levels within joint organizations and may serve on joint legal staffs dedicated to support a JFC or JFACC or the Joint Air Operations Center (JAOC). The size, amount, and configuration of legal support will vary with each operation, but a single legal activity may support multiple functions or commanders designated to serve in various roles. In large operations, a separate legal support staff may be dedicated to independently support a JFC, JFACC, and the JAOC. By contrast, in small operations a single joint legal support staff may collectively support all the above functions. In all cases, open communication and close coordination among all legal personnel throughout the joint organization are essential to ensure consistent legal advice is provided to commanders and their staffs.

237. Rules of engagement

Many problems arose during the Vietnam conflict because of confusion between the LoW and ROE. As a result, the US Armed Forces embarked upon a process to clarify the distinctions and to better educate our personnel to create ROE appropriate to the particular mission and take into account a number of political, military, and legal factors. This process, guided in large part by the US Navy, led to the extremely successful ROE used in Operations Desert Shield and Desert Storm and to the publishing of the Standing Rules of Engagement (SROE) by the Chairman of the Joint Chiefs of Staff in 1994. Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, *Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces*, dated 13 June 2005 contains the updated SROE. As US Armed Forces become involved in an ever-widening range of "operations other than war," the significance of the appropriate ROE and their promulgation will only increase.

Purpose

JP 1-02 defines ROE as directives issued by competent military authority that delineate the circumstances and limitations under which the United States forces will initiate and/or continue combat engagement with other forces encountered. Rules of engagement are restrictions that a state places on its military forces regulating when, where, how, why, those forces accomplish a mission and, in some cases, against whom commanders and their troops may use force. ROE ensure the use of force in an operation occurs in accordance with national policy goals, mission requirements, and the rule of law. In general, ROE present a more detailed application of the LoW principles tailored to the political and military nature of a mission. ROE set the parameters of an Airman's right to self-defense. In theory, ROE represent the intersection of political, military, and legal purposes.

Effective ROE are critical to mission accomplishment. Effective ROE can only result from a successful ROE development process that is integrated throughout all phases of mission planning. While ROE should never drive the mission; the political, military, and legal forces that may impact the mission and inhibit the use of force must be considered and planned for throughout the planning process.

Joint Chiefs of SROE

The unclassified SROE approved by the Chairman of the Joint Chiefs of Staff (CJCS) contains basic rules for national and unit self-defense. The purpose of the SROE is to provide implementation guidance on the application of force for mission accomplishment and the exercise of self-defense. It establishes fundamental policies and procedures governing the actions to be taken by US commanders during all military operations and contingencies and routine military department functions. In addition, the SROE includes antiterrorism/force protection (AT/FP) duties and applies to air and maritime homeland defense missions conducted within US territory or territorial seas, unless otherwise directed by the SecDef. According to the SROE, national self-defense is "the act of defending the United States, US forces, and in certain circumstances, US persons and their property, and/or US commercial assets from a hostile act or demonstration hostile intent." National self-defense may be used, for example, in situations of international instability.

Supplemental ROE

Although the SROE are fundamentally permissive, with the exception of those weapons or measures that specifically require NCA approval, commanders at all echelons may request additional authority or restraints for specific missions. As a matter of practice, all messages requesting supplemental ROE are classified at least CONFIDENTIAL. Every ROE message should reference the operations plan or operations order to which it pertains.

Supplemental ROE are designed to limit or grant authority for mission accomplishment purposes—like the rest of the SROE, they are not intended to limit a commander's inherent right and obligation to engage in self-defense. Supplemental measures are intended to provide information on the political situation, thereby helping commanders advance national political purposes when planning operations and provide clear military guidance and policy. In addition, they provide sufficient military and political guidance to allow commanders to deal effectively with unforeseen circumstances. Finally, they enable subordinate commanders to request additional measures or clarification.

Hostile act

A hostile act is an attack or other use of force against the US, US forces, or other designated persons or property. It also includes force used directly to preclude or impede the mission and/or duties of US forces, including the recovery of US personnel or vital US government property.

Hostile intent

Hostile intent is defined as the threat of imminent use of force against the US, US forces, or other designated persons or property. It also includes the threat of force to preclude or impede the mission and/or duties of US Forces, including the recovery of US personnel or vital US government

property. When hostile intent is present, the right exists to use proportional force, including armed force, in self-defense by all necessary means available to deter or neutralize the potential attacker or, if necessary, to destroy the threat. A determination that hostile intent exists and requires the use of proportional force in self-defense must be based on evidence that an attack is imminent. Evidence necessary to determine hostile intent will vary depending on the state of international or regional political tension, military preparations, intelligence, and indications and warning (I&W) information.

238. Determining current rules of engagement

Where can you find ROEs? ROE, broadly defined, can be found in a great variety of documents. The intent of this lesson is to familiarize you with the different ROEs and help you understand how to find the specific ROE you're looking for.

Standing ROE

The US SROE is the basic ROE document for all US forces during military attacks against the US and during all military operations, contingencies, and terrorist attacks outside the territory of the US. This is always the ROE you need to check first and foremost.

Mission specific ROE

The second place you can look is for a ROE specifically tailored to a particular mission. These are almost always included as an annex to the operational plan (OPLAN) or operational order (OPORD). The ROE contained in OPLANs or OPORDs can be modified by reissuing the entire document, issuing regular changes to the document, or by interim change messages from higher headquarters.

Joint air operations center products as sources of ROE

Third, special instructions, or SPINS, are periodically issued by the JFACC or the Combined Forces Air Component Commander (CFACC) via the JAOC or combined air operations center (CAOC) and usually have several sections that concern the use of force. The SPINS are produced at regular intervals by the Combat Plans Division of the JAOC based on inputs from all JAOC functional teams. Most SPINS have an ROE subsection, which contains a copy of relevant provisions of the applicable ROE together with any amplification the JFACC deems necessary for complex ROE provisions from higher echelons of command, and air component guidelines for the application of force. Other sections you should carefully examine include the "Search and Rescue" subsection which may contain ROE-like guidance for combat search and rescue (CSAR) operations. In addition, the "Communications" section may contain restrictions on the use of force without a specific communications capability.

The daily air tasking order (ATO), produced by the Combat Plans Division of the JAOC, may contain late-breaking, airframe specific, or individual target specific ROE restrictions, normally found on the cover page or ATO banner.

In addition, theater-specific ROE documents can be found on the Combatant Command's SIPRNet Website, often within or linked to by the SJA portion of the site. If you anticipate an exercise or deployment into any geographic combatant commander's AOR, check with the combatant commander's SJA for ROE guidance.

239. Law of War

One of the most critical subjects for today's military is LoW, also known as the Law of Armed Conflict (LOAC) or International Humanitarian Law. In accordance with AFD 51-4, *Operations and international Law*, LoW encompasses all international and domestic law regulating the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, domestic law implementing those treaties, and applicable customary international law. In the myriad of operational situations in which Air Force units are involved, commanders must ensure their personnel are trained and comply with LoW. Compliance was one of the hallmarks of the United Nations (UN) coalition during the Gulf War

against Iraq. It helped end the war faster (e.g., Iraqis were more likely to surrender because they believed coalition forces would safeguard their rights as prisoners of war [POW]), and it helped the coalition preserve the favorable international opinion that is critical to modern military operations.

Law of War principles

The basic principle of the LoW draws upon the humanitarian desire of civilized nations to diminish the effects of conflicts. It protects combatants from unnecessary suffering and safeguards the basic rights of noncombatants and civilians. The law also tries to keep conflicts from degenerating into savagery and brutality, thereby helping to restore peace. Four important LoW principles govern armed conflict, including military necessity, proportionality, distinction, humanity or unnecessary suffering.

Military necessity

The principle of military necessity authorizes the use of force required to accomplish the mission. Military necessity limits a combatant's use of force to only that degree of force, not otherwise prohibited by international law, needed to obtain the prompt submission of the enemy which results in the least possible expenditure of life and physical resources. It requires combat forces to engage in only those acts necessary to accomplish a legitimate military objective. In applying military necessity to targeting, the rule generally means the Air Force may target those facilities, equipment, and forces which, if destroyed, would lead as quickly as possible to the enemy's partial or complete submission.

As an example of compliance with the principle of military necessity during Desert Storm, consider our targeting and destruction on Iraqi surface-to-surface missile system (SCUD) missile batteries and of Iraqi army and air forces. These actions quickly achieved air superiority and hastened the Iraqi military's defeat.

Military necessity also applies to weapons and cyber capabilities. AFI 51-401, *The Law of War*, requires the Air Force to perform a legal review of all Air Force weapons, weapons systems, and cyber capabilities intended to meet a military requirement. It provides guidance and procedures for the review to ensure legality under domestic and international law including LoW. Even lawful weapons may require some restrictions on their use in particular circumstances to increase compliance with LoW.

Proportionality

Proportionality prohibits the use of any kind or degree of force that exceeds that needed to accomplish the military objective. Proportionality compares the military advantage gained to the harm inflicted while gaining that advantage. Proportionality requires a balancing test between the concrete and direct military advantage anticipated by attacking a legitimate military target and the expected incidental civilian injury or damage. Under this balancing test, excessive incidental losses are prohibited. Proportionality seeks to prevent an attack in situations where civilian casualties would clearly outweigh military gains. This principle is considered by a commander in determining whether, in engaging in offensive or defensive operations, his or her actions may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated by those actions.

Distinction

Fundamental to the avoidance of unnecessary suffering is the LoW principle of distinction, sometimes referred to as discrimination. Distinction means discriminating between lawful combatant targets and noncombatant targets such as civilians, civilian property, POWs, and wounded personnel who are out of combat. The central idea of distinction is to only engage valid military targets. An indiscriminate attack is one that strikes "military objectives and civilians or civilian objects without distinction." Distinction requires defenders to separate military objects from civilian objects to the

maximum extent feasible. Therefore, it would be inappropriate to locate a hospital or POW camp next to an ammunition factory.

Humanity or unnecessary suffering

The principle of humanity or unnecessary suffering complements the principle of military necessity. Grounded on a fundamental belief in the dignity and importance of each individual, humanity in aerial warfare forbids the infliction of suffering, injury, or destruction not actually necessary for the accomplishment of legitimate military objectives. The principle of avoiding the employment of arms, projectiles, or material of a nature to cause unnecessary suffering, also referred to as superfluous injury, is codified in Article 23 of the Annex to Hague IV, which especially forbids employment of “arms, projectiles or material calculated to cause unnecessary suffering...” and the destruction or seizure of “the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.” In other words, combatants cannot use arms that are calculated to cause unnecessary suffering (e.g., projectiles filled with glass, irregular shaped bullets, dum-dum rounds, and lances with barbed heads). Also, combatants cannot use otherwise lawful arms in a manner that causes unnecessary suffering (e.g., 2,000 pound bomb instead of precision-guided munitions against a military objective where civilians are nearby, used with the intent to cause civilian suffering).

Protective symbols and emblems

In addition to the general international law rules protecting civilians and civilian populations, specific protections apply to certain facilities. Specially protected places and objects should be marked with a distinctive emblem of the 1949 Geneva Conventions and 1977 Additional Protocols to the Geneva Convention, with the most recent added in 2005; the Red Crystal. There are four recognized symbols, three of which are in use for the marking of protected places: the Red Cross, the Red Crescent, and the Red Crystal (used by the Israeli Defense Forces (IDF) during war). The Red Lion and Sun (a symbol formerly used by Iran) is also a recognized emblem, but is no longer in use. Although not officially recognized by treaty, several other symbols are accepted by customary law or state practice, such as the Red Star of David. See figure 5–3 for examples of protective symbols and emblems.

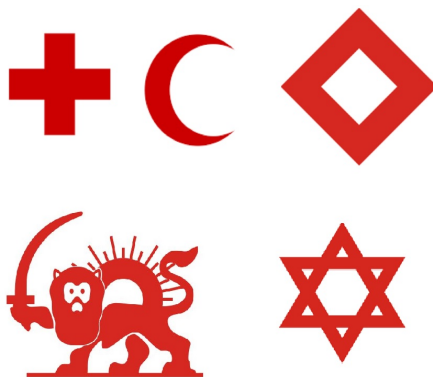


Figure 5–3. Protective symbols and emblems.

Medical

The use of distinctive emblems in peace or in war is prohibited except to protect medical personnel, units, establishments, and supplies. Special protocol for the protection to the wounded and sick and to persons, facilities, and transports caring for the wounded and sick must be observed. The Geneva Conventions require the following be respected and protected from attack:

- Hospitals and other fixed or mobile medical establishments, including aeromedical staging facilities and airmobile hospitals.
- Medical personnel and chaplains, including medical, nursing, medical services, and medical administrative personnel.
- Medical transport.
- Medical aircraft.
- Hospital ships.
- Wounded, sick, and shipwrecked personnel.

Combatants are prohibited from intentionally attacking or firing upon any of these protected persons or places. However, collateral injury to protected personnel or damage to protected objects due to their collocation with or in proximity to military targets under attack gives no legal cause for complaint.

Prisoner of war camps

POWs and POW camps may neither be the object of attack nor used to render areas immune from attack. Parties to a conflict must convey to all concerned information regarding the geographical location of their POW camps. When considerations permit, POW camps should be identified by the letters “PW” (prisoner of war) or “PG” (*prisonnier de guerre*) clearly visible from the air (e.g., painted on the roofs of buildings). POWs must also be provided shelter against aerial bombardment equivalent to protection afforded the civilian population.

Works or installations containing dangerous forces

The additional Protocol I to the Geneva Conventions includes a section limiting attacks on “works or installations containing dangerous forces” (e.g., dams, dikes, nuclear power plants) adopting a different—and arguably more stringent—stand of “severe losses to the civilian population” for determining the legality of such attacks. The US position is that attacks on or near such installations should be judged using a basic proportionality analysis. However, there are special concerns that destruction of such objects may unleash forces causing widespread injury far beyond any military advantage secured or anticipated. Target selection of such objects is accordingly a matter of national-level decision-making at an appropriately high level. Installations containing dangerous natural forces may be marked with three bright *orange* circles arranged along the same axis (fig. 5-4).

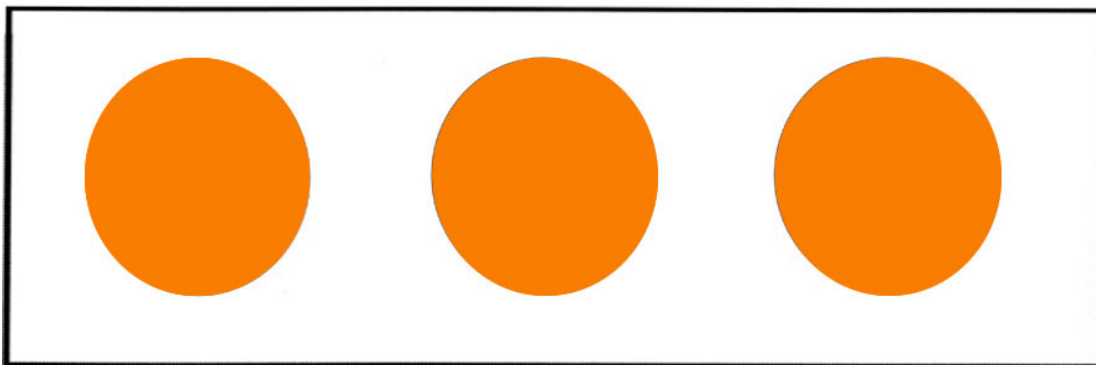


Figure 5-4. Symbol for works or installations containing dangerous forces.

Cultural property

Buildings devoted to religion, art, science, or charitable purposes as well as historical monuments may not be the direct and deliberate object of attack. This protected status; however, is contingent upon these installations not being utilized for military purposes.

Even if cultural property is used for a military purpose, consideration of the unique value of historic objects to human culture will weigh heavily in the proportionality assessment. For example, during Operation Desert Storm, the Iraqi Air Force parked two relatively old fighter aircraft directly next to the ziggurat of UR (a terraced pyramid located adjacent to an Iraqi air base). The ziggurat is one of the oldest manmade structures in existence. Although the Iraqis forfeited any special protection for the ziggurat by placing military aircraft next to it, the military value of destroying two rather outdated fighters—which could not fly from their location anyway—was obviously outweighed by the almost certain severe damage to the adjacent ziggurat that would have occurred.

Protected property should be marked with the emblem adopted by the 1954 Hague Cultural Property Convention. Any of the emblems shown in figure 5-5 can be displayed alone or in groups of three. Failure to mark cultural property does not, however, negate its protected status.



Figure 5-5. Cultural property symbols.

International Committee of the Red Cross

Established in 1863, the International Committee of the Red Cross (ICRC) is an independent and neutral organization that works worldwide to provide humanitarian help for people affected by conflict and armed violence and to promote the laws that protect victims of war. In addition, it directs and coordinates the international relief activities conducted by the International Red Cross and Red Crescent Movement in situations of conflict and endeavors to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. The work of the ICRC is based on the Geneva Conventions of 1949, their additional protocols, its statutes, and those of the International Red Cross and Red Crescent Movement. It's based in Geneva, Switzerland and employs some 12,000 people in 80 countries. The ICRC is financed by voluntary donations from governments and from national Red Cross and Red Crescent societies.

The universally recognized symbols of the ICRC are the Red Cross and the Red Crescent. In 2007 another symbol was added, called the Red Crystal, which is in the shape of a red diamond (see fig. 5-3). This symbol was added after a decision of the diplomatic conference held in Switzerland due to some countries having difficulty identifying with either the cross or crescent. Per Additional Protocol III to the Geneva Conventions, the Red Crystal may be used alone, or it may contain one or more of the other traditional protected symbols (e.g., the Red Cross or Red Crescent).

Combatants

The Geneva Conventions distinguish between lawful combatants, noncombatants, and unlawful combatants. A lawful combatant is an individual authorized by governmental authority or the LoW to engage in hostilities. A lawful combatant may be a member of a regular armed force or an irregular

force. In either case, the lawful combatant's force must: be commanded by a person responsible for subordinates; have fixed distinctive emblems recognizable at a distance, such as uniforms; carry arms openly; and conduct their combat operations according to LoW. The LoW applies to lawful combatants who engage in the hostilities of armed conflict and provides combatants immunity for their lawful warlike acts during conflict.

Noncombatants

Noncombatants do not engage in armed conflict and are *protected persons* under the LoW. This category includes civilians accompanying the Armed Forces, combatants who are out of combat, such as POWs and the wounded, and certain military personnel who are members of the Armed Forces not authorized to engage in combat activities, such as medical personnel and chaplains. Noncombatants may not be made the object of direct attack. They may, however, suffer injury or death incidental to a direct attack on a military objective without such an attack violating the LoW, if such attack is on a lawful target by lawful means.

Unlawful combatants

Unlawful combatants are individuals who directly participate in hostilities without being authorized by governmental authority or under international law to do so. For example, bandits who rob and plunder and civilians who attack a downed Airman are unlawful combatants. Unlawful combatants who engage in hostilities violate LoW and become lawful targets. They may be killed or wounded and, if captured, may be tried as war criminals for their LoW violations.

Civilian contractors

Contractors (contingency contracting personnel (CCP)) may support military operations as "civilians accompanying the force." CCP must be designated as such by the military force they are accompanying and must be provided an appropriate identification (ID) card under the Geneva Conventions. If captured during armed conflict, CCPs are entitled to POW status. CCPs may support operations through indirect participation, such as by providing communications support, transporting munitions and other supplies, performing maintenance on military equipment, and other logistic services. CCPs who "engage in hostilities" risk being treated as combatants (and thus being targeted, etc.). Further, they risk being treated as "unprivileged belligerents" (and thus as war criminals). CCPs will receive one or more of three distinct forms of identification: Common Access Card (CAC), DD Form 489, Geneva Conventions Identity Card for Civilians Who Accompany the Armed Forces, or personal identification tags.

240. Enforcement of the Law of War

All military and civilian personnel who, in the course of their duties, uncover information which might reasonably be viewed as a violation of the LoW will report that information to their commanders. There are also several legal avenues to enforce and prosecute LoW violations or law of war violations committed by enemy combatants.

Reporting Law of War violations

Military members who violate the LoW are subject to criminal prosecution and punishment. Criminal prosecutions may take place in a national or international forum. In theory, US Armed Forces personnel could be prosecuted by courts-martial under the UCMJ or through an international military tribunal, such as those used in Nuremberg and Tokyo after World War II or in Yugoslavia and Rwanda.

Legal staff at all levels must be familiar with reporting procedures for LoW violations in accordance with AFI 51-401. Air Force personnel who suspect or have information which might reasonably be viewed as a violation of the LoW must report this to his or her immediate commander or another appropriate official. In addition to reporting incidents involving US or enemy personnel, report incidents alleged to have been committed by or against contractors or persons accompanying or

serving with the US Armed Forces, and violations alleged to have been committed by or against allies of the US, including personnel accompanying those forces.

Individual responsibilities

As stated above, all military and civilian personnel who have information which might be a LoW violation will report that information to their commanders. Contracts shall similarly require reporting through the chain of command by contractor personnel. If the immediate commander appears to be involved or reporting to the commander is otherwise not feasible, personnel must report the incident to the next higher command authority. In instances where it is unreasonable to report within the chain of command, personnel shall report to the servicing SJA, IG, AFOSI, or to a sister service counterpart of one of these offices. They will take all prudent steps to safeguard any information or evidence and surrender it to the agency that investigates the alleged violation. They must limit the dissemination of information only to those with a need to know; e.g., the responsible commander, the SJA, and/or the local AFOSI Field Unit. Additionally, personnel will, when applicable:

- Preserve physical evidence through limiting access to evidentiary materials and crime scenes.
- Draw detailed sketches or take photographs documenting the circumstances of the incident.
- Collect any applicable descriptive notes.
- Identify all possible witnesses and victims for later interview by investigators and legal personnel.

Commander and staff agencies

Within Air Force channels, each commander and staff agency that receives a report of a reportable incident will report the facts promptly to the appropriate SJA and will make relevant information or evidence available to the appropriate investigating agency. The SJA will do the following:

- Notify the appropriate investigating agency of the receipt of a report of a reportable incident.
- Assist and advise investigators.
- Review completed investigation summaries and reports.
- Develop and provide recommendations to the commander on the use of the evidence and on the disposition of the report of investigation.
- For reports incidents initiated within service channels, forward the initial ROI to TJAG through HQ USAF/JAO. Subsequent reports sent to TJAG of reportable incidents will include, but are not limited to, the incident report; ROI; and summary of investigation and report on disposition of the case, including any disciplinary actions taken in light of LoW violations. The report must include any recommendations for corrective action that should be undertaken at HQ USAF level or above.

International Criminal Court

The International Criminal Court (ICC) is a permanent international criminal court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity, and war crimes. The ICC is an independent international organization, and is not part of the United Nations system. The ICC is the first permanent, treaty based, international criminal court established to provide for trial of those who commit the most serious crimes of concern to the international community.

The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine. For example, if formal proceedings were undertaken solely to shield a person from criminal responsibility.

In all of its activities, the ICC observes the highest standards of fairness and due process. The jurisdiction and functioning of the ICC are governed by the Rome Statute that was entered into force on 1 July 2002. The ICC represents one of the most significant opportunities the world has had to

prevent or drastically reduce the deaths and devastation caused by conflict. Since 2002, much progress has been achieved in the establishment of the court which is located in The Hague, Netherlands.

Military commissions

Military commissions have historically been used to prosecute enemy combatants who violate the Laws of War. The last time the United States used the military commission process was in the context of World War II.

The Military Commissions Act (MCA) of 2006 established procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission. The MCA of 2009 modified the term for persons subject to military commissions to “any alien unprivileged enemy belligerent.” The MCA of 2009 defines alien as a person who is not a citizen of the United States, and further defines unprivileged enemy belligerent as an individual (other than a privileged belligerent) who has engaged in hostilities against the United States or its coalition partners or has purposefully and materially supported hostilities against the United States or its coalition partners or who was a part of al Qaeda at the time of the alleged offense.

Each military commission consists of a military judge and at least five members. In a case where the accused may be sentenced to death, a minimum of twelve members and unanimous agreement are required. The military judge of a military commission must be certified in accordance with the UCMJ. The military judge rules upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

Any commissioned officer of the armed forces on active duty, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal Service, or retired commissioned officers recalled to active duty are eligible to serve on a military commission. The MCA and commission rules provide the following protections for the accused:

- The presumption of innocence.
- A requirement for proof of guilt beyond a reasonable doubt.
- Representation by an independent military defense counsel free of charge with the option to retain civilian defense counsel. Civilian defense counsel must be US citizens.
 - Foreign consultants available for consultation during the proceedings.
- Presence of accused at all proceedings of the military commission, other than those for deliberations and voting. The military judge may only exclude the accused if the accused persists in conduct that is disruptive or threatens the physical safety of individuals.
 - An opportunity to present evidence and call witnesses.
 - A requirement that the accused be provided evidence to be introduced against him or her at trial.
 - Protection from self-incrimination at trial and most common law evidentiary privileges.
 - The appropriately qualified right to self-representation.
- Suppression of statements obtained by torture or in violation of the Detainee Treatment Act of 2005.
 - Prohibition against drawing an adverse inference if an accused chooses not to testify.
- A thorough, comprehensive, and independent appellate system, including appeals to US civilian federal courts.

The military judge may admit evidence that would have “probative value to a reasonable person.” Evidence may not be excluded on the grounds that it was not seized pursuant to a search warrant. This standard of evidence takes into account the unique battlefield environment that is different from traditional peacetime law enforcement practices in the United States. A finding of guilt and the imposition of a sentence must be with the concurrence of at least two-thirds of the military commission members. Sentences that include confinement for ten years or more require concurrence by at least three-fourths of the members.

If there is a finding of guilt, the military commission members may impose any appropriate sentence, including death if the case is referred as a capital case by the convening authority. A sentence of death requires a unanimous vote of at least 12 members as to both findings and sentence.

All of the following may happen after the military commission has delivered its verdict and imposed a sentence:

- All records of trial must be reviewed by the legal advisor’s office and may be reviewed by the convening authority. The convening authority may take action on the findings and shall take action on the sentence only after consideration of any and all matters submitted by the accused, as well as the recommendation of the legal advisor. In the event of conviction, the convening authority may dismiss any charges or specifications by setting aside a finding of guilty or change a finding of guilty to a finding of guilty of a lesser included offense; approve, disapprove, commute, or suspend a sentence in whole or in part; or order a proceeding in revision or rehearing for any charge for which the accused was convicted.
- The convening authority shall refer the case to the United States Court of Military Commission Review in each case where the final decision of a military commission, as approved by the convening authority, includes a finding of guilty. An accused may waive the right of review, except in cases which extend to death.
- The United States Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction to determine the validity of any final decisions of a military commission case; however, the court may not review a final judgment until all other appeals have been waived or exhausted. The US Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals for the District of Columbia Circuit.

The MCA amends both Articles 21 and 36, UCMJ, to permit greater flexibility in constructing procedural and evidentiary rules for trials of alien unprivileged enemy belligerents by military commission. Several key provisions of the MCA demonstrate this accommodation of military operational and national security considerations:

- While the MCA is consistent with the UCMJ in many respects, neither the UCMJ itself nor “the judicial construction and application of that chapter” is binding on trials by military commission.
- The MCA provides that the SecDef, in consultation with the Attorney General, may prescribe rules of evidence and procedure, as well as elements and modes of proof, for cases triable by military commissions, and that if the Secretary promulgates regulations, he/she shall submit them to the Committees on Armed Services of the Senate and the House of Representatives. Except as otherwise provided under the MCA of 2009, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commissions.

Implementing rules must be consistent with the MCA and provide for the accused’s rights to do the following:

- Be present at trial, examine and respond to evidence admitted against them, cross-examine witnesses who testify against them, obtain and present evidence, and not be required to testify against themselves at a military commission proceeding.

- Assistance by counsel or self-representation.

Statements obtained by torture or cruel, inhuman, or degrading treatment are not admissible, but a statement of the accused that is otherwise admissible shall not be excluded on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of the MCA of 2009.

241. Noncombatant evacuation operations

Noncombatant evacuation operations (NEO) are operations directed by the DOS, the DOD, or other appropriate authority whereby noncombatants are evacuated from areas of danger overseas to safe havens or to the United States. NEOs generally occur in the event of imminent or actual hostilities or civil disturbances overseas and involve the protection and/or evacuation of US citizen noncombatants. Examples of NEOs are Operation Eastern Exit, conducted in 1991, when US and foreign national personnel were evacuated from Somalia, and Operation Quick Lift, also conducted in 1991, when personnel were evacuated from Zaire.

Authority to conduct NEOs

The DOS coordinates and implements plans for the protection and evacuation in emergencies of persons abroad for whom the Secretary of State or Secretary of Defense are responsible. If you take a look at JP 3-68, *Noncombatant Evacuation Operations*, it will tell you that pursuant to Executive Order 12656, the DOD, in support of DOS, is responsible for the protection or evacuation of US citizens and nationals abroad and for safeguarding their overseas property abroad, in consultation with the Secretaries of Defense and Health and Human Services. The US policy has resulted in a memorandum of agreement (MOA), *Memorandum of Agreement between Departments of State and Defense on the Protection and Evacuation of US citizens and Nationals and Designated Other Persons from Threatened Areas Overseas*, between DOD and DOS. DODD 3025.13, *Evacuation of US Citizens and Designated Aliens from Threatened Areas Abroad*, implements the MOA and addresses the roles and responsibilities of each department in implementing evacuations. Once the decision has been made to use military personnel and equipment to assist in the implementation of emergency evacuation plans, DOD is solely responsible for conducting the evacuation, in consultation with the principal US diplomatic or consular representative in the affected country.

During NEOs, the US ambassador, not the geographic combatant commander (GCC) or subordinate JFC, is the senior United States Government (USG) for the evacuation and is ultimately responsible for the successful completion of the NEO and the safety of evacuees. US embassies and consulates are required to have emergency action plans (EAP) for the area under their cognizance. The ambassador is responsible for the preparation and maintenance of EAPs, one section of which addresses the military evacuation of US citizens and designated foreign nationals.

Status of evacuees

In NEOs, commanders will face a multitude of legal issues regarding the personnel encountered on the ground. For example, the US may have custody of captured combatants. Captured enemy combatants, in some cases, may not be entitled to POW status as a matter of law. However, it is US policy to treat all captured enemy personnel consistent with the Geneva Conventions even if they are not to be afforded POW status, and to treat them as POWs unless otherwise determined by a competent tribunal. US policy is to leave them behind upon departure. Another category of non-US noncombatant is civilians seeking refuge. Some may be seeking temporary refuge, but others may be seeking asylum. The policy regarding foreign personnel seeking temporary refuge and asylum is set forth in AFD 51-4 and AFI 51-402. Other issues may include the status of in-laws, noncommand-sponsored dependents (including local national dependents), and pets. A fiscal issue may arise if command-sponsored dependents leave prior to an evacuation order. These dependents may have to fund their own travel.

Air Force responsibilities

In accordance with AFI 36-3802, *Force Support Readiness Programs*, the Air Force will support evacuation and repatriation operations as well as safe haven locations.

Air Force units have supported a number of NEOs by providing insertion of evacuation forces, airlift, combat search and rescue, aeromedical evacuation, air refueling, interdiction, counterair, close air support, intelligence, communications, and psychological operations. One example of psychological operations during NEOs is leaflets airdropped to announce evacuation locations, times, and procedures. Another example is the radio and television broadcasts from Air Force special operations C-130 aircraft. These broadcasts contain information similar to the leaflets. During opposed NEOs, low-flying aircraft are used for close air support as well as for psychological advantage (noise and shock value).

242. Military operations other than war

Military operations other than war (MOOTW) encompass the use of military capabilities across the range of military operations short of war. It is focused on deterring war, resolving conflict, promoting peace, and supporting civil authorities in response to domestic crises. Although MOOTW are not new to the Air Force, they have taken center stage since the end of the Cold War. The two areas of MOOTW that will be covered are peace operations and humanitarian assistance.

Peace operations

JP 3-07.3, *Peace Operations*, is the basic doctrine document for US forces engaged in peace operations (PO). For the Armed Forces of the United States, POs are crisis response and limited contingency operations, and normally include international efforts and military missions to contain conflict, redress the peace, and shape the environment to support reconciliations. It also includes rebuilding and facilitating the transition to legitimate governance.

Peacekeeping operations

Peacekeeping operations (PKO) are defined in joint doctrine as “military operations undertaken with the consent of all major parties to a dispute, designed to monitor and facilitate implementation of an agreement (i.e., ceasefire, truce, or other such agreement) and support diplomatic efforts to reach a long-term political settlement.” Before a PKO can begin, a credible truce or cease fire must be in effect and the parties to the dispute must consent to the operation.

Peacekeeping is conducted under the authority of the *Charter of the United Nations*, Chapter 4, *The General Assembly*, and, just as the name, peacekeeping, implies, there must be a peace to keep. It is intended to maintain calm while giving the peacemakers time to negotiate a permanent settlement to the underlying dispute and/or assist in carrying out the terms of a negotiated settlement. Therefore, there must be some degree of stability within the area of operations.

Peacekeeping requires an invitation or at a minimum the consent of all the parties to the conflict. Peacekeepers must remain completely impartial towards all the parties involved. Peacekeeping forces may include unarmed observers, lightly armed units, police, and civilian technicians. Typical peacekeeping missions include: observing and reporting violations of a cease-fire or truce; monitoring borders; observing forces within an area of responsibility and reporting any changes in activity; and assisting civil authorities in supervision of elections or administration of civil functions.

Peace enforcement operations

Peace enforcement operations (PEO) are generally coercive in nature and rely on the threat of or use of force; however, PEO may also be co-optive in nature, relying on the development of working relationships with locals.

Peace enforcement is conducted under the authority of the *Charter of the United Nations*, Chapter 7, *Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression*, and

could include combat, armed intervention, or the physical threat of armed intervention. In contrast to peacekeeping, peace enforcement forces do not require consent of the parties to the conflict and they may not be neutral or impartial. PEO may include the enforcement of sanctions and exclusion zones, protection of personnel conducting foreign humanitarian assistance missions, restoration of order, and forcible separation of belligerent parties or parties to dispute.

Peacemaking

Peacemaking is a diplomatic process aimed at establishing a cease fire or an otherwise peaceful settlement of a conflict. Peacemaking is not military led; however, military support to peacemaking includes provisions of military expertise to the peacemaking process, military-to-military relations, security assistance, peacetime deployments, or other activities that influence the disputing parties to seek diplomatic settlement.

Peace building

Peace building covers post-conflict actions, predominantly diplomatic, economic, legal, and security related, that support political, social, and military measures aimed at strengthening political settlements and legitimate governance, and rebuilding governmental infrastructure and institutions. Tasks include disarming former combatants, engineering projects, training of security personnel, monitoring of elections, reforming or strengthening government institutions, and war crimes investigations or truth commissions.

Humanitarian assistance

Although humanitarian assistance (HA) operations may be conducted simultaneously with peace operations, they are different in nature and purpose. In accordance with Field Manual (FM) 100-23-1, *Multiservice Procedures for Humanitarian Assistance Operations*, HA includes programs conducted to relieve or reduce the results of natural or man-made disasters or other endemic conditions such as human pain, disease, hunger, or lack of the basic necessities of life that might present a serious threat to life or result in great damage or loss of property. The assistance is designed to supplement or complement the efforts of the host nation civil authorities or agencies that may have the primary responsibility for providing HA.

Air Force units can respond rapidly to emergencies or disasters and provide various types of support to sustain operations. Air Force units have supported a number of foreign humanitarian assistance operations in the 1990s, such as Operation Restore Hope in Somalia and Operation Support Hope in Rwanda and, even more recently, Operation Tomodachi (Japanese for Friendship) following the 2011 Tōhoku earthquake and tsunami in Japan.

243. Deployment fiscal law

This lesson covers fiscal law as it pertains to the deployed environment. As in any part of your job, things are not always done the same as home station when you are deployed. Fiscal law is no different. After reading this section, you should be familiar enough with the different types of funding and projects to be able to identify the right pot of money for the right project.

General principles

There are three big areas of deployment-related activities: (1) construction, (2) HA programs (HAP), and training and equipping troops. Deployed fiscal law also covers Acquisition and Cross-Servicing Agreements (ACSA) and Commander's Emergency Response Program (CERP). The basic concept is that we must distinguish between what the State Department may sell, grant, or loan to a foreign country (security assistance) and those activities DOD conducts as part of a deployment in a foreign country for which we receive the primary benefit and the host nation receives only a minor and incidental benefit.

The DOD is given several different types of appropriated funds from Congress. Of the several types, the most common category of funds that may be an issue during deployment includes O&M, military construction (MILCON), and “other procurement.”

O&M funds are for day-to-day expenses of DOD in garrison, during exercises, deployments, and military operations. In a deployed environment, day-to-day expenses include force protection, sustainment costs, repair of main supply routes, and other “necessary and incident” operations and maintenance to an assigned military mission unless statutorily limited. For example, Haiti used O&M funds properly for maintaining public order and emergency health and safety requirements of the populace as the noncombat activity directed mission was to “establishing a secure and stable environment.”

MILCON is the fund that must be used for all military construction projects. A MILCON project includes all construction work necessary to produce a complete and usable facility or complete and usable improvement to an existing facility. A convenient and often used statutory exception to the rule that only MILCON funds can be used for construction projects is when a project has a cost of \$1,000,000 or less. In that case, Title 10 U.S.C. § 2805, *Unspecified Minor Construction*, (c)(1)(B) permits the use of O&M funds to pay for the construction.

“Investment” items must be purchased with “other procurement” funds. These items are assets which will benefit the current and future fiscal years and generally have a long life span. The definition of “investment item” is very broad and includes equipment such as computers, appliances, copy machines, furniture, and cell phones. However, a huge exception to this rule allows the use of O&M funds for investments item with a cost of \$250,000 or less. That threshold has been raised to \$500,000 by Congress in yearly appropriation acts for purchases related to overseas contingency operations.

Types of contracts

Once you have determined a need and other means of acquiring the supplies and/or services have been exhausted, the contingency contracting officer (CCO) now can consider local purchasing. The first step is to decide which of the following types of contract to utilize.

- Firm Fixed Price – This is the *primary type* of contract used during a contingency operation. Since the price is firm and fixed, the contractor has the risk of contract completion, but also has an incentive to perform efficiently and economically.
- Requirements – This type provides for purchasing all requirements or services from one contractor so that maximum and minimum order amounts are established in the contract. The contractor is not obligated to fill orders beyond the established maximum.
- Indefinite Quantity – This contract provides for an indefinite quantity (within stated limits) of specific services or supplies to be furnished within a fixed object.
- Time and Materials – This acquires services or supplies on the basis of the direct labor hours at specified fixed hourly rates (including wages, overhead, profit, and general administrative (G&A) expenses) material at cost (which may include material handling costs).

Competition requirements

The CICA, Title 10 U.S.C. § 2304, *Contracts: Competition Requirements*, requires the government to seek competition for its requirements. *See also* FAR Part 6, *Competition Requirements*, and FAR 2.101, *Definitions*. In general, the government must seek full and open competition by providing all responsible sources an opportunity to compete. While there may be exceptions to the full and open competition requirement, no automatic exceptions are available for contracting operations during deployments.

There are seven statutory exceptions that permit contracting without full and open competition and may be found in Title 10 U.S.C. § 2304(c) and FAR Subpart 6.3, *Other than Full and Open Competition*; some of these exceptions include:

- Only one responsible source and no other supplies or services will satisfy agency requirements, FAR 6.302-1. The contracting officer may award a contract without full and open competition if the required supplies or services can only be provided by one or a limited number of sources. For example, it may be necessary to award to a particular source where that source has exclusive control of necessary raw materials or patent rights. FAR 6.302-1 provides additional examples of circumstances where use of this exception may be appropriate. This exception allows the CCO to limit the competition to those sources that can meet the government's need.
- Unusual and compelling urgency, FAR 6.302-2. This exception applies where the need for the supplies or services is of such an unusual or compelling urgency that delay in awarding the contract would result in serious injury to the government. Use of this exception enables the CCO to limit the procurement to the only firm(s) the CCO reasonably believes can properly satisfy the requirement in the limited time available. Because of the urgency, the CCO is permitted to award the contract even before the written "Justification and Approval" is completed. Similarly, the urgency requiring use of this exception can allow the contracting officer to dispense with the 15-day publication requirement, FAR 5.202(a)(2).
- International agreement, FAR 6.302-4. This exception is used where supplies or services will be used in another country, and the terms of an SOFA or other international agreement or treaty with that country specify or limit the sources. This exception also applies when the acquisition is for a foreign country who will reimburse the acquisition costs (e.g., pursuant to a foreign military sales agreement) and directs that the product be obtained from a particular source.
- Authorized or required by statute, FAR 6.302-5. Full and open competition is not required if a statute expressly authorizes or requires the agency to procure the supplies or services from a specified source, or if the need is for a brand name commercial item for authorized resale.
- National security, FAR 6.302-6. This exception applies if disclosure of the government's needs would compromise national security. Mere classification of specifications generally is not sufficient to restrict the competition, but it may require potential contractors to possess or qualify for appropriate security clearances.

Methods of acquisition

There are a number of methods of acquisition. Only those appropriate for or common to deployments will be covered. Once the supplier(s) is identified, the CCO will use one of the following methods to acquire the supplies or services.

Sealed bidding

The contract award is based only upon price and price-related factors, and the contract is awarded to the lowest responsive, responsible bidder. It requires the use of sealed bids if the following four conditions in the CICA of 1984 are present:

1. Time permits for the solicitation, submission, and evaluation of sealed bids.
2. The award will be made on the basis of price and other price-related factors.
3. It is not necessary to conduct discussions with the responding offerors about their bids.
4. There is a reasonable expectation of receiving more than one sealed bid.

Unfortunately, sealed bidding requires more sophisticated contractors and substantial bid preparation time so it is rarely used during deployments.

Negotiations

On deployments, because sealed bidding often is not appropriate, CCOs may negotiate with offerors. Negotiations allow the agency to use a "best value" basis for awarding a contract and pay more in order to obtain a better service or product. The contract is awarded based upon stated evaluation

criteria (one of which must be cost) and is awarded to the responsible offeror whose proposal offers either the low-cost, technically acceptable solution to the agency's requirements or the offeror whose proposal represents the best value.

Simplified acquisition procedures

Simplified acquisition procedures (SAP) are used almost exclusively to obtain nonpersonal services, supplies, or construction that are not estimated to exceed \$150,000. About 95 percent of the contracting activity conducted in a deployment setting will be simplified acquisitions. SAP can be used to procure goods and services up to the "simplified acquisition threshold" (SAT) which is normally \$150,000. In a contingency operation, the SAT goes up to \$300,000 if the contract is awarded, performed, or the purchase is made within the United States; if outside the United States, the threshold goes up to \$1 million. This increased threshold simplifies the contracting procedure for contingency operations. SAP may also be used to purchase commercial items up to an amount well above the SAT-the commercial items test program threshold is normally \$6,500,000. The "micro-purchase threshold," below which purchases may be made without competition, is normally \$3,000, but goes up to \$15,000 in support of a contingency operation when the contract is awarded or performed in the United States and \$30,000 when outside the United States.

Purchase orders

CCOs may use the SF 44, US Government Purchase Order - Invoice - Voucher, to purchase aviation fuel and oil or for any purchase in support of the contingency up to the simplified acquisition threshold. The SF 1449, Solicitation/Contract/Order for Commercial Items, and the DD Form 1155, Order for Supplies or Services, may also be used for ordering supplies or services.

Government-wide purchase card

The government-wide purchase card (GPC) is used in the government credit card/micro-purchase program. Authorized purchasers may acquire goods and services up to \$2,500 per purchase. Because this method is often not feasible in developing countries or when a country's basic services are no longer functioning, use should be limited to the CCO.

Blanket purchase agreements

A blanket purchase agreement (BPA) is not a contract, but rather akin to setting up a "charge account" with a provider of services or supplies. BPAs are commonly used to procure billeting, meal services, and other supplies and services of a recurring, yet indeterminate, nature.

Imprest funds

An imprest fund is a petty cash fund for small transactions. These have been phased out in the US and are rarely used during deployments, but they may be established to support a contingency operation overseas.

Last resort method of acquisition

If all else fails, the LoW allows the taking of supplies (and sometimes services) under certain circumstances.

Identify construction issues

What is construction? Any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements.

What is NOT construction?

- Maintenance – work required to preserve real property and real property systems or components and prevent premature failure or wearing out of the same.
- Repair – to restore real property and real property systems or components to such condition that they may effectively be used for their designated functional purposes.

In conjunction with construction, you have funded vs. unfunded costs. Funded costs include “out of pocket” expenses such as materials, supplies, and services applicable to the project (including property owned by the government), installed capital equipment, transportation costs, civilian labor costs, overhead and support cost, TDY expenses, the cost of fuel to operate equipment, and site preparation costs. Unfunded costs include “sunk costs” (i.e., expenses charged to a different appropriation) such as military pay and labor, government equipment depreciation, some licenses/permits/fees, and excess materials, supplies, and equipment obtained on a nonreimbursable basis from another federal entity.

Types of deployment-related construction are as follows: specified military construction greater than \$3 million dollars; unspecified minor military construction (UMMC) for MILCON less than \$3 million, and O&M funds less than \$1M; and lastly, emergency construction authority during a declaration of war or national emergency and contingency construction.

UMMC uses O&M funds of \$1M per project; \$4 million to correct life, health, or safety threatening deficiencies. In addition, costs are funded, but salaries of military personnel, depreciation on equipment, and similar sunk costs are not included. UMMC is not for JCS-directed operations outside the US. Furthermore, project splitting is prohibited. If the cost of a UMMC project will exceed \$1M Congress must be notified and the project must be approved by the Secretary of the Air Force.

With regards to funding training activities, the purpose must be to train our forces and can only provide a minor benefit to host nation. In addition, O&M funds must be used, and it can only be for familiarization, safety, and interoperability training. The activity cannot rise to a level normally provided by security assistance. For example, Special Forces training is authorized to foreign forces because special operations are part of the special operations mission.

The above types of construction are what you will be dealing with while deployed. The better you know the different types, the easier it will be for you to identify if the wrong funds are being used for the wrong reasons.

244. Force protection

The concept of force protection of DOD personnel rose to the forefront in the aftermath of the 1983 Marine barracks bombing in Beirut. The 1996 Khobar Towers bombing in Saudi Arabia and the 2000 bombing of the US Ship (USS) *Cole* exemplify the continuing need to make force protection a high priority within the DOD.

Deployed commanders responsibilities

Commanders are responsible for maintaining law and order on military installations. Contingency plans need to address the use of security forces to isolate, contain, and neutralize a terrorist incident within the capability of installation resources. In the event of an incident, the SROE make it clear that the commander retains the inherent right and obligation of self-defense even in such situations. The response to off-installation foreign incidents is the sole responsibility of the host nation. In emergency situations, commanders must evaluate whether Immediate Response Authority criteria are met permitting commanders to take immediate action to save lives, prevent human suffering, or mitigate substantial property damage under imminently serious conditions.

Rules for the use of force

Commanders must ensure that our forces are operating under clear, concise ROE and that personnel are briefed on and understand the ROE during peacetime and in contingency operations. Legal personnel can play a major role in the dissemination of ROE through participation in briefings to security forces and other personnel. Frequent issues arise in the areas of use of force, weapons selection and employment, collateral damage, defense of third parties, targeting, and terminology. Particularly, emphasis should be placed on the inherent right and obligation to self-defense. The US

position is that US forces always retain the right to use necessary and proportional force for unit and individual self-defense in response to a hostile act or demonstrated hostile intent.

245. Homeland Security

On the morning of 11 September 2001, the United States had the worst attack on its home soil since the bombing of Pearl Harbor. This attack shocked everyone. They realized that no longer would the Atlantic and Pacific Oceans - our natural borders - provide protection from hostile parties. To deal with this reality, the Department of Homeland Security (DHS) was created.

Purpose

The purpose of this lesson is to understand the relationship between the DOD and DHS that is critical to the security of the nation. We must have a country that is secure from threats and violence, including terrorism, to preserve the freedoms that we enjoy and are guaranteed by the Constitution. The security of the nation is our first priority and requires a national effort. The Air Force, along with the other four service branches (including the Coast Guard) plays a key role in this effort. The *National Strategy for Homeland Security* (NSHS) provides the framework for organizing the efforts of federal, state, local, and private organizations whose primary functions are often unrelated to national security, but are defined in the NSHS. Homeland security at the national level has a specific focus on terrorist threats, whereas the focus of DOD's support is broader.

Homeland Security Operations

There are two types of missions the DOD provides to Homeland Security. They are homeland defense (HD) and civil support (CS) and are explained in the following paragraphs.

Homeland defense

The purpose of HD is to protect against and mitigate the impact of attacks on US territories, populations, and defense of the critical infrastructure. The 2005 National Defense Appropriation Act defined HD as:

“An activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.” (32 U.S.C. 901)

In HD, the DOD is the lead, and supported by other agencies to defend against traditional external threats and aggression (i.e., air and missile attack). However, against nontraditional threats (i.e., terrorism), the DOD may be in a supporting role of DHS. If the DOD is ordered to conduct HD operations, it must coordinate closely with other federal agencies. The following goals guide the DOD HD mission area:

- Identify the threat.
- Dissuade adversaries from undertaking programs or conducting actions that could pose a threat to the US homeland.
- Ensure defense of the homeland and deny an adversary's access to the nation's airspace, land, and maritime approaches.
- Ensure access to space and information.
- Ensure availability of the defense critical infrastructure (DCI).
- Deter aggression and coercion by deploying forward with the capability to prevent attacks on the homeland and impose severe penalties for aggression on an adversary's military capability and supporting infrastructure.
- Decisively defeat any adversary if deterrence fails.
- Minimize the consequences of any attack or incident.

To obtain these goals, US Northern Command (USNORTHCOM) was created to unify the military defense of our homeland, coordinate the DOD's assistance to civil authorities, and protect the US and its territories.

United States Northern Command

USNORTHCOM provides command and control of the DOD homeland defense efforts and coordinates defense support of civil authorities. Their specific mission is to conduct homeland defense, civil support, and security cooperation to defend and secure the United States and its interests. USNORTHCOM is a joint command, with a headquarters staff comprising members of all branches of military service including reserve and the National Guard. It also includes civilian employees, contractors and liaisons from various federal agencies, including Federal Emergency Management Agency (FEMA), the Federal Bureau of Investigation (FBI), the Department of State, and others. It has comparatively few assigned forces, which maximizes efficiency and minimizes redundancy. If a contingency develops warranting a response from USNORTHCOM, the command may respond with its own assigned forces or it may reach out to any or all of the various services, including the Coast Guard, to provide the appropriate forces. The Commander of USNORTHCOM is dual-hatted, also serving as the commander in chief of North America Aerospace Defense (NORAD).

Civil support

The DOD provides civil support by employing military forces within the US, its territories, and possessions, under the provisions of CS which falls under a broader mission of military assistance to civilian authorities (MACA). The MACA missions consist of:

Military support to civil authorities

Military support to civil authorities (MSCA) refers to support provided by federal military forces, DOD civilians, contractor personnel, and DOD agencies and components in response to requests for assistance during domestic incidents to include terrorist threats or attacks, major disasters, and other emergencies. MSCA missions consist of DOD support to US domestic emergencies and for designated law enforcement, civil disturbances, and other activities.

Military support to civilian law enforcement agencies

The use of the military in law enforcement roles is a sensitive topic and restrictions apply to such use. Military forces performing in this role support the lead federal agency and other supporting agencies and may be armed depending on the SecDef decision. Military support to civilian law enforcement agencies (MSCLEA) may include, but is not limited to national special security events, support for combating terrorism, support to counterdrug operations, maritime security, intelligence, surveillance, and reconnaissance capabilities, and general support (training support to law enforcement agencies (LEA)/loan of equipment/personnel and expert advice).

Military assistance for civil disturbances

The President is authorized by the Constitution and statutory laws to employ the Armed Forces of the United States to suppress insurrections, rebellions, and riots, and provide federal supplemental assistance to the states to maintain law and order. This is also referred to as military assistance for civil disturbances (MACDIS). Responsibility for the management of federal response for civil disturbances rests with the Attorney General. DODI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, provides joint doctrine to guide the Armed Forces in the conduct of homeland security operations. It describes the homeland security framework, mission areas, missions and related supporting operations and enabling activities. It also discusses legal authorities; joint force, multinational, and interagency relationships; command and control; planning and execution; and training and resource considerations.

Posse Comitatus Act (18 U.S.C. § 1385)

As you can see, protecting the US directly on its own soil is something relatively new to the armed forces. There are various civilian organizations that may ask commanders at your base for assistance. You must provide them with information on the laws that apply in those types of situations. One of the laws, the Posse Comitatus Act (PCA), you probably have heard discussed in your office. This federal statute places strict limits on the use of military personnel for law enforcement. Enacted in 1878, the PCA prohibits the direct participation by the US Armed Forces in law enforcement duties, except as authorized by the President, Congress, the US Constitution, or in certain emergency situations. Specifically prohibited activities include: interdiction of a vehicle, vessel, aircraft, or similar activity; search and/or seizure; arrest, apprehension, stop and frisk, and similar activities; and use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators. DODI 3025.21 sets forth several forms of assistance to civilian authorities which are allowed under the PCA. The *exceptions* to PCA include the following:

- National Guard forces operating under state active duty, under the control of the governor or Title 32, U.S.C., *National Guard*, (“while in the service of” the United States, generally a training status).
- Federal troops acting pursuant to the presidential power to quell insurrection.
- Aerial photographic and visual search and surveillance by military personnel.
- Congressionally created “drug exception.”
- The USCG when operating under Title 14, U.S.C., *Coast Guard*, authority.

As you can see, the world today and the Air Force mission changed dramatically due to 9/11. It is crucial that you know the role of the Air Force in defending the homeland.

Self-Test Questions

After you complete these questions, you may check your answers at the end of the unit.

236. Fundamentals of joint operations

1. Who is the principal air advisor to the JFC?
2. What is normally the grade of the COMAFFOR?
3. List the distinct thoughts from doctrine of just war.
4. What are the four aspects of the regulation of conduct during war?
5. What type of operations provide unique and challenging decisions that do not fall squarely within existing law or precedent?

6. Legal information mastery is one of the six legal support functional competencies, what does this competency allow legal officer personnel to do?
7. How are legal services configured in order to provide support to air and space expeditionary task forces?
8. What situations determine the amount and configuration of legal support available for air and space expeditionary task forces?

237. Rules of engagement

1. Why were there numerous problems during the Vietnam conflict regarding how to conduct the war?
2. Define the term *rules of engagement*.
3. What information does the unclassified SROE approved by the CJCS contain?
4. What is a hostile act?

238. Determining current rules of engagement

1. When determining ROE, where do you need to check first and foremost?
2. Where are mission specific ROE almost always included?
3. Who issues SPINS?

239. Law of War

1. What is another name for the LoW?

2. What are the four important LoW principles that govern armed conflict?
3. Which LoW principle requires combat forces to engage in only those acts necessary to accomplish a legitimate military objective?
4. Which LoW principle compares the military advantage gained to the harm inflicted while gaining that advantage?
5. Which LoW principle requires defenders to separate military objects from civilian objects to the maximum extent feasible?
6. When would the use of otherwise lawful arms not be allowed?
7. What are the three recognized symbols, which are in use for the marking of protected places?
8. Define a *lawful combatant*.
9. What may happen to unlawful combatants during hostilities?

240. Enforcement of the LoW

1. What may happen to military members who violate the LoW?
2. Which AFI should legal staffs familiarize themselves with for reporting LoW violations?
3. To whom will the staff judge advocate forward the initial report of investigation regarding violations of the LoW?

4. What is the International Criminal Court?
5. For what purpose have military commissions historically been used?
6. For cases tried by the Military Commissions, as a *minimum*, how many members must there be in a case where the accused may be sentenced to death?
7. With regard to the Military Commissions Act (MCA), what does the amendment of both Articles 21 and 36, UCMJ, permit?

241. Noncombatant evacuation operations

1. What agency is responsible for the protection or evacuation of US citizens and nationals abroad and for safeguarding their overseas property abroad?
2. According to US policy, how will captured combatants in US custody be treated?
3. According to US policy, what will happen to captured combatants upon departure of an area?
4. What may arise if command sponsored dependents leave prior to an evacuation order?

242. Military operations other than war

1. What is the focus of MOOTW?
2. In joint doctrine, how are PKOs defined?
3. What type of operations are conducted to relieve or reduce the results of natural or man-made disasters or other endemic conditions such as human pain, disease, hunger, or lack of the basic necessities of life that might present a serious threat to life or result in great damage or loss of property?

243. Deployment fiscal law

1. What are the three types of appropriated funds that may be an issue during a deployment?
2. For what are O&M funds used?
3. What Act requires the government to seek competition for its requirements?
4. What are SAPs used to obtain?
5. Define the term *construction*.

244. Force protection

1. When did the concept of force protection of DOD personnel rise to the forefront?
2. What type of document(s) should address the use of security forces to isolate, contain, and neutralize a terrorist incident within the capability of installation resources?
3. Who maintains sole responsibility to respond to any off-installation foreign incidents?

245. Homeland Security

1. What type of missions does DOD provide to Homeland Security?
2. List four goals of Homeland Defense.
3. What is USNORTHCOM's specific mission?
4. Under the provisions of CS, the MACA consists of what?
5. List the exceptions to the Posse Comitatus Act.

Answers to Self-Test Questions

232

1. Its purpose is to maintain order and discipline among the deployed troops, and avoid offending certain host nation sensitivities by outlining prohibitions against specific activities.
2. The commander or designated alternate.
3. AARS improves legal expertise by sharing lessons learned from deployments and operational exercises. This will enhance readiness, bolster combat capability, streamline procedures, and improve reach-back support.
4. The VoSIP, STE, and TACLANE.
5. A technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line.
6. The Enhanced Crypto Card (KSV-21), which provides all the security services.
7. It is a network encryption device that provides network communications security on IP and ATM networks for the individual user or for enclaves of users at the same security level.
8. By training, the ability to perform tasks, and pay grade.
9. A Systems Approach to Training (SAT).
10. It is not an entry-level position and the ability for a paralegal to work in a variety of billets to include, afloat commands.
11. The Coast Guard does not have a paralegal career field.

233

1. The application of international agreements, international customary practices, and the general principles of law recognized by civilized nations to military operations and activities.
2. Stability.
3. Laws that reflect host country customs, such as religious laws and customs regarding insults.
4. AFI 51-701.
5. HQ USAF/JAO.
6. At least for the duration of the agreement, or until it no longer has legal significance.

234

1. To set forth rights and responsibilities between the United States and the host government focusing on two broad areas: criminal jurisdiction and civil law relief.
2. Administrative and technical staff status.
3. Full SOFA.
4. HQ USAF/JAO.
5. NATO SOFA and the Partnership for Peace SOFA.

235

1. DCO.
2. HQ USAF/JAO.
3. All US military personnel facing foreign criminal charges.
4. Forwarded immediately upon completion of each hearing at the trial court level and for hearings on appeal and are sent to the DCO and/or USCR, who in turn forwards them to TJAG of the accused's service.
5. Matters involving denied visitation requests, prisoner maltreatment, and substandard conditions.
6. 1 December through 30 November.

236

1. Joint Force Air Component Commander.
2. Colonel (0-6) to lieutenant general (0-9).
3. The two distinct thoughts are: legal basis for use of war and regulation of hostilities.

4. Military necessity, discrimination between combatants and noncombatants, humanity, and use of force proportional to the desired result.
5. Air and space operations, and combat operation in particular.
6. To obtain, analyze, and communicate legal information rapidly.
7. They are configured to support two primary command levels: the COMAFFOR and AETF units.
8. The scope and duration of operation, the size of the supported population, and the requirements of the supported commander.

237

1. Because of confusion between LoW and ROE.
2. Directives issued by competent military authority that delineate the circumstances and limitations under which the United States forces will initiate and/or continue combat engagement with other forces encountered
3. Basic rules for national and unit self-defense.
4. A hostile act is an attack or other use of force against the US, US forces, or other designated persons or property.

238

1. US SROE.
2. As an annex to the OPLAN or OPORD.
3. The JFACC or the CFACC via the JAOC or CAOC.

239

1. Law of Armed Conflict (LOAC) or International Humanitarian Law.
2. Military necessity, proportionality, distinction, and humanity or unnecessary suffering.
3. Military necessity.
4. Proportionality.
5. Distinction.
6. When used in a manner that causes unnecessary suffering.
7. The Red Cross, the Red Crescent, and the Red Crystal.
8. An individual authorized by governmental authority or the LoW to engage in hostilities.
9. They may be killed or wounded and, if captured, may be tried as war criminals for their LoW violations.

240

1. May face criminal prosecutions and punishment, which may take place in a national or international forum.
2. AFI 51-401.
3. To TJAG through HQ USAF/JAO.
4. A permanent international criminal court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity, and war crimes.
5. To prosecute enemy combatants who violate the Laws of War.
6. Twelve members.
7. Greater flexibility in constructing procedural and evidentiary rules for trials of alien unprivileged enemy belligerents by military commission.

241

1. The Department of State.
2. As prisoners of war.
3. Leave them behind.
4. A fiscal issue, the dependents may have to fund their own travel.

242

1. It is focused on deterring war, resolving conflict, promoting peace, and supporting civil authorities in response to domestic crises.
2. Military operations undertaken with the consent of all major parties to a dispute, and are designed to monitor and facilitate implementation of an agreement to support diplomatic efforts to reach a long-term political settlement.
3. Humanitarian assistance.

243

1. O&M, MILCON, and “other procurement.”
2. Day-to-day expenses of DOD in garrison and during exercises, deployments, and military operations.
3. CICA, Title 10 U.S.C. § 2304
4. Almost exclusively used to obtain nonpersonal services, supplies, or construction that are not estimated to exceed \$150,000.
5. Any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements.

244

1. In the aftermath of the Marine barracks bombing in Beirut.
2. Contingency plans.
3. Host nation.

245

1. Homeland defense and civil support.
2. List any four of the following:
 - (1) Identify the threat.
 - (2) Dissuade adversaries from undertaking programs or conducting actions that could pose a threat to the US homeland.
 - (3) Ensure defense of the homeland and deny an adversary’s access to the nation’s airspace, land, and maritime approaches.
 - (4) Ensure access to space and information.
 - (5) Ensure availability of the DCI.
 - (6) Deter aggression and coercion by deploying forward with the capability to prevent attacks on the homeland and impose severe penalties for aggression on an adversary’s military capability and supporting infrastructure.
 - (7) Decisively defeat any adversary if deterrence fails.
 - (8) Minimize the consequences of any attack or incident.
3. Conduct homeland defense, civil support, and security cooperation to defend and secure the United States and its interests.
4. MSCA, MSCLEA, and MACDIS.
5.
 - (1) National Guard forces operation under state active duty, under the control of the governor or Title 32.
 - (2) Federal troops acting pursuant to the presidential power to quell insurrection.
 - (3) Aerial photographic and visual search and surveillance by military personnel.
 - (4) Congressionally created “drug exception.”
 - (5) The USCG when operating under Title 14.

Glossary of Abbreviations and Acronyms

A1C	Airman first class (E-3)
A&T	administrative and technical
AAFES	Army and Air Force Exchange Service
AAR	after action report
AARS	After Action Reporting System
ABA	American Bar Association
ACC	Air Combat Command
ACSA	Acquisition and Cross-Servicing Agreement
ADA	Anti-Deficiency Act
ADAPT	alcohol and drug abuse prevention and treatment
ADC	area defense counsel
ADCON	administrative control
ADHD	attention deficit hyperactivity disorder
ADR	alternative dispute resolution
AEF	Air and Space Expeditionary Force
AEG	air expeditionary group
AES	air expeditionary squadron
AETC	Air Education and Training Command
AETF	air and space expeditionary task force
AEW	air expeditionary wing
AFAF	Air Force Assistance Fund
AFCARO	Air Force Civilian Appellate Review Office
AFDD	Air Force doctrine document
AFDTL	Air Force Drug Testing Laboratory
AFDW	Air Force District of Washington
AFFARS	Air Force Federal Acquisition Regulation Supplements
AFFOR	Air Force forces
AFGOMO	Air Force General Officer Matters Office
AFH	Air Force handbook
AFI	Air Force instruction
AFJAGS	Air Force Judge Advocate General's School
AF/JAO	Air Force Operations and International Law Division
AFJI	Air Force joint instruction
AFLLP	Air Force Lessons Learned Program
AFLOA	Air Force Legal Operations Agency
AFLOA/JACC	Air Force Legal Operations Agency Claims and Tort Litigation Division
AFLOA/JACL	Air Force Legal Operations Agency General Litigation Division
AFLOA/JAJM	Air Force Legal Operations Agency, Military Justice

AFMAN	Air Force manual
AFMC	Air Force Materiel Command
AFMOA	Air Force Medical Operations Agency
AFOSI	Air Force Office of Special Investigations
AFPAM	Air Force pamphlet
AFPB	Air Force Personnel Board
AFPC	Air Force Personnel Center
AFPD	Air Force policy directive
AFQT	Armed Forces Qualification Test
AFR	Air Force Reserve
AFRC	Air Force Reserve Command
AFS	Air Force specialty
AFSC	Air Force specialty code
AF/SE	Air Force Chief of Safety
AFSCO	Air Force Security Clearance Office
AF/SG	United States Air Force Surgeon General
AFSLMO	Air Force Senior Leader Management Office
AGS	Administrative Grievance System
AIB	accident investigation board
AJ	administrative judge
ANG	Air National Guard
ANGRC	Air National Guard Readiness Center
AOC	Air and Space Operations Center
AOR	area of responsibility
AR	arithmetic reasoning
ARC	Air Reserve Component
ARPC	Air Reserve Personnel Center
ASVAB	Armed Services Vocational Aptitude Battery
AT/FP	antiterrorism/force protection
ATM	asynchronous transfer mode
ATO	air tasking order
AWOL	absent without leave
BOI	Board of Inquiry
BPA	Blanket Purchase Agreement
CAC	Common Access Card
CAOC	combined air operations center
CAP	Civil Air Patrol
CBPO	consolidated base personnel office
CC	commander
CCO	contingency contracting officer

CCP	contingency contracting personnel
CDA	Contract Disputes Act
CDC	career development course
CERP	Commander's Emergency Response Program
CFACC	Combined Forces Air Component Commander
CFC	Combined Federal Campaign
CFETP	Career Education and Training Plan
CFR	Code of Federal Regulations
CICA	Competition in Contracting Act
CJCS	Joint Chiefs of Staff
CJR	career job reservation
CL	clerical
CLSL	Community Legal Services Division
CMSgt	chief master sergeant (E-9)
CO	conscientious objector, contracting officer
COCOM	Combatant Command
COG	convenience of the government
COMAFFOR	Commander, Air Force Forces
COMSEC	communications security
CONUS	continental United States
CPFF	cost plus fixed fee
CPMS	Civilian Personnel Management Service
CPO	Civilian Personnel Office
CPS	Civilian Personnel Section
CS	civil support
CSAF	Chief of Staff Air Force
CSAR	combat search and rescue
CSRA	Civil Service Reform Act
CUI	controlled unclassified information
CV	vice commander
DAEO	designated agency ethics official
DCI	defense critical infrastructure
DCO	designated commanding officer
DD	Department of Defense (form)
DDRP	Drug Demand Reduction Program
DDRPM	Drug Demand Reduction Program Manager
DEP	Delayed Enlistment Program
DFARS	Defense Federal Acquisition Regulation Supplements
DHS	Department of Homeland Security
DL	Drafting Library

DOD	Department of Defense
DODD	Department of Defense Directive
DOD FMR	Department of Defense Financial Management Regulation
DODI	Department of Defense instruction
DOD/GC	General Counsel of the Department of Defense
DOHA	Defense Office of Hearing Appeals
DOJ	Department of Justice
DOR	date of rank
DOS	Department of State; date of separation
DPM	Personnel Directorate
DPSOS	Separations Branch
DRU	direct reporting unit
DSCA	Defense Support of Civil Authorities
DTPAM	Drug Testing Program Administrative Manager
EAD	extended active duty
EAP	emergency action plan
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EO	equal opportunity
EPME	enlisted professional military education
EPR	Enlisted Performance Report
EPTS	existed prior to service
ETS	expiration of term of service
FAD	final agency decision
FAR	Federal Acquisition Regulation
FBI	Federal Bureau of Investigation
FCBA	Fair Credit Billing Act
FCC	Federal Communications Commission
FCJ	foreign criminal jurisdiction
FDM	Financial Disclosure Management
FECA	Federal Employees' Compensation Act
FEMA	Federal Emergency Management Agency
FFP	firm-fixed-price
FLRA	Federal Labor Relations Authority
FLSA	Fair Labor Standards Act
FM	field manual
FNBDT	Future Narrowband Digital Terminal
FOA	field operating agency
FOIA	Freedom of Information Act
FOUO	for official use only (no longer used-replaced by CUI)

FSMPS	MPS Customer Support Element
FSR	private organization monitor
FSS	force support squadron
FY	fiscal year
G&A	general administrative
GAO	Government Accountability Office
GCC	geographic combat commander
GCM	general courts-martial
GCMCA	general court-martial convening authority
GED	General Education Development
GM	general manager
GPC	Government-Wide Purchase Card
GS	general schedule
GSU	geographically separated unit
GT	general technical
HA	humanitarian assistance
HAF	Headquarters Air Force
HAP	Humanitarian Assistance Program
HCA	head of the contracting activity
HD	Homeland Defense
HIV	human immunodeficiency virus
HN	host nation
HQ	headquarters
I&W	indications and warning
IAW	in accordance with
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ID	identification
IDA	initial denial authority
IDF	Israeli Defense Force
IG	Inspector General
IO	investigating officer
IP	Internet Protocol
IRD	Investigations and Resolutions Division
IRS	Internal Revenue Service
ISDN	Integrated Services Digital Network
JAA	Administrative Law Directorate
JACC	Claims and Tort Litigation Division
JAG	judge advocate
JAGC	Judge Advocate General's Corps

JAGUARS	Judge Advocate General's Unified Automated Reporting System
JAO	Operations & International Law Division
JAOC	Joint Air Operations Center
JER	Joint Ethics Regulation
JFACC	Joint Force Air Component Commander
JFC	Joint Force Commander
JP	Joint Publication
JRS	joint reporting structure
JS	Joint Staff
JTF	joint task force
LL	lessons learned
LAWS	United States Air Force Legal Assistance Website
LEA	law enforcement agency
LLFSC	Labor Law Field Support Center
LOA	letter of admonishment
LOAC	Law of Armed Conflict
LOC	letter of counseling
LOD	line of duty
LOE	letter of evaluation
LOR	letter of reprimand
MACA	military assistance to civilian authorities
MACDIS	Military Assistance for Civil Disturbances
MAJCOM	major command
MCA	Military Commissions Act
MCM	<i>Manual for Courts-Martial</i>
MFP	medical focal point
MILCON	military construction
MilPDS	Military Personnel Data System
MLA	military legal advisor
MLC	Maintenance and Logistics Command
MOA	memorandum of agreement
MOOTW	military operations other than war
MOS	Military Occupational Specialty
MOU	memorandum of understanding
MPF	military personnel flight
MPS	military personnel section
MSCA	military support to civil authorities
MSCLEA	military support to civilian law enforcement agency
MSG/CC	mission support group commander
MSgt	master sergeant (E-7)

MSPB	Merit System Protection Board
MSS	Mobile Subscriber System
NAF	Numbered Air Force
NATO	North Atlantic Treaty Organization
NCA	National Command Authority
NCO	noncommissioned officer
NCOIC	noncommissioned officer in charge
NEO	noncombatant evacuation operation
NJP	nonjudicial punishment
NOFI	notice of final interview
Non-EAD	not on extended active duty
NORAD	North America Aerospace Defense
NOS	Navy Occupational Specialty
NQP	not qualified for promotion
NSA	National Security Agency; negotiated settlement agreement
NSHS	National Strategy for Homeland Security
O&M	operations and maintenance
OFO	Office of Federal Operations
OGD	officer grade determination
OGE	Office of Government Ethics
OJT	on-the-job training
OMB	Office of Management and Budget
OPCON	operational control
OPLAN	operational plan
OPM	Office of Personnel Management
OPORD	operational order
OPR	officer performance report; office of primary responsibility
OSC	Office of Special Counsel
OSI	Office of Special Investigations
OTS	Officer Training School
P&R	probation and rehabilitation
PA	Privacy Act; public affairs
PAFSC	primary Air Force specialty code
PC	paragraph comprehension
PCA	permanent change of assignment; Posse Comitatus Act
PCS	permanent change of station
PDG	<i>Professional Development Guide</i>
PEO	peace enforcement operation
PETS	prior to expiration of term of service

PG	prisonnier de guerre
PIF	personal information file
PKO	peacekeeping operation
PME	professional military education
PO	private organization; peace operation
POA	power of attorney
POW	prisoner of war
PRF	promotion recommendation form
PRP	Personnel Reliability Program
RESOMO	Reserve Senior Officer Management Office
RIC	record of individual counseling
RIP	record on individual person
ROE	rule of engagement
ROI	report of investigation
ROS	report of survey
ROTC	Reserve Officers' Training Corps
RSC	Requestor Service Center
RSO&I	reception, staging, onward movement and integration
SAF	Secretary of the Air Force
SAF/AQ	Assistant Secretary of the Air Force (Acquisition)
SAF/GC	Secretary of the Air Force General Counsel
SAF/GCA	Secretary of the Air Force General Counsel, Fiscal, Ethics & Administrative Law
SAF/GCI	Secretary of the Air Force Deputy General Counsel, International Affairs
SAF/LL	Office of Legislative Liaison
SAF/LLI	Legislative Liaison Inquiry Division
SAF/MIB	Secretary of the Air Force, Assistant Secretary for Manpower and Reserve Affairs, Deputy, Air Force Review Board
SAFPC	Secretary of the Air Force Personnel Council
SAM	support agreement manager
SAP	simplified acquisition procedures
SAT	simplified acquisition threshold; Systems Approach to Training
SAUSA	special assistant US attorney
SCA	show-cause authority
SCIF	Sensitive Compartmented Information Facility
SCRA	Servicemembers Civil Relief Act
SCUD	surface-to-surface missile system
SecDef	Secretary of Defense
SES	senior executive service
SF	standard form; security forces

SGLI	Servicemembers' Group Life Insurance
SIB	safety investigation board
SIPRNet	Secret Internet Protocol Router Network
SITREP	situation report
SJA	staff judge advocate
SKIWeb	Strategic Knowledge Integration Web
SME	subject matter expert
SMSgt	senior master sergeant (E-8)
SOFA	Status of Forces Agreement
SPCMCA	special court-martial convening authority
SPE	senior procurement executive
SPINS	special instructions
SrA	senior Airman (E-4)
SROE	standing rules of engagement
SSgt	staff sergeant (E-5)
SSN	social security number
STE	secure terminal equipment
T&R	Training and Readiness Manual
TACON	tactical control
TACLANE	Tactical Local Area Network Encryption
TAFMS	total active federal military service
TDY	temporary duty
TJAG	The Judge Advocate General
TJAGC	The Judge Advocate General's Corps
TJAGCR	The Judge Advocate General's Corps Reserve
TJS	The Judge Advocate General Standard
TPA	Terminal Privilege Authority
TPRS	Tax Program Reporting System
TRI-TAC	Tri-Service Tactical Communications System
TSgt	technical sergeant (E-6)
TSP	Thrift Savings Plan
TS/SCI	Top Secret/Sensitive Compartmented Information
UC	unemployment compensation
UCMJ	Uniform Code of Military Justice
UIF	unfavorable information file
ULP	unfair labor practices
UMMC	unspecified minor military construction
UN	United Nations
UOTHC	under other than honorable conditions
US	United States

USAF	United States Air Force
USAFR	United States Air Force Reserve
U.S.C.	United States Code
USCG	United States Coast Guard
USCR	United States Country Representative
USERRA	Uniform Services Employment and Reemployment Rights Act
USG	United States Government
USMC	United States Marine Corps
USN	United States Navy
USNORTHCOM	US Northern Command
USS	United States ship
VA	Veterans Administration
VITA	volunteer income tax assistance
vMPF	virtual military personnel flight
VoIP	Voice-over Internet Protocol
VoSIP	Voice-over Secure Internet Protocol
VWAP	Victim and Witness Assistance Program
WASP	Web-based Administrative Separation Program
WebLIONS	Web-based Legal Information Online System
WG	wage grade
WL	wage leader
WS	wage supervisor
Z	Zulu

Student Notes

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