



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON DC 20374-5066

IN REPLY REFER TO

JAG/COMNAVLEGSVCCOMINST 5800.4A

Code 60

APR 18 2011

JAG/COMNAVLEGSVCCOM INSTRUCTION 5800.4A

From: Judge Advocate General
Commander, Naval Legal Service Command

Subj: VICTIM AND WITNESS ASSISTANCE PROGRAM (VWAP)

Ref: (a) DoD Directive 1030.1 of 13 Apr 04
(b) DoD Instruction 1030.2 of 4 Jun 04
(c) SECNAVINST 5800.11B
(d) OPNAVINST 5800.7 (series)
(e) SECNAVINST 1752.4A
(f) OPNAVINST 1752.1B
(g) SECNAVINST 1752.3B
(h) BUPERSINST 5800.3A
(i) DoD Instruction 1342.24 of 23 May 95
(j) OPNAVINST 1750.3
(k) DoD 7000.14-R, DoD Financial Management Regulation,
Vol. 7B, Chapters 59 and 60
(l) COMNAVLEGSVCCOMINST 5530.2B

Encl: (1) VWAP Checklist
(2) VWAP Program Certification Letter
(3) Victim Declination Acknowledgment

1. Purpose. To promulgate VWAP policy and procedures for the Office of the Judge Advocate General and Naval Legal Service Command (NLSC). This instruction has been substantially revised and should be reviewed in its entirety.

2. Cancellation. JAG/COMNAVLEGSVCCOMINST 5800.4.

3. Background. The Victim and Witness Assistance Program is of paramount importance to the Navy and the JAG Corps. References (a) through (d) prescribe procedures to implement the Victim and Witness Assistance Program in the Department of Defense (DoD) and the Department of the Navy (DON). Naval Legal Service Offices (NLSOs) and Region Legal Service Offices (RLSOs) are instrumental in the implementation and success of this program. NLSOs must be prepared to deliver information and other legal assistance services to victims of crime. Through Region Staff

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Judge Advocate (SJA) Offices, RLSOs are responsible for ensuring that the VWAP program is properly implemented and executed within their Regions. Through local Trial Departments, RLSOs are responsible for keeping victims and witnesses informed during the entire court-martial process and providing essential services and support. Every NLSO and RLSO is required to appoint a Victim and Witness Assistance Coordinator to assist personnel assigned to the command. Naval Justice School (NJS) has the unique role of providing training to NLSC personnel and staff judge advocates regarding their responsibilities in this vital program, ensuring that all judge advocates and other legal support personnel receive the training mandated by references (c) through (g).

4. Applicability. The provisions of this instruction apply to all personnel under the cognizance of Commander, Naval Legal Service Command (CNLSC) and the Office of the Judge Advocate General (OJAG) as set forth herein. Per references (c) and (d), the provisions of this instruction are not limited to criminal offenses prosecuted at courts-martial, but also apply to victims when offenses are referred to non-judicial punishment or administrative separation proceedings.

5. Definitions. For purposes of this instruction, the following definitions apply:

a. Victim

(1) A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime in violation of the Uniform Code of Military Justice (UCMJ), or in violation of the law of another jurisdiction in cases where military authorities have been notified. Such individuals shall include, but are not limited to, the following:

(a) Military members and their family members.

(b) Non-foreign hire civilian employees of the Department of Defense in overseas locations, and their legal family members, for services that are not available in the local community.

(c) Persons under 18 years of age, incompetent, incapacitated, or deceased, whose rights may be asserted by: a parent, legal guardian, in loco parentis, or other person designated by a court or Local Responsible Official.

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(2) When an institutional entity is a victim, an authorized representative may assert the victim's rights. Federal Departments and State and local agencies, as entities, are not eligible for services available to individual victims.

(3) The term "victim" does not include an individual involved in the crime as a perpetrator or accomplice, even though the individual may be one of the representatives described above.

b. Witness. A person who has information or evidence concerning a crime, and provides that knowledge to a DON representative about an offense in the investigative jurisdiction of DON. When a witness is a minor, that term includes a parent or legal guardian. The term "witness" does not include a defense witness or an individual involved in the crime as a perpetrator or accomplice. For purposes of advisement of rights, witnesses do not include law enforcement personnel associated with a case in an official capacity.

6. Policy

a. Personnel will treat all victims and witnesses of crime with dignity and respect. Activities and personnel shall attempt to mitigate, within the means of available resources and in accordance with applicable law, the physical, psychological, and financial hardship suffered by crime victims and witnesses of criminal offenses. All reasonable efforts shall be made to foster cooperation of crime victims and witnesses.

b. Additional rights and procedures apply to victims of domestic abuse or sexual assault. Information regarding resources and benefits available to crime victims, including the Sexual Assault Prevention and Response (SAPR) (formerly known as the Sexual Assault Victim Intervention Program (SAVI)), Family Advocacy Program (FAP) and Transitional Compensation is found in references (e) through (k). OJAG, RLSO and NLSO personnel shall ensure coordination with victim advocates and other personnel operating under SAPR and FAP authorities.

c. While special attention must be provided to victims and witnesses of serious or violent crime, all victims and witnesses shall receive the assistance as outlined in this instruction.

d. The provisions of this instruction are intended to provide internal guidance for the protection and assistance of victims and witnesses and the enhancement of their roles in the

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military criminal justice process without infringing on the constitutional and statutory rights of the accused.

e. This instruction is not intended to, and does not, create any entitlement, cause of action or defense, substantive or procedural, for any victim, witness or any other person, arising out of the failure to accord a victim or witness the services enumerated in this instruction. No limitations are placed on the lawful prerogatives of the DON or its officials.

f. NLSC personnel shall exercise their responsibilities robustly by leveraging additional non-NLSC resources and benefits available to military crime victims.

7. Roles and Responsibilities

a. CNLSC shall:

(1) Exercise oversight and overall administration of the VWAP program.

(2) Ensure VWAP is included as an item of interest during regular Article 6 inspections of NLSC commands, including, but not limited to, the areas of inquiry listed in enclosures (1) and (2).

(3) Ensure subordinate commands actively support VWAP initiatives through, among other means, periodic requests for VWAP compliance certification letters from cognizant RLSO commanding officers (CO's) and regular inspections of those commands.

(4) Ensure that all training required under references (c) through (g) is being provided to judge advocates and other essential personnel.

b. Assistant Judge Advocate General, Operations and Management (AJAG 06). AJAG 06 shall appoint a Victim Witness Liaison Officer (VWLO) and Victim Witness Coordinator (VWAC) for OJAG in accordance with reference (d). The VWLO and VWAC shall be collaterally assigned to CNLSC.

c. Deputy Commander - Region Legal Service Office (DCOM-RLSO) shall:

(1) Provide reports as necessary to CNLSC.

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(2) Provide additional guidance, as necessary and consistent with this instruction, to RLSOs to implement and administer VWAP program, and coordinate as necessary with DCOM-NLSO.

d. Deputy Commander - Naval Legal Service Office (DCOM-NLSO). DCOM-NLSO shall provide guidance as necessary and consistent with this instruction to NLSOs to further implement this instruction and coordinate as necessary with DCOM-RLSO.

e. Deputy Assistant Judge Advocate General for Management and Plans (OJAG Code 63). OJAG Code 63 shall ensure annual data is compiled regarding the number of victims and witnesses who received DD Form 2702, Court-Martial Information for Victims and Witnesses of Crime; DD Form 2703, Post Trial Information for Victims and Witnesses of Crime, and the number of victims and witnesses who elected to be notified of confinee status changes via DD Form 2704. Personal information on victims and/or witnesses shall not be kept together with this data. Provide NAVPERSCOM (PERS-OOJ) with an annual report using DD Form 2706 covering the period of 1 January through 31 December of the previous year no later than 15 February of the current calendar year.

f. Deputy Assistant Judge Advocate General for Criminal Law (OJAG Code 20) shall:

(1) Under the leadership and supervision of the Assistant Judge Advocate General (Military Justice), monitor DON-wide policy matters relating to the VWAP, including changing reporting requirements, revised standards relating to victim and witness notifications, and other developing program matters requiring potential changes to NLSC VWAP policy. Report such changes and recommended action to Commander, NLSC, as required.

(2) Serve as liaison to NJS in the development, maintenance, and provision of VWAP training and training topics to all judge advocates and all personnel throughout NLSC. Ensure training provided by NJS is sufficient to meet the requirements of pertinent instructions and the needs of NLSC.

g. Inspector General (Code 002). OJAG (Code 002) shall, pursuant to Article 6, UCMJ, and with the assistance of a military justice subject matter expert, conduct annual inspections of NLSC commands to ensure compliance with this and other applicable instructions. Inquiry should include, but is not limited to, spot checks of trial counsel case files for

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appropriate utilization of enclosure (1), local information management database referenced in paragraph 7(h)(5), and command completion of enclosure (2).

h. RLSO CO's shall:

(1) Be responsible to Region Commanders for implementation and oversight of the Region VWAP program to ensure that Region and installation SJA Offices have properly implemented VWAP in their AOR, per their specific programmatic responsibilities under reference (d). Effective oversight and coordination of all victim advocacy program elements for VWAP, SAPR/SAVI, and FAP must be provided for and regularly inspected at the Region level.

(2) Exercise oversight and administrative control over trial counsel compliance with the responsibilities delineated in this and other pertinent instructions.

(3) Ensure that trial counsel are promptly assigned to cases in which charges have been preferred and cases involving victims for which charges are reasonably anticipated.

(4) Ensure that trial counsel have accurately identified all victims and witnesses in cases to which they are assigned so that the victims and witnesses may be apprised of the rights afforded to them by reference (d).

(5) Ensure data is maintained on the number of victims and witnesses who received DD Form 2702, Court-Martial Information for Victims and Witnesses of Crime; DD Form 2703, Post Trial Information for Victims and Witnesses of Crime, and the number of victims and witnesses who elected to be notified of confinee status changes via DD Form 2704, Victim/Witness certification and Election Concerning Inmate Status at the command. Such data shall be maintained both in trial counsel notebooks and in a local information management database or system in order to ensure accurate information is available for future reporting. Every instance of counseling or assistance should be entered into this system as it occurs. Personal information on victims and/or witnesses shall not be kept together with this data. Ensure trial counsel make appropriate utilization of enclosure (1) and maintain in each case file.

(6) In accordance with reference (d), appoint VWAC, in writing, to administer the command program, ensure coordination within the command, maintain databases, ensure all required

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training for RLSO personnel is accomplished and documented, make annual reports, oversee certifications, and act as a representative on the regional Victim and Witness Assistance Council.

(7) In coordination with the Region or Type Commander, provide a Victim Witness Liaison Officer (VWLO) (appointed by the Region or Type Commander), who shall be a Staff Judge Advocate, civilian attorney, or paralegal with legal training/experience with VWAP in the grade of GS-9 or above. Exercising authority from the Region or Type Commander, VWLOs shall:

(a) Ensure each command within their area of responsibility appoints a Victim Witness Assistance Coordinator (VWAC). A copy of the appointing letter shall be forwarded to the VWLO.

(b) Maintain a list of VWACs within their area of responsibility.

(c) Ensure VWACs in their area of responsibility receive training materials and appropriate guidance on VWAP.

(d) Obtain and maintain a directory of military and civilian programs and services within their area of responsibility that are available for counseling, treatment, and other support to victims. VWLOs shall distribute this list to VWACs within their area of responsibility.

(e) Obtain reporting data from VWACs and physical security/base security staff on the number of victims and witnesses who received DD 2701 during the period of 1 January through 31 December of the previous year for inclusion in the annual report to NAVPERSCOM (PERS-00J) due no later than 15 February of the current year.

(f) Chair meetings of the local Victim Witness Assistance Council, if locally established.

(8) Provide OJAG Code 63 with an annual report on DD Form 2706 covering the period of 1 January through 31 December of the previous year no later than 31 January of the current calendar year. Additional direction regarding this report is contained below.

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(9) When directed, conduct periodic VWAP compliance reviews of post-preferral trial-level cases and post-trial cases still pending convening authority action using enclosure (2) to certify the results of such review to Commander, NLSC.

(10) Conduct regular local training to non-NLSC commands as may be requested on topics relating to the VWAP to the extent needed to ensure continued local compliance and awareness.

(11) In instances where a victim requests copies of a record of trial, promptly forward such requests to OJAG Code 20. When necessary to lessen the physical, psychological, or financial hardships suffered as a result of the criminal act, Code 20 may authorize release of a copy of the record of trial without cost to a victim in accordance with the Freedom of Information Act. In forwarding victim requests, RLSO CO's shall make specific recommendations regarding the necessity of the release based on the victim's circumstances.

i. NLSO CO's shall:

(1) Take measures to ensure that legal assistance attorneys are appropriately prepared to provide advice as "service providers" per reference (d). This advice includes general information about VWAP and the Victims' Bill of Rights (including maintaining specific written materials that describe and contain POCs for local victim counseling or treatment programs), processes for federal, state, and local crime compensation programs, and transitional compensation available to victims of domestic violence. Before giving such advice, legal assistance officers shall determine the status of any ongoing military justice case and avoid establishing an attorney-client relationship as long as members of the same NLSO are involved in the case with trial or appellate defense responsibilities. In such cases, the person seeking assistance may be referred to the trial counsel or other service providers such as Family Service Center personnel, chaplains, health care personnel, other armed services legal assistance offices and other advocates who assist victims and witnesses of crime.

(2) Ensure all required VWAP, SAPR/SAVI, and FAP annual training for NLSO personnel is accomplished and documented.

j. NJS CO shall:

(1) Ensure formal and effective training is established and maintained for VWAP in the Basic Lawyer, Legal Officer,

Legalman, SJA, and Senior Officer Courses and for use by RLSO in training non-NLSC commands. This shall include reference to and incorporation of victim advocacy requirements established in the SAPR and FAP programs.

(2) Consult with OJAG Code 20 in the development, maintenance, and provision of VWAP training and training topics to all judge advocates and all personnel throughout NLSC. Ensure training provided by NJS is sufficient to meet the requirements of pertinent instructions and the needs of NLSC.

k. Trial Counsel. Trial counsel are responsible for ensuring a smooth transition of victim and witness assistance between the pre-trial, trial and post-trial processes as noted in references (i) through (k) as well as throughout a non-judicial punishment action, board of inquiry or administrative separation board.

(1) A trial counsel's responsibilities established by references (b) and (d) begin at assignment to a case by competent authority when in anticipation of charges being preferred or otherwise when assigned after charges have been preferred. A judge advocate who provides command services assistance to a convening authority to review a criminal investigation to include making charging recommendations, even if assigned within the Trial Department, is not considered to be a trial counsel for purposes of VWAP unless specifically assigned by competent authority in anticipation of charges being preferred. In matters where RLSO assistance is limited to command services, the judge advocate shall coordinate with the convening authority and, if applicable, NCIS to ensure that victims are informed of a convening authority's decision not to prefer charges or to process for non-judicial punishment.

(2) Significant victim and witness assistance from the RLSO may be required before preferral or referral of charges. All government counsel shall be proactive in affording rights at all stages of a potential case; however, any consultation or notification required herein may be limited to avoid endangering the safety of a victim or witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Trial Counsel shall retain appropriate copies and annotate within the trial notebook, utilizing enclosure (1), when the following specific responsibilities are met:

(a) Identification of Victims and Witnesses. Once Trial Counsel has been assigned to a case, they shall identify the victims and witnesses in the case. Trial Counsel must also determine whether immediate actions are required to reasonably protect any victim and/or witness from an accused, to include military or civilian protective orders. Trial Counsel shall contact any victim or witness to inform of the right to be reasonably protected from an accused and of any protective measures taken or considered necessary. The requirement for Trial Counsel to identify victims and witnesses, and to assess appropriate protection, is an ongoing requirement until the case is closed. Trial Counsel shall identify the VWAC for the victim's command and for the convening authority, as well as any other SAPR or FAP victim advocates or command liaisons that have been assigned. Trial Counsel shall coordinate with these advocates and officials, as appropriate, throughout the pendency of the matter, and ensure that victims are being provided case updates not less than monthly.

(b) Providing of General Information to Victims and Witnesses. Trial Counsel shall ensure victims and witnesses are provided information concerning their role in the criminal justice process, including what to expect from the process, what the process expects from them and the stages of the criminal justice process. This requires ensuring that investigators previously provided a DD 2701, Initial Information for Victims and Witnesses of a Crime, to each victim and witness, and providing and explaining the form if it was not previously provided. Trial Counsel shall provide and explain the rights contained in the DD 2702 to each victim and witness at their first meeting with each victim and witness, and ensure that the form includes correct contact information. Trial Counsel shall affirmatively document the date that such forms are provided to each victim and witness, both in trial notebooks and in local RLSO VWAP accounting systems.

(3) Victim and Witness Consultation. Trial counsel shall provide the following to victims and witnesses:

(a) Consultation concerning the decision not to prefer charges against the suspected offender.

(b) Consultation concerning the disposition of the offense if other than a court-martial.

(c) Consultation concerning any decision to dismiss charges or to enter into a pretrial agreement.

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(4) Victim Declination Acknowledgment. When a victim declines to cooperate with the prosecution of a case, trial counsel shall request that the victim complete the Victim Declination Acknowledgment to ensure that the victim has received sufficient support throughout the investigative and prosecution process (Enclosure (3)). If any deficiencies in the VWAP program are identified by completion of the form, Trial Counsel shall take action to correct them before accepting the Victim Declination Acknowledgment.

(5) Victim and Witness Notification. Trial Counsel shall ensure at the earliest possible convenience that the victim is advised of:

(a) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at an Article 32, UCMJ, investigation (10 U.S.C. § 832).

(b) The pretrial confinement status of the suspected offender.

(c) The release of the suspected offender from pretrial confinement.

(d) The date charges are forwarded for investigation at an Article 32 hearing and/or referred to a court-martial, and the nature of the charges.

(e) The acceptance of a pretrial plea agreement (see sub-section j.(5) of this paragraph regarding the victim's views concerning pretrial negotiations).

(f) The scheduling of each court proceeding.

(g) The findings of the court-martial.

(h) The sentence adjudged.

(i) The convening authority's action concerning the findings and the sentence.

(j) Any scheduling changes that will affect the appearances of all victims and witnesses who have been scheduled to attend criminal justice proceedings.

(6) Victims views concerning Pretrial Plea Negotiations.

Victims have a designated advisory role in decisions involving prosecutorial discretion, such as whether to prefer and refer charges, to dismiss charges, to seek disposition other than at court-martial, and to plea-bargain, including to enter into a pre-trial agreement. Trial Counsel shall ensure victims are aware of their right to act in this advisory capacity. In those cases in which a victim has elected to exercise the right to act in such an advisory capacity, Trial Counsel shall ensure the victim's views concerning prosecution and plea negotiations are obtained, documented, and forwarded to the convening authority prior to the specific decision or disposition. Under the Uniform Code of Military Justice and Rules for Courts-Martial, convening authorities have exclusive authority to direct the trial of any charge by a court-martial or to enter into a pretrial agreement.

(7) Separate Waiting Room. Trial Counsel shall ensure victims and prosecution witnesses are provided a waiting area during court-martial proceedings that is removed from, and out of the sight and hearing of, the accused and defense witnesses. Courtroom and waiting area security is to be addressed in accordance with reference (1).

(8) General Assistance at Trial. Trial Counsel shall ensure victims and witnesses are provided assistance in obtaining available services such as transportation, parking, child care, lodging, and court-room translators or interpreters.

(9) Notification of Employer. Upon request of a victim or witness, the Trial Counsel shall take reasonable steps to inform the employer of the victim or witness of the reasons for absence from work due to court-martial.

(10) Explanation to Creditors. Upon request of and with the express consent of a victim or witness, Trial Counsel shall contact the creditor of a victim or witness who is subjected to serious financial strain caused by the crime or cooperation in the investigation or prosecution of an offense.

(11) Victim's Property. Trial Counsel shall safeguard the property of a victim held as evidence by the RLSO and shall return it as soon as possible.

(12) Sentencing. Trial Counsel shall inform victims of the opportunity to present evidence to the court at sentencing

concerning the impact of the crime, including financial, social, psychological, and physical harm suffered by the victim.

(13) Post-Trial Information. At the conclusion of a court-martial, the Trial Counsel shall provide victims and witnesses the DD Form 2703 to convey basic information about the post-trial process. Trial Counsel shall affirmatively document the date that such forms are provided to each victim and witness, both in trial notebooks and in local RLSO VWAP accounting systems. Trial Counsel shall provide information about the approximate date that the accessed would be eligible for release from confinement.

(14) Post-Trial Confinement Status of the Accused. At the conclusion of every court-martial in which confinement is adjudged, Trial Counsel, in consultation with each victim and witness, shall prepare a DD Form 2704 wherein the victim or appropriate witness (those who fear harm by the offender) may elect to be notified of changes in the offender's status in confinement. Trial Counsel shall affirmatively document the date that such forms are provided to each victim and witness, both in trial notebooks and in local RLSO VWAP accounting systems. The DD Form 2704 shall not be attached to any record to which the confinee has access. Trial Counsel will ensure that copies are provided to:

(a) NAVPERSCOM (PERS-00D1) as the Central Repository for the Navy;

(b) The confinement facility where the accused offender will be confined; and

(c) Victims and/or witnesses whose entitlement to receive confinement information has been certified by Trial Counsel.

(15) VWAP data. Trial Counsel shall maintain data on the number of victims and the number of witnesses who received a DD Form 2702, DD Form 2703, and the number of victims and witnesses who elected to be notified of confinee status changes via a DD 2704. Trial Counsel shall affirmatively document the dates that such forms are provided to each victim and witness, both in trial notebooks and in local RLSO VWAP accounting systems. This data shall be forwarded annually to OJAG Code 63 and shall be maintained locally according to processes developed at the command level as required by this instruction.

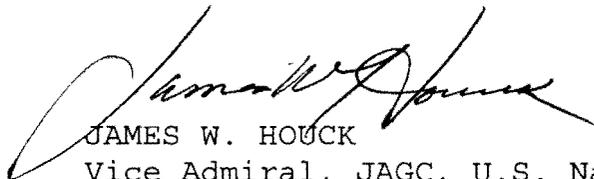
(16) Transitional Compensation for Abused Dependents.

Trial Counsel shall ensure victims are apprised of Transitional Compensation for Abused Dependents, if applicable and receive information concerning compensation programs available from the State and other sources of financial relief. Assistance may be available from local Legal Assistance and other family support program offices.

8. Annual Reports. Not later than 31 January of every year, NLSC units will provide Code 63 with the number of victims and witnesses who received DD 2702, Court-Martial Information for Victims and Witnesses of Crime; DD 2703, Post Trial Information for Victims and Witnesses of Crime; and the number of victims and witnesses who elected to be notified of confinee status changes via DD 2704. RLSO's may also report number of DD 2701 forms actually provided, but only where such forms were provided by RLSO counsel and or NLSC support personnel. Forms provided by Region law enforcement personnel (e.g., installation security, master-at-arms) shall be submitted by the Region directly to NPC (PERS-00J), and not to CNLSC. This includes both DD 2701 and 2705 forms.



NANETTE M. DERENZI
Rear Admiral, JAGC, U.S. Navy
Commander, Naval Legal Service
Command



JAMES W. HOUCK
Vice Admiral, JAGC, U.S. Navy
Judge Advocate General

Distribution:

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Victim Witness Assistance Program Compliance Checklist*

Case: United States v. _____ RLSO: _____ Trial Counsel: _____

Victim/Witness Identifying Information:

Name _____ Address _____
 Phone _____ E-mail _____

-DD 2701 was provided _____

- If no DD 2701 was previously provided, provide:

- Reconfirm:

- Is victim/witness in need of reasonable protection? _____

- Have military or civilian protective orders been obtained? _____

- VWAC has been identified for victim's command (name) _____ (date contacted)

- VWAC for convening authority has been identified (name) _____ (date contacted)

- Other advocates identified and contacted to ensure interdisciplinary support.

- SAPR/SAVI (name) _____ (date contacted)

- FAP (name) _____ (date contacted)

- Command Liaison (name) _____ (date contacted)

Required Information Provided

	<u>Date</u>	<u>Election of Right</u>	<u>Date of Follow-up</u>	<u>Method of Follow-up</u>
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- DD 2702 provided	_____	_____	_____	_____
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- Notification of pre-trial confinement status of suspected offender	_____	_____	_____	_____
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- Consultation on the decision to refer/not refer case to trial or disposition of the case if other than a court-martial.	_____	_____	_____	_____
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- Notification of the following (as applicable):

- Initial appearance of suspected offender before a judicial hearing officer at a pretrial confinement hearing	_____	Y or N	_____	_____
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- Appearance of suspected offender at an Article 32, UCMJ investigation	_____	Y or N	_____	_____
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- Release of the suspected offender from pre-trial confinement	_____	Y or N	_____	_____
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*Complies with DODI 1030.2, June 4, 2004

Victim Witness Assistance Program Compliance Checklist*

- Assistance in obtaining services to allow victim/witness to participate in the court proceedings (childcare, translators, parking, etc.) _____
- Private waiting area during court proceedings _____
- Local procedures for courtroom security are complied with. _____

Required Information Provided (cont'd)

	<u>Date</u>	<u>Election of Right</u>	<u>Date of Follow-up</u>	<u>Method of Follow-up</u>
- Notification of scheduling changes/delays and dates/times of court proceedings.	_____	Y or N	_____	_____
- Inform the employer or creditor of the victim/witness of the reasons for the absence from work or inability to make timely payments on an account due to crime or cooperation in the investigation or prosecution.	_____	Y or N	_____	_____
- Consultation concerning decision to dismiss charges or enter into a pre-trial agreement with victim's input conveyed to Convening Authority.	_____	Y or N	_____	_____
- If right is exercised, documentation has been provided to convening authority prior to the specific decision or disposition.	_____			
- Notification as to disposition of the case, including guilty plea, verdict, or withdrawal/dismissal of charges.	_____	Y or N	_____	_____
- Notification to victims of the opportunity to present information to the court at sentencing (statement of the impact of the crime on the victim - financial, social, psychological and physical harm suffered).	_____	Y or N	_____	_____
- Notification that after court proceedings, action will be taken to return property held as evidence as expeditiously as possible.	_____			
- Date property returned	_____			
- Notification of the offender's sentence and general information regarding minimum release date, parole, clemency, and mandatory supervised release.	_____	Y or N	_____	_____
- Information concerning compensation programs available from the State and other sources of financial relief and information on Transitional Compensation for Abused Dependents (if applicable).	_____			
- DD 2703 provided at conclusion of trial	_____			
- Approximate date of release from confinement	_____			
- DD 2704 provided (notification on inmate status)	_____	Y or N	_____	_____
- Forwarded to appropriate confinement facility and Navy Personnel Command	_____			

*Complies with DODI 1030.2, June 4, 2004

<Date>

From: Commanding Officer, RLSO _____
To: Commander, Naval Legal Service Command

Subj: COMPLIANCE WITH THE PROVISIONS OF THE VICTIM AND
WITNESS ASSISTANCE PROGRAM (VWAP)

Ref: (a) JAG/COMNAVLEGSVCCOM 5800.4A
(b) OPNAVINST 5800.7A

Encl: (1) List of Open Cases Requiring Completion of VWAP
Requirements (If applicable)

1. As directed by reference (a), RLSO _____ has completed a comprehensive review of all open and pending cases currently onboard to ensure full compliance with pertinent VWAP obligations. The checklist provided as enclosure (1) to reference (a) was used to conduct this review and has been completed for each individual post-preferred trial-level case and post-trial case still pending convening authority action. The original checklist will be retained onboard RLSO _____ for inspection/review at a later date.

2. Based on the review of all cases which has been conducted, I certify the following (check as applicable):

- Victim and witness notification requirements as set forth in references (a) and (b) have been fully met in all cases.
- Victim and witness notification requirements as set forth in references (a) and (b) have not been fully met in all cases. Continuances in these cases, identified by case name and circumstances (i.e., charges, forum, status of case, reasons for noncompliance) in enclosure (1), will be sought until such time as all VWAP requirements can be met.

Commanding Officer Signature

Enclosure (2)

VICTIM DECLINATION ACKNOWLEDGEMENT

Please circle YES or NO for each of the following. If the statement does not apply to you, circle N/A for "not applicable."

- I have either worked with or voluntarily declined to work with a:

○ Sexual Assault Response Coordinator (SARC) *	YES	NO	N/A
○ Sexual Assault Prevention and Response Victim Advocate (VA)*	YES	NO	N/A
○ Chaplain*	YES	NO	N/A
○ Counselor*	YES	NO	N/A
○ Legal Assistance Attorney*	YES	NO	N/A
○ Victim Witness Assistance Coordinator (VWAC)	YES	NO	N/A

- I received notification of the pre-trial confinement status of suspected offender. YES NO N/A
- I was advised I have the right to be consulted on the decision to refer or not refer this case to trial. YES NO N/A
- I received notification of the initial appearance of the suspected offender before a judicial hearing officer or at an Article 32 and the release of the suspected offender from pre-trial confinement. YES NO N/A
- I was offered assistance in obtaining services I needed to participate in the court proceedings (childcare, translators, parking, etc.). YES NO N/A
- I was advised that if the case went to court-martial, I would be able to wait in a private area during court proceedings. YES NO N/A
- I was notified of any scheduling changes/delays and dates/times of court proceedings. YES NO N/A
- I was advised that trial counsel could inform my employer or creditors that my absence from work or inability to make timely payments on an account were due to being the victim of a crime. YES NO N/A
- I was advised that I have the right to be consulted and have trial counsel convey my input to the Convening Authority regarding a decision to dismiss charges or enter into a pre-trial agreement. YES NO N/A
- I was advised that I would be notified as to disposition of the case, including guilty plea, verdict, or withdrawal/dismissal of charges. YES NO N/A
- I was advised that if the case went to court-martial, I would have the opportunity to present information to the court at sentencing regarding the financial, social, psychological and physical harm suffered. YES NO N/A
- I have been provided with information concerning compensation programs available from the State and other sources of financial relief and information on Transitional Compensation for Abused Dependents YES NO N/A

At this time, after being provided the support described above, I have decided against providing additional information and/or participating in the investigation and potential prosecution of the suspect. I understand that the investigation may be closed and the suspect may not be prosecuted. I also understand that if the investigation/prosecution continues, the chances that the suspect will be brought to justice without my assistance are greatly reduced. Initials: _____

I understand that I can change my mind and cooperate with this investigation/prosecution at a later date but the delay may affect the ability to successfully investigate/prosecute the suspect. Initials: _____

I fully understand the above and make my decision freely and voluntarily.

Victim's signature	Victim's printed name/title	Date
Witness' signature	Witness' printed name/title	Date

United States vs. _____ NCIS case number: _____

*Note: Civilian victims who are not the dependent of a military member are not entitled to these services.

Penetration Offenses

- Forum Restriction
- Mandatory Minimum Sentence

Victims & Post-Trial Process

- Record of Trial
- Clemency

Limitations on CA's Action

- Findings
- Sentence

FY14 NDAA §1705

Penetration Offenses

Forum Restriction

&

Mandatory Minimum Punishment

Penetration = GCM

Any penetration offense committed on or after 24 June 2014, may only be referred to GCM for adjudication.

Which offenses?

Art. 120 (a) – Rape

Art. 120(b) – Sexual assault

Art. 125 – Forcible sodomy

Art. 120b(a) – Rape of a child

Art. 120b(b) – Sexual assault of a child

Art. 80 – Attempts to commit any of the above

FY14 NDAA §1705
amends Art. 18, UCMJ

Mandatory Minimum Punishment

A finding of guilty for any penetration offense committed on or after 24 June 2014, requires the sentence to include, at a minimum, dismissal or DD.

Which offenses?

Art. 120 (a) – Rape

Art. 120(b) – Sexual assault

Art. 125 – Forcible sodomy

Art. 120b(a) – Rape of a child

Art. 120b(b) – Sexual assault of a child

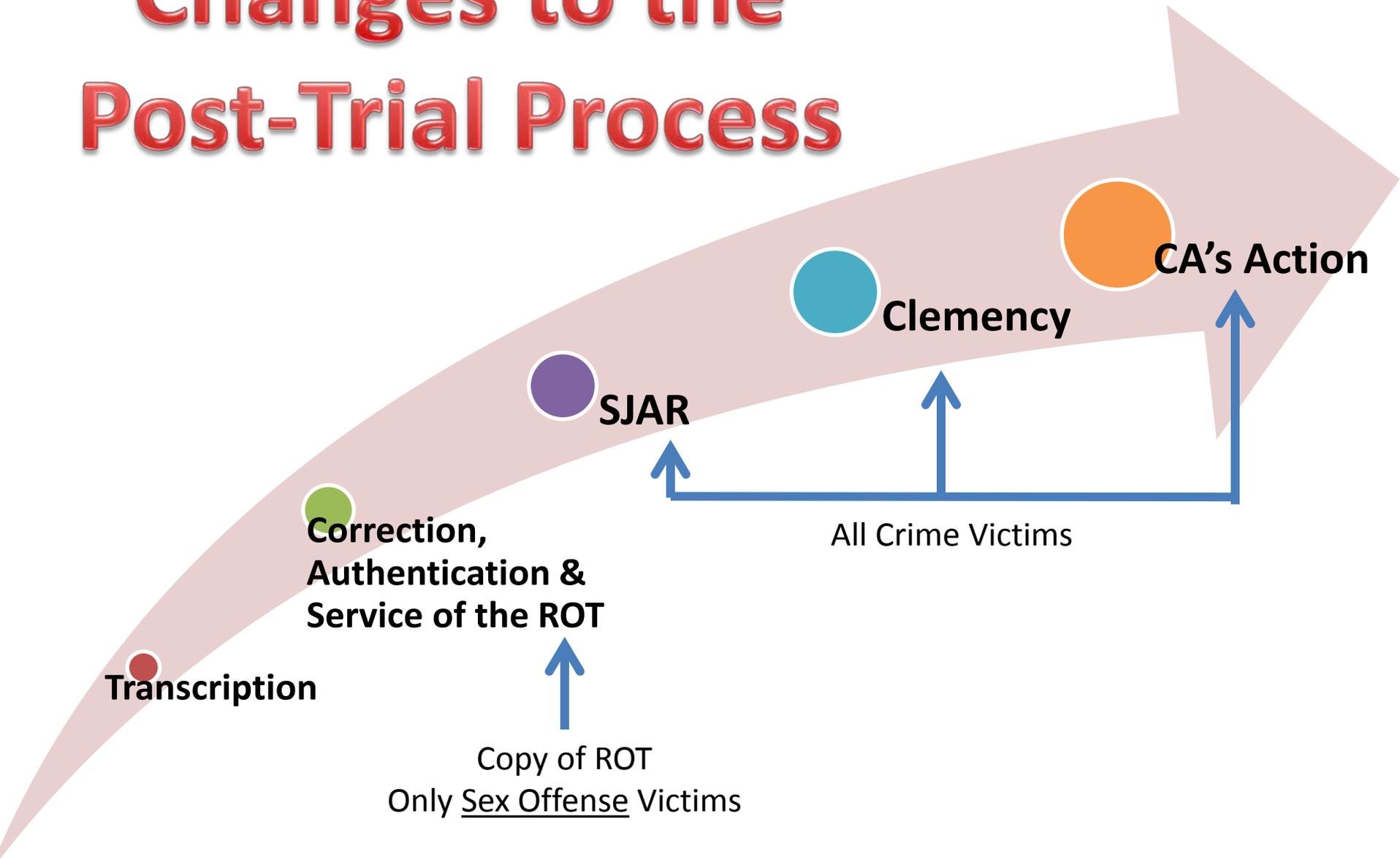
Art. 80 – Attempts to commit any of the above

FY14 NDAA §1705
amends Art. 56, UCMJ

Male-on-male Abusive Sexual Contact. Victim alleges that (on 25 Jun 2014) the Accused touched the Victim's genitalia and buttocks over his clothing.

Must this case be referred to GCM?

Changes to the Post-Trial Process



Sex Offense Victims

Right to Free Copy of
Record of Trial

OLD RULE

- Art. 54(e) was amended by FY12 NDAA to create an obligation to serve a copy of the ROT on qualifying victims.
- Applied only to victims of Art. 120 offenses who actually testified.

NEW RULE

- EO 13669 amends RCM 1103 to provide a free copy of the ROT to victims of Art. 120, 120b, 120c, and 125 offenses and attempts to commit any of those offenses under Art. 80, regardless of whether the victim testifies.

WHO

is considered a “victim”?

RCM 1103(g)(3)

a “Victim” is a person who:

1

- Suffered harm as a result of a charged offense

2

- Is named in a specification

3

- Under any Art. 120, 120b, 120c, or 125 offense (or Art. 80 attempt)

Free Copy of Record of Trial

Which offenses?

- Art. 120 – Rape, SA, Agg. Sex Contact, Abusive SC
- Art. 120b – Rape, SA, Sex Abuse of Child
- Art. 125 – Forcible sodomy
- Art. 120c – Voyeurism, Pandering, Indecent Exposure
- Art. 80 – Attempts to commit any of the above

Discussion to RCM 1103(g)(3)

“This rule does not limit the Services’ discretion to provide ROTs to other individuals.”

WHAT

are victims entitled to
receive?

“Record of Trial” defined:

Per RCM 1103(g)(3)(D) - For the purposes of this section, the record of trial shall consist of the documents described in **RCM 1103(b)(2)**:

- Transcript
- Charge sheet(s)
- Convening order & amending order(s)
- Written request for MJ alone or enlisted members (if any)
- CA's Action
- Prosecution and Defense Exhibits received in evidence
- Appellate exhibits

Matters NOT required to be provided to victims:

Per RCM 1103(g)(3)(D)

Matters attached to the record as described in
RCM 1103(b)(3) are NOT required to be provided:

- Clemency matters submitted by the accused
- Any response by DC to the post-trial review
- Recommendations and other papers relative to clemency
- Any deferment request and action on it
- If not used as exhibits:
 - Art. 32 IO Report
 - SJA Art. 34 Advice Ltr
 - Record of former hearings (if rehearing)
 - Written special findings by MJ
- Exhibits not rec'd in evidence
- See RCM 1103(b)(3) for complete list

Matters that **SHALL NOT** be provided:

1

- Classified info

2

- Sealed exhibits

3

- Info protected by Privacy Act (PII)

PII must be redacted from ROT prior to service on the victim!

Sex Offense Victims – Copy of Record of Trial

Qualifying Victim? →

(A) Must provide:

(1) Suffered harm

(2) Named in specification; AND

(3) Art. 120, 120b, 120c, 125 (or 80)

- Transcript
- Change sheet(s)
- Convening & amending order(s)
- Written request for MJ alone or enlisted members
- CA's Action
- Prosecution and Defense Exhibits received in evidence
- Appellate exhibits

(B) Should provide: ←

- [1] Accused.** Any information regarding the accused, except his social security number and financial account numbers, properly admitted into evidence and presented to the finder of fact on the merits or on sentencing.
- [2] Victim.** Any information presented about the victim or presented by the victim.

The following individual items should be provided to the victim about any witness, member, military judge, or counsel:

- Name (except for other victims or family members of the other victims),
- Gender,
- Rank / Date of entry,
- Branch of service / MOS / OCC series
- Duty station,
- Salary,
- Source of commission,
- Promotion date,
- Awards and decorations,
- Professional Military Education / Post graduate or technical education,
- Duty stations at any given time (EXCEPTION: No data will be disclosed to reflect a current or past assignment to NSA, DIA, NRO, or NGA),
- Prior civilian employment relevant to current job,
- Official photograph, and
- Membership in official or professional groups.

(C) Do not have to provide: ←

- If not used as exhibits:
 - Art. 32 IO report
 - SJA's Art. 34 advice
 - If the trial was a rehearing or new or other trial of the case, the record of the former hearing(s); and
 - Written special findings by the MJ.
- Exhibits that were not received in evidence.
- Clemency matters submitted by the accused per RCM 1105
- Any deferment request and the action on it
- Explanation for any substitute authentication
- Explanation for any failure to serve the ROT on the accused
- Post-Trial recommendation of the SJA/LO and proof of service on DC;
- Any response by DC to the post-trial review
- Recommendations and other papers relative to clemency
- Any statement why it is impracticable for the CA to act
- Conditions on suspension, if any
- Waiver of appellate review
- Records related to vacation of suspension per RCM 1109
- Documents pertaining to the receipt of the ROT by the Victim per RCM 1103.

(D) Do NOT provide: ←

- Classified information
- Sealed exhibits

(E) Should be REDACTED

(unless it meets one of the two exceptions in (B)1 or (B)2 above):

- Social Security Number,
- Bank account or credit card information,
- Names of other victims of sexual assault (initials do not need to be redacted),
- Names of relatives of other sexual assault victims (initials do not need to be redacted),
- Prior sexual conduct of other victims,
- Photos / Videos of other alleged victims,
- Home or office address,
- Personal or office telephone number,
- Personal or official e-mail address,
- Home of record (city and state),
- Ethnicity / Race,
- Religion,
- Citizenship,
- Age / Date of birth,
- Marital status,
- Number / Names of children,
- Medical Records,
- Details of health and insurance benefits,
- Fitness Reports/Supervisory assessments of professional conduct and ability,
- Names of references,
- Type of leave taken,
- Law enforcement records, and
- Previous unrelated private sector employment.

References:

- Executive Order 13669
- RCM 1103
- RCM 1104
- TCAP Guidance on Art. 54(e) Redaction

NOTICE

NLT authentication, TC shall notify each qualifying victim of the opportunity to receive a copy of the ROT.

Declination

Victims may decline in writing and
any written declination
shall be attached to the original ROT.

HOW & WHEN

Service of ROT & CAA
on victims

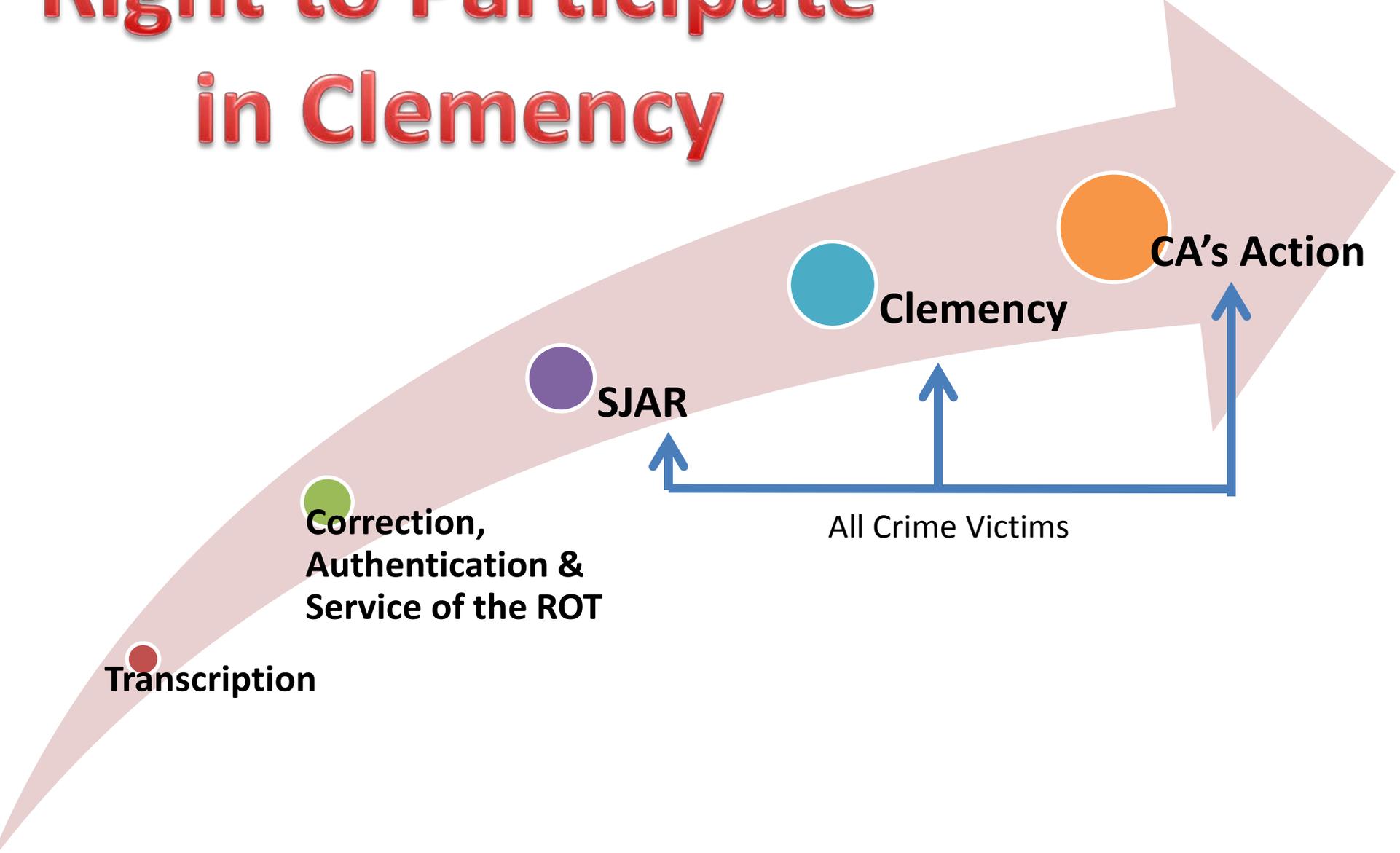
Service of ROT

- Copy of ROT shall be provided to victim as soon as authenticated (or later if the victim so requests).
- Victim's receipt of ROT, including any delay, shall be documented and attached to the original ROT.

CA's Action

- A copy of the CAA shall be provided to each qualifying victim as soon as prepared.
- Victim can request in writing to delay service of ROT until CAA is available.

Right to Participate in Clemency



RCM 1105A

- A crime victim shall have the right to submit a written statement to the CA after the sentence is adjudged.

WHO
is considered a
“crime victim”?

Victim Right to Participate in Clemency Process

RCM 1105A

a “Crime Victim” is a person who:

1

- Suffered harm as a result of a charged offense

2

- Of which the accused was found GUILTY, AND

3

- On which the CA is taking action.

*****Not just sex offense victims*****

WHAT

may a victim submit?

Victim Right to Participate in Clemency Process

Format of Victim Statement

- Shall be in writing & signed by Victim
- May include photos
- May **NOT** include video, audio, or other media



WHEN?

Timing of Submission

Victim Right to Participate in Clemency Process

**Crime Victims shall submit
statement to SJA/LO NLT
10 days after the later of:**

Receipt of authenticated ROT (or waiver)

(if victim is entitled to a copy of ROT (i.e., sex offense victims))

OR

Date SJAR is served on crime victim

Additional Time

- For good cause, CA may extend the submission period for not more than an **additional 20 days.**

NOTICE

TC shall inform crime victims of their clemency rights and the manner in which their statements may be submitted.

SJAR

RCM 1106

Victim Right to Participate in Clemency Process

When is an **SJAR** required?

1

- All GCMs

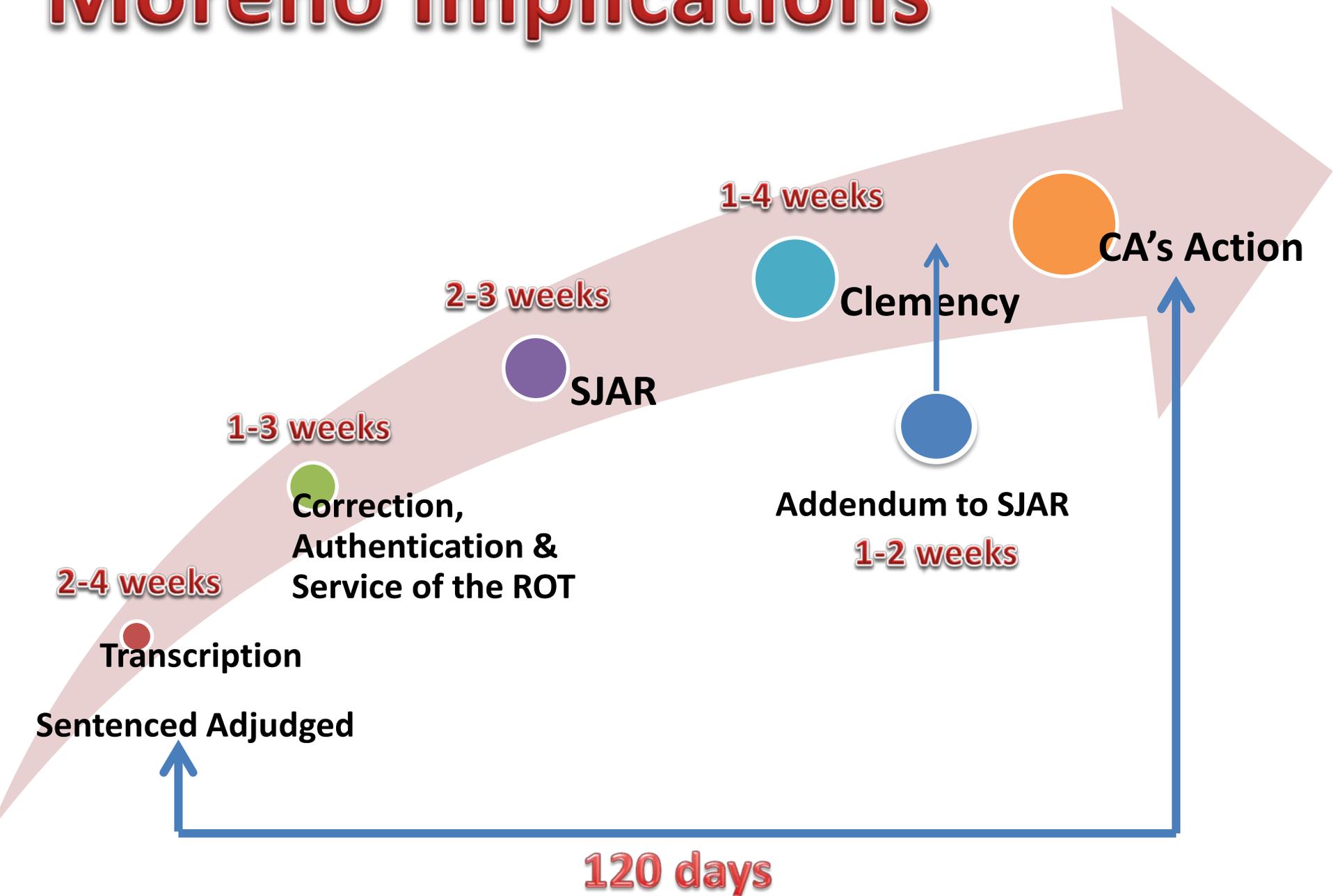
2

- SPCM - sentence adjudged includes BCD or 1 year confinement

3

- If the accused was found guilty of ANY OFFENSE that resulted in direct harm to a victim, a copy of the SJAR will be served on that victim.

Moreno Implications



Addendum to SJAR – New Matter

RCM 1106(f)(7):

- When a new matter is introduced after the SJAR has been served, SJA must serve the new matter on the Accd/DC in an addendum.
- Accd/DC gets 10 days from service of the addendum to submit a response.

Is Victim Clemency Statement a “New Matter”?

Yes, unless...

"If a victim statement, submitted under RCM 1105A, is served on the accused prior to service of the recommendation, then that statement shall not be considered a "new matter" when it is again served on the accused as an enclosure to the recommendation.

Discussion to RCM 1106(f)(7)

Recommended Moreno Time-Saving COA:

- TC should coordinate with VLC/Victim & SJA to have VLC/Victim submit clemency statement so it can be served on Accd/DC before SJAR is signed.
- SJA should then attach the Victim's clemency statement to the SJAR as an enclosure.
- This will avoid the necessity of an addendum and the additional 10 days of response time.

Rule 1107. Action by convening authority

(3) *Matters considered.*

(A) *Required matters.* Before taking action, the convening authority shall consider:

(iv) Any statement submitted by a crime victim pursuant to R.C.M. 1105A.

(C) *Prohibited matters.* The convening authority shall not consider any matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.

Limitations on CA's Ability to Take Certain Actions on **Findings & Sentence**

Applies to offenses committed
on or after 24 June 2014

CA Action on Findings

Art. 60(c)(3)(B), UCMJ

- **Rule**: Except for “qualifying offense”, the CA may not:
 - Dismiss / set aside finding of Guilty
 - Change a finding G to LIO
- **“Qualifying Offense”**
 - Max punishment = 2 years or less AND
 - Sentence adjudged does NOT include punitive discharge or >6 months confinement.
 - Art. 120(a) or (b), Art. 120b, Art. 125 are NEVER “qualifying offenses”.

CA Action on Sentence

Art. 60(c)(4), UCMJ

- **Rule:** The CA may not disapprove, commute, or suspend in whole or in part an adjudged sentence of:
 - **confinement for more than six months or**
 - **dismissal, dishonorable discharge, or bad conduct discharge.**

CA Action on Sentence

Art. 60(c)(4)(B), UCMJ

Exception 1 – Trial Counsel Recommendation:

Upon the recommendation of the TC, in recognition of the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the CA shall have the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part, even with respect to an offense for which a mandatory minimum sentence exists.

CA Action on Sentence

Art. 60(c)(4)(C), UCMJ

Exception 2 – Pre-Trial Agreements:

The CA shall have the authority to approve, disapprove, commute, or suspend a sentence in whole or in part pursuant to the terms of a PTA, subject to the following:

- If a mandatory minimum sentence of a DD applies, the CA may only commute the DD to a BCD, **unless** Exception 1 (TC recommendation) applies.

Pre-Trial Agreements

- CA's ability to accept pleas to LIOs or NG+WD/DS not limited
- CA's ability to limit punishments other than discharge not limited

CA Action on Sentence

ALNAV 051/14:

Please refer to Art. 60(c)(4), UCMJ, not ALNAV 051/14 as ALNAV 051/14 is inconsistent with the FY14 NDAA amendments to Art. 60 and is in the process of being revised.

If CA modifies findings or sentence, must include a **written explanation** in ROT.

Sex Offense Victims – Copy of Record of Trial

Qualifying Victim?

(A) Must provide:

- (1) Suffered harm
- (2) Named in specification; AND
- (3) Art. 120, 120b, 120c, 125 (or 80)

- Transcript
- Charge sheet(s)
- Convening & amending order(s)
- Written request for MJ alone or enlisted members
- CA's Action
- Prosecution and Defense Exhibits received in evidence
- Appellate exhibits

(B) Should provide:

- (1) Accused.** Any information regarding the accused, except his social security number and financial account numbers, properly admitted into evidence and presented to the finder of fact on the merits or on sentencing.
- (2) Victim.** Any information presented about the victim or presented by the victim.

The following individual items should be provided to the victim about any witness, member, military judge, or counsel:

- Name (except for other victims or family members of the other victims),
- Gender,
- Rank / Date of entry,
- Branch of service / MOS / OCC series
- Duty station,
- Salary,
- Source of commission,
- Promotion date,
- Awards and decorations,
- Professional Military Education / Post graduate or technical education,
- Duty stations at any given time (EXCEPTION: No data will be disclosed to reflect a current or past assignment to NSA, DIA, NRO, or NGA),
- Prior civilian employment relevant to current job,
- Official photograph, and
- Membership in official or professional groups.

(C) Do not have to provide:

- If not used as exhibits:
 - Art. 32 IO report
 - SJA's Art. 34 advice
 - If the trial was a rehearing or new or other trial of the case, the record of the former hearing(s); and
 - Written special findings by the MJ.
- Exhibits that were not received in evidence.
- Clemency matters submitted by the accused per RCM 1105
- Any deferment request and the action on it
- Explanation for any substitute authentication
- Explanation for any failure to serve the ROT on the accused
- Post-Trial recommendation of the SJA/LO and proof of service on DC;
- Any response by DC to the post-trial review
- Recommendations and other papers relative to clemency
- Any statement why it is impracticable for the CA to act
- Conditions on suspension, if any
- Waiver of appellate review
- Records related to vacation of suspension per RCM 1109
- Documents pertaining to the receipt of the ROT by the Victim per RCM 1103.



(D) Do NOT provide: 

- Classified information**
- Sealed exhibits**



(E) Should be REDACTED

(unless it meets one of the two exceptions in (B)1 or (B)2 above):

- Social Security Number,
- Bank account or credit card information,
- Names of other victims of sexual assault (initials do not need to be redacted),
- Names of relatives of other sexual assault victims (initials do not need to be redacted),
- Prior sexual conduct of other victims,
- Photos / Videos of other alleged victims,
- Home or office address,
- Personal or office telephone number,
- Personal or official e-mail address,
- Home of record (city and state),
- Ethnicity / Race,
- Religion,
- Citizenship,
- Age / Date of birth,
- Marital status,
- Number / Names of children,
- Medical Records,
- Details of health and insurance benefits,
- Fitness Reports/Supervisory assessments of professional conduct and ability,
- Names of references,
- Type of leave taken,
- Law enforcement records, and
- Previous unrelated private sector employment.

References:

- Executive Order 13669
- RCM 1103
- RCM 1104
- TCAP Guidance on Art. 54(e) Redaction

TRIAL COUNSEL ASSISTANCE PROGRAM GUIDANCE MEMO 1-14

Subj: IMPLEMENTATION GUIDANCE FOR REDACTION OF RECORDS OF TRIAL RELEASED TO VICTIMS OF SEXUAL ASSAULT

1. Purpose. This memorandum provides guidance on proper compliance with Article 54(e), which requires Legal Services Support Sections to provide a free copy of the record of a general or special court-martial to victims of qualifying offenses who testify at the court-martial. Qualifying sex offenses include sexual assault or other crimes under Article 120, 120b, 120c, 125 or attempts to commit the previous offenses. The record must be redacted in such a way as to provide the maximum amount of information to victims, while protecting witnesses, counsel, members, the military judge, and the accused from an unlawful invasion of their privacy.

2. Background

a. Article 54(e), UCMJ requires the release of records of trial to testifying victims in sexual assault cases. Information that would unlawfully violate the privacy interests of any party, to include those afforded by 5 U.S.C. § 552a, the Privacy Act of 1974, shall not be provided in any release pursuant to Article 54(e).

b. The Privacy Act prohibits disclosing information that would constitute a clearly unwarranted invasion of personal privacy for the accused or any other witness, counsel, member, or the military judge. The Secretary of the Navy provides guidance on compliance with the Privacy Act through 32 C.F.R. 701.112 and SECNAVINST 5211.5E. The SecNav Instruction categorizes Privacy Sensitive material as Personally Protected Information (PPI) and defines it as “[a]ny information or characteristic that may be used to distinguish or trace an individual’s identity.” If information qualifies as PPI, the disclosure authority must balance the “personal privacy interests of the individual against the qualifying [victim] interest in disclosure.” *Chang v. Dep’t of Navy*, 314 F.Supp.2d 35 (D.C. Cir. 2004). Information should be protected if its disclosure could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is kept, and these harms outweigh the victim’s interest in knowing the information.

3. Discussion

a. The Legal Services Support Sections must inform victims that release of any type of PPI to individuals under Article 54(e), the Privacy Act, and the SECNAVINST is not considered a public release of information, and therefore released documents should still be treated as private, even after release to the victim.

b. A victim generally has an interest to know what information was presented at the court-martial regarding the offense committed against the victim. The victim also has an interest in knowing who ultimately made the decision as to guilt or innocence and what the decision was based upon. Based upon these interests and balancing them against the personal privacy interests of the accused, members, counsel, and the military judge, the following information should be provided to the victim:

i. Any information regarding the accused, except his social security number and financial account numbers, properly admitted into evidence and presented to the finder of fact on the merits or on sentencing. Any information presented about the victim or presented by the victim. Beyond these two major categories, the following individual items should be provided to the victim about any witness, member, military judge, or counsel:

- (a) Name (except for other victims or family members of the other victims),
- (b) Gender,
- (c) Rank / Date of entry,
- (d) Branch of service / MOS / OCC series
- (e) Duty station,
- (f) Salary,
- (g) Source of commission,
- (h) Promotion date,
- (i) Awards and decorations,
- (j) Professional Military Education / Post graduate or technical education,
- (k) Duty stations at any given time (EXCEPTION: No data will be disclosed to reflect a current or past assignment to NSA, DIA, NRO, or NGA),
- (l) Prior civilian employment relevant to current job,
- (m) Official photograph, and
- (n) Membership in official or professional groups.

ii. The following information should be redacted unless it meets one of the two general exceptions in paragraph 3.b.i. above.

- (a) Social Security Number,
- (b) Bank account or credit card information,
- (c) Names of other victims of sexual assault (initials do not need to be redacted),
- (d) Names of relatives of other sexual assault victims (initials do not need to be redacted),
- (e) Prior sexual conduct of other victims,
- (f) Photos / Videos of other alleged victims,
- (g) Home or office address,
- (h) Personal or office telephone number,
- (i) Personal or official e-mail address,
- (j) Home of record (city and state),
- (k) Ethnicity / Race,
- (l) Religion,
- (m) Citizenship,
- (n) Age / Date of birth,
- (o) Marital status,
- (p) Number / Names of children,
- (q) Medical Records,
- (r) Details of health and insurance benefits,
- (s) Fitness Reports/Supervisory assessments of professional conduct and ability,
- (t) Names of references,
- (u) Type of leave taken,
- (v) Law enforcement records, and
- (w) Previous unrelated private sector employment,

c. A victim has the right to appeal the redaction of any redacted information pursuant to SECNAVINST 5720.42F and must be informed of this right. The enclosed cover sheet should be provided to all victims to inform them of this right.

Prepared by:

Maj Mark D. Sameit, USMC
Head, Trial Counsel Assistance Program
703-693-8955

Approved by:

Col John G. Baker, USMC
Deputy Director, Judge Advocate Division for
Community Development Strategy & Plans



DEPARTMENT OF THE NAVY

XXXXXX
XXXXXX
XXXXXX

5720
LSSS-XX
Date

SENT VIA EMAIL TO:

Dear Mr. [REDACTED] :

SUBJECT: RECORD OF TRIAL IN THE CASE OF UNITED STATES V. [REDACTED], USMC.

The enclosed record of trial is provided to you pursuant to your rights under Article 54(e), UCMJ. You are advised that this disclosure is not a public disclosure and contains personally protected information on individuals as defined in SECNAVINST 5211.5E. These documents should be treated as a private release and should not be released to the public because of the existence of this personally protected information.

You will see that some information has been redacted. Specifically, some third persons' personally protected information has been withheld pursuant to SECNAVINST 5211.5E, which prohibit disclosure of personal information when an individual's privacy interest in it outweighs the victim's interest.

In view of the above, you may appeal the decision to redact information to the Judge Advocate General (Code 14), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066. Your appeal, if any, must be postmarked within 60 calendar days from the date of this letter and should include a copy of your initial request, a copy of this letter, and a statement indicating why you believe it should be granted. We recommend that your appeal and its envelope both bear the notation "Privacy Act Appeal."

Questions concerning this action should be directed to **Review Officer** of my staff at **(XXX) XXX-XXXX** or via email to **XXXXXX@usmc.mil**. Please reference the case name in the subject line above.

Sincerely,

I. M. REVIEW

Review Officer, LSSS-XXX

Enclosure: Record of Trial ICO United States v. [REDACTED], USMC.

Copy of Record of Trial

RCM 1103

Victim

- (1) Suffered harm
- (2) Named in sex offense specification

- Art. 120 – Rape, SA, Agg. Sex Contact, Abusive Sex Contact
- Art. 120b – Rape, SA, Sex Abuse of Child
- Art. 120c – Voyeurism, Pandering, Indecent Exposure
- Art. 125 – Forcible sodomy
- Art. 80 – Attempts to commit any of the above

“Victim(s)” entitled to ROT:	Provided on:	Receipt/Declination to Court Reporter:
1) _____	_____	_____
2) _____	_____	_____
3) _____	_____	_____
4) _____	_____	_____
5) _____	_____	_____
6) _____	_____	_____
7) _____	_____	_____
8) _____	_____	_____
9) _____	_____	_____

Clemency – Victim Participation

RCM 1105A, 1106, 1107

Crime Victim – served with SJAR & right to submit statement to CA.

- (1) Suffered harm as the results of the commission of any offense
- (2) Of which the accused was found guilty; AND
- (3) On which the CA is taking action

“Crime Victim(s)” entitled to SJAR/INPUT:	SJAR provided:	Input rec’d:
1) _____	_____	_____
2) _____	_____	_____
3) _____	_____	_____
4) _____	_____	_____
5) _____	_____	_____
6) _____	_____	_____
7) _____	_____	_____
8) _____	_____	_____
9) _____	_____	_____

VICTIMS:

Explain the post-trial process

- ❑ **DD Form 2703** – Provide copy of form to Vs.
 - CMS TRACKING REQUIREMENTS (VWAP TAB):
 - **DD 2703** – date form provided to V
 - **For DD2703** – name of person who served V with form

- ❑ **DD Form 2704** - Right to Notification of Changes in Confinement Status – DD Form 2704
 - All victims are entitled to be notified of changes in confinement status (i.e., release, transfer, parole, escape, death, etc).
 - The names of ALL VICTIMS must be listed on the DD 2704 even if they do not elect notification.

 - CMS TRACKING REQUIREMENTS (VWAP TAB):
 - **DD 2704** – date form provided to V
 - **For DD2704** – name of person who served V with form
 - **Election to be notified**

- ❑ Record of Trial (ROT) created (including verbatim or summarized transcript)
 - “Victims” are entitled to a free copy of the ROT
 - “Victims” are people who:
 - Suffered harm; AND
 - Are named in a sex offense spec (Art. 120, 120b, 120c, 125, or 80)
 - Victim can decline to receive a copy of ROT.
 - Victim can choose to have copy of ROT served on VLC.
 - Get V Email Address - ROT is provided to V electronically so if V elects to receive ROT, ask Victim for email address s/he would like us to contact her/him at to provide ROT.
 - Trial Counsel is responsible for ensuring V receives ROT & documenting receipt.
 - Receipt of ROT (or declination) signed by V must be inserted into the ROT.
 - TC must supervise court reporter in redaction of certain information from the victim’s copy of the ROT (see “Victim ROT Outline – Guidance on Redaction of Victim’s copy of ROT”).

 - CMS TRACKING REQUIREMENTS (VWAP TAB):
 - **Date Victim Received Art. 54(e) rights advertisement** (i.e., Date V Notified of Right to ROT)
 - **Did Victim request a ROT?**
 - **Method of Service** (i.e., AMRDEC SAFE)
 - **Date ROT was mailed to Victim** (i.e., Date V provided ROT via AMRDEC SAFE)

- ❑ SJAR & Clemency
 - All “Crime Victims” are entitled to a copy of the SJAR & to provide input to the CA during the Clemency Process.
 - “Crime Victims” are people who:

- Suffered harm;
 - Of which the Accused was found guilty; AND
 - On which the CA is taking Action.
- SJAR
 - Crime Victims can decline to receive a copy of the SJAR and/or to provide input to CA.
 - Crime Victims can choose to have copy of SJAR served on VLC. If V elects to have SJAR served on VLC, make sure to document that election.
 - Get V Email Address - SJAR is provided to V electronically so if V elects to receive SJAR, ask V for email address s/he would like us to contact her/him at to provide SJAR.
 - SJA is responsible for ensuring V received SJAR and provides input
 - TC will assist SJA by:
 - preparing “List of Victims Eligible for ROT and SJAR Clemency Input”
 - providing SJA with sample “Acknowledgement of Receipt of SJAR (Victim)”
 - CMS TRACKING REQUIREMENTS (VWAP TAB):
 - **SJAR**
 - At Signing – If V elects to rec SJAR when signed.
 - At CAA – If V elects to rec SJAR after CA’s Action is signed.
 - Waived – If V does not wish to receive SJAR.
 - **Date SJAR Served**
- Input During Clemency Process
 - “Crime Victims “ have the right to submit a written (signed) statement to CA after sentence is adjudged.
 - CMS TRACKING REQUIREMENTS (VWAP TAB):
 - **10 Day Expires** – Per RCM 1105A(d)(1) – The crime victim shall submit the statement NLT 10 days after the later of (A) receipt or waiver of ROT or (B) the date on which the SJAR is served.
 - **Victims 1105 Matters**
 - Pending
 - Received
 - Waived
 - **Date Victim 1105 Matters Received**

☐ CA’s Action

- “Victims” shall be served a copy of the CAAs (unless waived in writing).
 - “Victims” are people who:
 - Suffered harm; AND
 - Are named in a sex offense spec (Art. 120, 120b, 120c, 125, or 80)
 - Victim can waive right to receive a copy of CAA.
 - Victim can choose to have copy of CAA served on VLC.
- CMS TRACKING REQUIREMENTS (VWAP TAB):
 - **CA’s Action**
 - **Date Served CAA Action**
 - **Type of Receipt**

WITNESSES:

Explain the post-trial process

- ❑ **DD Form 2703** – Provide copy of form to all Ws (excluding defense Ws and law enforcement).
 - CMS TRACKING REQUIREMENTS (VWAP TAB):
 - **DD 2703** – date form provided to W
 - **For DD2703** – name of person who served W with form

- ❑ **DD Form 2704** - Right to Notification of Changes in Confinement Status – DD Form 2704
 - Only CERTAIN witnesses are entitled to be notified of changes in confinement status (i.e., release, transfer, parole, escape, death, etc).
 - “CERTAIN” witnesses = those who fear harm from the offender.
 - If W says they fear harm, add their name on the DD Form 2704.
 - If W does NOT fear harm, do not add their name on the DD Form 2704.

 - CMS TRACKING REQUIREMENTS (VWAP TAB):
 - **DD 2704** – date form provided to V
 - **For DD2704** – name of person who served V with form
 - **Election to be notified**