

# Staff summary of reading materials for JPP members in preparation for March 13, 2015 public meeting

## **A. Overview of Restitution and Compensation**

### **1. Summary charts comparing compensation, restitution, and other forms of relief for crime victims in the states, federal and military systems (2 pages)**

*The charts, prepared by the JPP Staff, provides a summary of the types of relief generally available to victims of crime in the state, federal, and military systems.*

### **2. Service Responses to JPP Requests for Information # 53-60 (39 pages)**

- Question 53: Provide the Services' definitions of and distinction between "compensation" and "restitution" as those terms relate to victims of criminal offenses.
- Question 54: Explain current options available to provide compensation and/or restitution available to victims of offenses committed by Service members.
- Question 55: Other than those options explained in the previous question, have victims requested or sought other forms of compensation, restitution, services, benefits, etc.?
- Question 56: Explain the convening authority's waiver of forfeitures pursuant to Article 58b of the UCMJ, and impact of allowing forfeited wages to be paid to victims of sexual assault.
- Question 57: Provide information regarding Article 139, UCMJ, concerning property damage claims and whether that could be expanded to include bodily harm.
- Question 58: What anticipated impacts may result from allowing a court-martial, either by court members or military judge, to direct restitution to the victims of offenses? What mechanisms exist or would be required to enforce restitution sentences?
- Question 59: How can military victims continue to receive treatment, counseling, etc., for injuries related to the crime committed against them after separation or retirement from the Armed Forces? How are victims informed of these options?
- Question 60: Provide information regarding the military's use of State Victim Compensation Funds.

## **B. Articles and Scholarship on Restitution**

### **3. National Crime Victim Law Institute (NCVLI), *Fundamentals of Victims' Rights: A Victim's Right to Restitution*, VICTIM LAW BULL. (Nov. 2011) (6 pages)**

*Brief historical overview of the use of restitution as a criminal punishment and its development in case law.*

### **4. Lieutenant Colonel David M. Jones, *Making the Accused Pay for His Crime: A Proposal to Add Restitution as an Authorized Punishment under Rule for Courts-Martial 1003(B)*, 52 NAVAL L. REV. 1 (2005) (26 pages)**

- Explains ways in which victim restitution in military system can be perceived as inadequate compared to federal court systems.
- Argues in favor of restitution as an authorized punishment at courts-martial and proposes language to change the RCMs and military judges' benchbook instructions.

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### **5. Courtney E. Lollar, *What Is Criminal Restitution?*, 100 IOWA L. REV. 93 (2014) (45 pages)**

*Professor Lollar will participate in the 10:00am panel.*

- Describes evolution of restitution from a primarily restorative/compensatory mechanism to a primarily punitive device.
- Argues that all the constitutional protections enjoyed by defendants in other criminal proceedings be extended to restitution proceedings.

## **C. Federal Restitution Statutes**

### **6. Federal mandate and procedures statutes**

- **18 U.S.C. § 3663A (Mandatory restitution) (2 pages)**

*Statute enacted in 1996, also known as Mandatory Victim Restitution Act (MVRA), establishing mandatory restitution as a consequence of convictions for the most serious federal crimes, including all crimes of violence.*

- Requires judge to order that defendant pay restitution “to each victim in the full amount of each victim’s losses as determined by the court and without consideration of the economic circumstances of the defendant.”
- Allows for recovery for variety of harms, including: property loss, damage, or destruction; bodily injury; death; loss of income; and cost of expenses for participating in prosecution.
- Essentially supersedes 18 U.S.C. § 3663, a provision of the Victim and Witness Protection Act of 1982 (VWPA) that merely established restitution as an authorized punishment for federal crimes.

- **18 U.S.C. § 3664 (Procedure) (4 pages)**

*Statute supplying the procedure governing issuance of federal restitution orders.*

- Directs probation service to investigate and prepare report identifying each victim and extent of injuries, damages, and/or losses. After report is presented to judge and parties, any contested issues are resolved at a hearing.
- Provides that in determining amount of restitution, judge may not take into account fact that victim “has received or is entitled to receive compensation with respect to a loss from insurance or any other source.”

## **D. Examples of Military Cases Involving Restitution to the Victim**

### **7. *United States v. Williams*, 60 M.J. 360 (C.A.A.F. 2004) (4 pages)**

*Government withdrew from pretrial agreement because the accused did not pay the restitution prior to trial to victims of his larceny using fellow Soldier’s government travel card. Court found there was a disagreement as to a material term of the pretrial agreement that permitted convening authority to withdraw from the agreement under R.C.M. 705(d)(4)(B).*

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### **8. *United States v. Delagarza*, No. ARMY 20080891 (A. Ct. Crim. App. Aug. 23, 2010) (5 pages)**

*Military judge recommended the convening authority reduce the sentence if the accused paid restitution. Convening authority did not adopt military judge's recommendation.*

## **E. UCMJ Articles Providing for Deferment or Waiver of Forfeitures for Dependents of the Accused**

### **9. Article 57a of the UCMJ (Defer Adjudged Forfeiture) (1 page)**

*Rule permitting the convening authority to defer forfeiture of pay and allowances if adjudged at a court-martial, upon the accused's request .*

- Forfeitures effective 14 days after announcement of accused's sentence or the date of the convening authority's action.
- Deferment must be requested by the accused. Deferred forfeitures are paid to the accused, who then must set up an allotment to his/her dependents.
- Deferral can continue until the member has reached his expiration of term of service date, remains in confinement, and is waiting for the convening authority to take action.
- *See also* R.C.M. 1101(c)(3), Action on deferment request.

### **10. Article 58b of the UCMJ (Waiver of Automatic Forfeitures) (1 page)**

*Certain court-martial sentences automatically trigger forfeiture of the accused's pay and allowances. Article 58b permits the convening authority to waive those forfeitures for up to six months and direct those funds be paid to the accused's dependents.*

- Forfeitures effective 14 days after announcement of accused's sentence or the date of the convening authority's action.
- Automatic forfeitures occur if the sentence includes confinement for more than six months, or confinement for any period and a dishonorable or bad conduct discharge, or a dismissal. (If the accused is sentenced to confinement, at general courts-martial, all pay and allowances are forfeited; at a special court-martial, two-thirds of pay and allowances are forfeited.)
- Art. 58b allows the convening authority to waive automatic forfeitures for up to six months for the benefit of accused's dependents, as long as the accused would otherwise be entitled to pay and allowances and has not reached his/her expiration of service (ETS) date. Can be requested by accused, his/her dependents, or the convening authority on his own initiative. Waiver can be requested at any time.
- *See also* R.C.M. 1101(d), Waiving forfeitures resulting from a sentence to confinement to provide for dependent support.
- Accused can also request deferment of automatic forfeitures, if requested within 14 days after sentence announced.

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### **F. Background and Scholarly Materials on Compensation**

#### **11. National Association of Crime Victim Compensation Boards (NACVCB), *Compensation for Crime Victims* (7 pages)**

*Brochure providing general overview of state victim compensation programs published by the NACVCB whose Executive Director, Mr. Dan Eddy, is testifying during the 11:00am panel.*

- Describes eligibility requirements, costs covered, and limitations most often experienced by victims seeking state compensation.
- Lists reporting requirement, filing limit, and maximum payment for every jurisdiction.

#### **12. U.S. Dep't of Justice, Office for Victims of Crime, "About OVC: Crime Victims Fund" and "Victims of Crime Act: Rebuilding Lives through Assistance and Compensation" (2 pages)**

*Basic summary of the federal Crime Victims Fund with accompanying chart providing overview of how Fund allocations are made to benefit crime victims.*

#### **13. Njeri Mathis Rutledge, *Looking a Gift Horse in the Mouth – The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims*, 19 DUKE J. GENDER L. & POL'Y 223 (2011) (47 pages)**

*Professor Rutledge will participate in the 10:00am panel.*

- Identifies the underlying theories behind state victim compensation programs and the barriers preventing domestic violence victims from using them.
- Argues that compensation funds fulfill a unique need for emergency assistance that is not satisfied by other available resources.

#### **14. Julie Goldscheid, *Crime Victim Compensation in a Post-9/11 World*, 79 TUL. L. REV. 167 (2004) (47 pages)**

*Professor Goldscheid will participate in the 10:00am panel.*

- Describes evolution and rationales of state victim compensation programs.
- Compares state victim compensation programs to the federal September 11th Victim Compensation Fund ("9/11 Fund").
- Argues in favor of the state programs' adopting the "tort substitute" and "cost-spreading" approaches of the 9/11 Fund.

#### **15. California Assembly Bill No. 2545 (3 pages)**

*Enacted in Sept. 2014, statute expands access to California state crime victim compensation funds to military sexual assault victims who do not promptly report incident.*

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### **G. Military Transitional Compensation for Abused Dependents**

#### **16. 10 U.S.C. § 1059 (Transitional compensation) (5 pages)**

*Transitional Compensation Act (effective 1994) provides for monthly compensation to dependents of Service members who are separated for dependent abuse.*

- Requires for eligibility an accused's conviction for a dependent-abuse offense resulting in either separation from active duty or forfeiture of all pay and allowances.
- Provides that monthly payments are made at rate in effect for payment of dependency and indemnity compensation (DIC), which is currently \$811 for spouse and \$120 per child.
- Guarantees at least 12 months of payments – but no more than 36 months – provided that offender is not residing in household.

#### **17. DoD Instruction 1342.24, *Transitional Compensation for Abused Dependents* (Jan. 16, 1997) (8 pages)**

*Implements 10 U.S.C. § 1059, assigns responsibilities, and prescribes procedures for payment of transitional compensation.*

### **H. Article 139 of the UCMJ (Redress of Injuries to Property)**

#### **18. Article 139 of the UCMJ (1 page)**

*UCMJ provision providing claim process for victims of willful property damage or theft of property.*

- Claim must be filed within 90 days of incident.
- Investigating officer/board must be appointed within four working days of receipt of claim.
- Investigating officer's assessment of damages, if any, must be approved by offender's commanding officer.
- When claim is successful, offender's commanding officer orders finance office to pay claimant with funds withdrawn from offender's paychecks.

#### **19. Service Regulations Pertaining to Article 139 Claims**

- Army Regulation 27-20, Chapter 9 (Feb. 8, 2008) (4 pages)
- Navy JAG Instruction 5800.7F, Chapter IV (June 26, 2012) (8 pages)
- Air Force Instruction 51-502, Chapter 6 (Mar. 1, 1997) (4 pages)
- Coast Guard COMDNOTE 5890 (Mar. 3, 1993) (4 pages)