

## PROPOSED JPP FINDINGS AND RECOMMENDATIONS ON VICTIMS' APPELLATE RIGHTS

*Recommendation 1:* Congress not enact Section 547 of Senate Bill S.2943 or any other statutory provision granting victims standing to file briefs or pleadings in post-conviction appellate proceedings under the Uniform Code of Military Justice.

- The JPP finds that the language in Section 547 of Senate Bill S.2943 allowing victims to file appellate pleadings as a “real party in interest” is confusing and would not clearly provide victims with standing to participate in post-conviction appellate proceedings.
- The JPP finds that victims may already have standing in post-conviction appellate proceedings under existing case law.
- The JPP finds that victims may participate in appellate proceedings currently by filing *amicus* briefs.

*Recommendation 2:* Congress revise Article 6b of the Uniform Code of Military Justice to grant the Court of Appeals for the Armed Forces (CAAF) jurisdiction to hear a victim’s appeal if a Service Court of Criminal Appeals denies the victim’s petition for a writ of mandamus under Article 6b(e).

- The JPP finds that victims’ lack of access to the CAAF prevents civilian oversight of decisions by the Service Courts of Criminal Appeals.
- The JPP finds that recent decisions by the CAAF indicate that Congress must expressly grant jurisdiction to the CAAF to review adverse decisions regarding victims’ writ petitions by the Service Courts of Criminal Appeals.
- The JPP finds that granting jurisdiction to the CAAF may cause delays in the process. Such delays can be minimized if Congress imposes time limits for judicial review such as those contained in the Crime Victims’ Rights Act to ensure that cases are reviewed in a timely manner and are not subject to speedy trial challenges.

*Recommendation 3:* The President amend Rule for Courts-Martial 1103A to establish uniform procedures for appellate counsel access to sealed materials, without requiring prior *in camera* review by the appellate court.

- The JPP finds that it is important that appellate counsel have access to all relevant records on appeal to ensure the reliability of convictions; therefore, appellate courts should not conduct *in camera* reviews of sealed materials that may limit the information disclosed to appellate counsel.
- The JPP finds that the current version of Rule for Courts-Martial 1103A provides no guidelines or procedures for appellate counsel’s examination of sealed materials. As a result, the Services have each developed their own rules and processes which are not uniform and have varying levels of clarity and transparency.
- *(Tentative)* The JPP finds that the Air Force Court of Criminal Appeals Rule 23.3(f), which requires appellate counsel to file a motion with the appellate court requesting authorization to

*review sealed exhibits, is a best practice. Under Air Force practice, a judge rules only on: (1) whether the person seeking access to the records is an appropriate person requesting records, and (2) whether the records being released relate to an offense of which the accused was convicted.*

**Recommendation 4:** The Services formalize procedures to: (1) provide victims with notice of appellate matters, including but not limited to the date and time of any appellate courtroom hearings and the final decision of any appellate court, and (2) provide victims with appellate pleadings and briefs, if requested.

- The JPP finds that the creation of a system similar to the federal Public Access to Court Electronic Records (PACER) system would allow all victims to receive notice of appellate proceedings. The JPP supports the proposed Military Justice Act of 2016 provision that would require the development and implementation of a case management, data collection, and data accessibility program for the military justice system. However, if the Military Justice Act of 2016 is enacted, the JPP recognizes that full implementation of this program may not occur for four years from the date of enactment.
- The JPP finds that notwithstanding the Military Justice Act of 2016 provision, the Services need a more immediate process and should develop and formalize their procedures to provide victims with notice and copies of appellate pleadings and briefs in the interim.
- The JPP finds that the Army practice of using a dedicated office to contact victims and provide them with status updates about the case on appeal is a best practice.
- The JPP finds that another option would be to provide victims who wish to receive notice of appellate proceedings the opportunity to provide electronic contact information after an accused is convicted. This would enable appellate counsel to efficiently provide appellate pleadings and briefs to victims, whether or not they are represented by counsel.