

**BUSINESS RULES FOR THE PROVISION OF VLC SERVICES
TO MINORS AND CLIENTS WITH DIMINISHED CAPACITY**

The following guidance is provided to assist Navy VLC in establishing legal representation for minors and clients with diminished capacity and for executing legal advice, aid, and advocacy for those victims. This guidance has been approved by Commander, Naval Legal Service Command and shall remain in effect until or unless revised or cancelled by that authority. Questions regarding implementation of these policies shall be referred to Chief of Staff, Navy Victims' Legal Counsel Program, or his/her Deputy.

Definitions

1. **Sexual Assault Victim.** A person who alleges she or he suffered direct emotional or physical harm as a result of the commission of a sex-related offense as defined by state or federal law or the Uniform Code of Military Justice (UCMJ) Articles 120, 120a, 120b, 120c, 125, or an attempt to commit such offenses.
2. **Diminished capacity.** A person whose capacity to make adequately considered decisions in connection with their representation is diminished, whether because of minority, mental impairment, or for some other reason. Refer to Rule 1.14 of the JAG Rules of Professional Conduct (JAGINST 5803.1D) for additional guidance.
3. **Minor.** A person under the age of 18. A "minor" may alternatively be referred to as a "child" herein.
4. **Eligibility.** The following individuals who are eligible for military legal assistance per 10 U.S.C. § 1044 are eligible for VLC services, to include: Navy members on active duty; Navy reserve personnel on active duty or on inactive-duty training at the time of the assault; other Department of Defense service personnel and retirees when assaulted by an active-duty Navy member; dependents, including spouses and children, of active duty Navy members when assaulted by an active duty Navy member; and some overseas DON civilians. Refer to NAVADMIN 087/14 for additional information.

5. **Guardian.** A person appointed to act as a *general* guardian over the person and their affairs by a competent family or dependency State court of law, also known as a "conservator," "custodian" or "curator."

6. **Guardian ad litem.** A person appointed by a State civil or criminal court to represent the *legal* interests of a minor or person with diminished capacity in a particular cause before the court.

7. **Article 6b Designee.** A person appointed by a military judge or other designated authority in accordance with UCMJ § 806b to assume and enforce the victims' Article 6(b) rights under said section.

Business Rules

1. **Applicability.** These business rules apply to the legal representation of minors and persons with diminished capacity who are otherwise eligible for VLC services on or after 24 June 2014. All Navy VLC shall adhere to these rules in the formation of any attorney-client relationship with minor or diminished capacity sexual assault victims.

2. **Representation.** The sexual assault victim is the VLC's client at all times. The VLC has an ethical obligation to advocate for the client's expressed interests. In accordance with Rule 1.14 of JAGINST 5803.1D, when a client's capacity is diminished due to age or other reason, the VLC must, as far as reasonably possible, maintain a normal attorney-client relationship with the client. This means that VLC shall assess each client's capacity separately on a case-by-case basis to determine if a particular client has the considered judgment and capacity to direct VLC services. If VLC determines that a minor or diminished capacity client has sufficient considered judgment and capacity to direct VLC services, that client shall retain VLC in a traditional attorney client relationship.

All child and diminished capacity clients should, at a minimum, be personally contacted and interviewed by the VLC to determine the client's wishes and assess the client's well-being and capacity to direct the representation. Unless impossible, it is critical for the VLC to observe the child and the child's

interactions with others (parent(s), guardian, the attorney, FAP personnel, counselors, law enforcement, etc.) and assess the severity of the injuries, the child's general health and condition and the child's mental acuity and ability to listen, understand, reason and make decisions. Even children four years of age or old enough to communicate orally should personally meet and communicate with VLC on one or more occasions to allow VLC to assess the child victims' capacity to direct the VLC's representation.

a. **Determining whether a minor or diminished capacity victim has considered judgment and the capacity to direct the representation.** Determining whether a minor has considered judgment and the capacity to direct representation is of paramount importance and VLC shall take care to devote sufficient time and opportunity to make an accurate assessment of such matters both initially and throughout representation of the child victim.

To determine whether the minor has considered judgment and the capacity to direct the representation, VLC should focus on the minor's decision-making process, rather than the minor's actual decision. VLC should determine whether the minor understands the risks and benefits of the minor's legal position and whether the minor can reasonably communicate the minor's wishes. VLC should consider the following non-exhaustive list of factors when determining whether the minor has considered judgment and sufficient capacity to direct the representation:

- (1) the child's chronological and intellectual age;
- (2) the child's developmental stage;
- (3) the child's cognitive ability;
- (4) the child's socialization;
- (5) the child's emotional and mental development;
- (6) the child's expression of a relevant position;
- (7) the child's ability to communicate with the attorney;
- (8) the child's ability to articulate reasons for a legal position; and,
- (9) the child's relevant and available reports such as reports from social workers, psychiatrists, psychologists, and schools relating to the child's capacity or intellectual development.

It should be noted that a minor may be capable of considered judgment even though the minor has a significant cognitive or emotional disability.

VLC should be sensitive to cultural, racial, ethnic, or economic differences between the VLC and the minor because such differences may inappropriately influence the attorney's assessment of whether the minor has considered judgment. In other words, VLC should meet the minor, regardless of the minor's age or disability, in an environment that will facilitate reasonable attorney-client communications. VLC are encouraged to meet with the minor in multiple different environments, which may include the minor's school or home or other environment, when reasonable and necessary so that VLC may establish a relationship with the minor and accurately assess their capacity and considered judgment.

In making a determination regarding considered judgment, VLC may seek guidance from professionals, family members, school officials, and other concerned persons. VLC should also determine if any evaluations are needed and advocate them when appropriate. At all times VLC must recognize the attorney-client privilege and maintain confidentiality with the minor victim.

(i) If the VLC determines that the minor or diminished capacity client has the considered judgment and capacity to direct the representation, the VLC shall explain and have the client execute the scope of representation letter attached as Enclosure (1). Both the client and VLC should be provided and retain a copy of the signed letter. VLC should seek the non-offending parent or guardian's signature as an acknowledgement on Enclosure (1) and retain a copy of that acknowledgement in the VLC's case file. If the VLC is unable to secure the non-offending parent or guardian's signature, VLC should note the date and to who(m) the acknowledgment was offered on Enclosure (1) and retain a copy in their client file.

(ii) If the VLC determines that the minor or diminished capacity client does not possess the considered judgment and capacity to direct any aspect of the VLC's representation, the VLC shall consult with the client's non-offending parent or guardian to determine if they desire to retain VLC to provide victim services for the minor or diminished capacity client. If the non-offending parent or guardian desires to retain VLC, VLC shall explain and have the non-offending parent or guardian

execute the scope of representation letter attached as Enclosure (2). The scope letter provided will plainly explain that while the non-offending parent or guardian is authorizing the representation, the minor is the client in all instances and that while the parent or guardian may be consulted along with other persons by the VLC, the minor remains the client and the parent does not direct the representation. Further, while the VLC may seek input from the non-offending parent or guardian, final legal decisions rest with the VLC. The only person other than the minor who may direct VLC legal services for the minor is a court appointed "guardian" as the term is defined above. The non-offending parent or guardian who retained VLC for the child victim should be provided and retain a copy of the signed letter, as should the VLC.

(iii) When determining whether a minor or diminished capacity client possesses considered judgment and capacity to direct some, any or all aspects of VLC representation, VLC shall remain cognizant of the guidance contained in Rule 1.14 of JAGINST 5803.1D. When a client's capacity is diminished due to age or other reason, the VLC must, as far as reasonably possible, maintain a normal attorney-client relationship with the client. A minor or diminished capacity client's inability to provide considered judgment or a lack of capacity to direct VLC on one or more matters during the course of the victim's representation does not automatically mean that the victim is unable or lacks the capacity to direct VLC on other matters. Accordingly, VLC should carefully consider whether the minor or diminished capacity client does not possess the considered judgment and capacity to direct any aspect of the VLC's representation vice a lack of capacity to direct certain aspects of the representation. The VLC should inquire thoroughly into all circumstances that a careful and competent person in the child's position should consider in determining the child's best decision regarding the issue in question. After consultation with the child, child's parent(s) (if there does not appear to be any conflict), the child's FAP or other mental health counselor or therapist, and VLC leadership, VLC shall advocate on the particular issue what the VLC determines to be the best decision for the child under the circumstances. In such an instance, the child victim shall continue to direct the VLC in all other areas where the child maintains sufficient capacity and considered judgment. VLC should exercise his/her reasoned judgment, considering rule 1.14, to determine if the minor or

diminished capacity client should be permitted to direct a particular matter on his or her own accord.

b. All Minor or Diminished Capacity Sexual Assault Victims.
When representing all minor or diminished capacity victims:

(1) Routine contact and access to the victim will be critical to effective representation. When face-to-face contact with a child is not reasonably possible or is otherwise not necessary, VLC must still seek meaningful contact with the child utilizing other means. These situations may include: (a) the child is located in a remote area; and, (b) the child is of a sufficient chronological or developmental age to permit the VLC to remotely assess and establish attorney-client relationship. The VLC, however, should have face-to-face contact with the child as early as possible in the relationship and absolutely prior to any court proceeding where the child victim's rights are in issue. Contact should include, at a minimum, regular telephonic communications, as well as in person and written communications as available and when appropriate. While the cooperation and support of the competent minor's non-offending parent or guardian may not always be necessary, it should be sought, with the client's consent, to facilitate access to the client and the client's relevant records.

(2) The VLC shall be vigilant to continually assess the client's capacity to direct the VLC's legal services throughout the term of the relationship.

(3) A VLC shall communicate with the client using developmentally appropriate language and communication methods, and shall assess at regular, frequent intervals the child's comprehension, thought processing, and ability to provide reasoned, coherent, thoughtful direction to the VLC.

(4) VLC should develop a position and strategy concerning relevant aspects of the proceedings that may potentially impact the victim's rights.

(a) When developing the child's legal position, VLC should ensure that the child is given advice and guidance and all information necessary to make an informed decision.

(b) VLC should give the client time to ask questions and consider the alternatives. VLC should obtain information from the client about the following when appropriate and with due consideration given to concerns about re-victimization and facilitating the victims overall recovery:

1. the client's feelings of safety;
2. the client's knowledge about the alleged crime;
3. the accuracy of information relayed to VLC by Trial Counsel or Law Enforcement;
4. any additional relevant facts not previously disclosed to Law Enforcement or Trial Counsel;
5. services being provided to the victim to assist in recovery;
6. any additional service that may be needed;
7. the client's concerns about the investigation or case;
8. the client's long- and short-term goals;
9. whether the client wishes to testify and participate in any criminal proceeding; and,
10. any other relevant information

(c) VLC should confer with the client as often as necessary after retention to ascertain all relevant facts and otherwise necessary information. After the VLC is fully informed on the facts and the law, the VLC should advise the client concerning all aspects of their matter. VLC should explain to the child in a manner appropriate to the child's level of development what is expected to happen before, during, and after each hearing; and should at reasonable regular intervals provide the child with updates regarding the status of their case.

(5) With the client's permission and absent conflict(s) of interest(s), the VLC is encouraged to involve the non-offending parent, family members, and other appropriate people in the minor or diminished capacity victim's life in the representation to the extent the VLC deems reasonable under the circumstances to help facilitate the minor victim's safety, recovery and participation.

(6) Should a VLC question or develop concern regarding the client's actual competency to direct VLC services on a

particular issue or in general, the VLC should discuss such concerns with his or her supervisory attorney, the VLC OIC and/or COS/DCOS VLC. These concerns must be evaluated on a case-by-case basis.

(7) In instances where the VLC and his/her supervising attorney disagree as to the competence of the child victim to direct VLC representation or where the VLC or his or her supervisory attorney believe measures are required to protect the child victim, they must notify Chief of Staff VLC prior to taking any action. With COS VLC approval, the VLC may take actions to include consulting with family members, medical or mental health professionals, or other professional services. The VLC may also consult with the Family Advocacy Program (FAP) multi-disciplinary team and/or relevant state or civil child development authorities to secure their assistance in rendering a confidential opinion on the client's competency to direct VLC legal services. The VLC should consider whether appointment of a guardian ad litem is necessary to protect the child's interests. In taking protective action, the VLC should be guided by such factors as the wishes and values of the child, the child's best interests, respecting the child's family and social connections (e.g., teachers, religious leaders, coaches), and his or her obligations pursuant to the Rules of Professional Conduct.

(8) VLC shall recognize that information relating to the representation of a client with diminished capacity is protected as confidential and is generally covered by the Attorney Client Privilege. VLC who have a diminished capacity client who is at risk of substantial, i.e. serious, physical, financial, or other harm unless action is taken and VLC cannot adequately act in the client's own interest are permitted to disclose confidential client information to third parties to aid the child client as authorized by their licensing authority's professional responsibility rules and in all cases only to the extent reasonably necessary to protect the client's interests.

(9) COS VLC, as VLCs' supervising attorney, retains the authority and prerogative to resolve any disagreements and direct necessary action of VLC should a difference of opinion develop between VLC counsel and his/her VLC supervisors on matters regarding representation of minor or diminished capacity clients.

3. Additional Matters.

a. A standardized training aid entitled "When Kids Testify at Court-Martial" is included as enclosure (3) and may be provided to younger or developmentally challenged victims to help them understand the court-martial process and what occurs when they are called to testify. Where possible, the VLC shall make every effort to escort such victim to the courtroom or physical site of the testimony for familiarization prior to testifying. Where the VLC is not able to provide this familiarization, he or she shall work with the detailed Trial Counsel to ensure this occurs.

b. In all cases, the VLC should seek the support of the non-offending parent or guardian to contact the relevant victim advocate, therapist, FAP counselor or case worker, clinical social worker, medical provider, school counselor, teacher or other parties related to the case to the extent necessary to provide effective legal representation of the victim, and also to comply with all mandatory child, elderly and other abuse reporting requirements.

c. When deemed necessary for legal representation, the VLC should request the non-offending parent or guardian sign any release and consent forms required to give the VLC access to the victim's counseling, medical, school and other records relevant to his or her report of sexual assault.

4. When Article 6b Representative has been Appointed. Per §1701 of NDAA 2014, once a 6b representative has been appointed to promote and preserve the 6b rights of a minor or diminished capacity victim, VLC may cooperate with that agent to enforce those 6b rights, subject to the confidentiality, consent, and representation requirements established above.



Privileged - Attorney Work Product

Diminished Capacity Client – Considered Judgment/Capacity Assessment Worksheet

Use this form to document your assessment of a diminished capacity client's considered judgment and capacity to direct your legal services. This form should be utilized during VLC's initial assessment prior to retention and for re-assessment of capacity at frequent intervals throughout the representation

Initial Client Capacity Assessment				
<i>Client Name & Date of Birth:</i> _____				
<i>VLC Counsel Name & Date of Initial Assessment:</i> _____				
Meeting Information	<i>In Person</i>	<i>VTC</i>	<i>Telephone</i>	<i>Other (Describe)</i>
<i>Type of Meeting</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Length of Meeting & Persons Attending</i>				
Meeting Content	Yes	No	Unsure	Comments/Findings
<i>Developmentally Appropriate Language Used?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Were VLC Services Explained?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Did you Determine the Victim's Chronological Age?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Intellectual Age?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Did you Assess the Victim's Cognitive Ability?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Socialization?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Emotional & Mental Development?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Expression of a Relevant Position?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Ability to Communicate with VLC?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Ability to Articulate Reasons for a Legal Position</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Did you examine any records that evidence the victim's capacity or intellectual ability? If "yes" list what you consulted and determined.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Initial Client Capacity Assessment Continued...

<i>Person(s) Consulted & Their Relationship(s) to Client</i>	
Other Factors Considered	Comments/Findings

Initial Considered Reasoning/Capacity Findings & Conclusions

Follow On Client Assessment/Meeting Log

Meeting Information	<i>In Person</i>	<i>VTC</i>	<i>Telephone</i>	<i>Other (Describe)</i>
<i>Type of Meeting</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Length of Meeting & Persons Attending</i>				
Meeting Content	Yes	No	Unsure	Comments/Findings
<i>Developmentally Appropriate Language Used?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Did you Assess the Victim's Cognitive Ability?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Ability to Communicate with VLC?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Ability to Articulate Reasons for a Legal Position</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Did you examine any records that evidence the victim's capacity or intellectual ability? If "yes" list what you consulted and determined.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Person(s) Consulted & Their Relationship(s) to Client</i>				

Meeting Notes & Additional Considered Reasoning/Capacity Assessment

Follow On Client Assessment/Meeting Log

Meeting Information	<i>In Person</i>	<i>VTC</i>	<i>Telephone</i>	<i>Other (Describe)</i>
<i>Type of Meeting</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Length of Meeting & Persons Attending</i>				
Meeting Content	<i>Yes</i>	<i>No</i>	<i>Unsure</i>	<i>Comments/Findings</i>
<i>Developmentally Appropriate Language Used?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Did you Assess the Victim's Cognitive Ability?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Ability to Communicate with VLC?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>“ “ “ “ Ability to Articulate Reasons for a Legal Position</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Did you examine any records that evidence the victim's capacity or intellectual ability? If "yes" list what you consulted and determined.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Person(s) Consulted & Their Relationship(s) to Client</i>				

Meeting Notes & Additional Considered Reasoning/Capacity Assessment

**** COPY THIS PAGE AND UTILIZE FOR FUTURE CLIENT MEETINGS ****

Victims' Legal Counsel (VLC) Scope of Representation Letter

DATE

From: *(Name/Rank of VLC)*

To: *(Name of eligible Victim)*

Subj: NOTIFICATION AND LIMITATIONS OF ATTORNEY-CLIENT RELATIONSHIP

1. VLC Program. The Department of the Navy is committed to promoting and protecting the rights and interests of sexual assault victims and to ensuring you receive assistance through the Victims' Legal Counsel (VLC) Program and other support services available throughout the Navy and Marine Corps.

At your request, I have been assigned to serve as your VLC and provide you legal services. We will form an **attorney-client relationship**. I will act as your attorney, and you will be my client.

The purpose of this memorandum is to explain the nature and limitations of our attorney-client relationship and the legal services I can provide to you.

2. My Military Duty Is To Represent You. As your VLC, I am your attorney. I have been licensed by a state bar to practice law, and have been certified by the Judge Advocate General of the Navy to act as counsel in courts-martial and to represent victims of sexual assault. As your attorney, you have my undivided loyalty and concern. My sole legal and ethical obligation is to be your attorney to the best of my ability subject to the rules discussed in detail below.

I am assigned to the Department of the Navy's VLC Program and belong to an independent chain of command whose sole mission is to represent victims like you. As your VLC, I work for you. I will only be involved in the investigation or processing of your reported assault to promote and protect your rights and interests. My independence means that no one will influence my representation of you.

3. Confidentiality. The law recognizes that you must be able to share information with me in confidence. As your attorney, I am generally prohibited from revealing information related to our conversations unless you give me consent to do so after we discuss that possibility. Importantly, this means that everything we discuss will remain confidential unless you give me actual or implied permission to discuss the information with others. I will not disclose or discuss any conversations you and I have or any matters related to my representation of you with anyone to include your parent/guardian without your permission. You are under no obligation to disclose any of our discussions with such persons to include your parent/guardian if they ask you to do so. If any person, to include your parent/guardian, requests that you disclose your conversations with me or your thoughts or decisions regarding the direction of my services, you may contact me to discuss any such request prior to answering any questions or providing any information. It is important that you keep our conversations and our plans between us, unless you wish me to discuss them with others.

Victims' Legal Counsel (VLC) Scope of Representation Letter

If you give me specific instructions that certain confidential information should not be disclosed, even in furtherance of promoting or protecting your rights and interests, I am required to keep that information confidential except as explained in the next paragraph.

There are a few limited exceptions to this confidentiality that apply to me and every other attorney. These exceptions are very narrow and typically relate to my duty to protect your immediate safety, health, and welfare or to comply with a court order. If I believe it necessary to reveal confidential information under one of these exceptions, I will attempt to discuss my intentions with you and only disclose information to the extent necessary to comply with my professional and legal obligations.

The confidentiality described above exists only between an attorney and his or her client. There are different professional and legal rules of confidentiality relating to medical providers, psychotherapists or psychologists, chaplains, and victim advocates.

Finally, other people are not bound by the same confidentiality rules as I am. What this means is that if other people are present when you and I communicate, those third-parties can be required to disclose what was said or shared in their presence.

4. Scope of Legal Services Provided. As your VLC, I will provide you legal services that are connected to your reported sexual assault. My focus will be to promote and protect your rights and interests related to that assault. The legal services I can provide include:

a. Legal Rights. As referenced above, I will assist you in understanding and exercising your legal rights connected to your reported sexual assault. This includes advocating on your behalf to promote, preserve, and protect those rights. With your permission, I can advocate on your behalf to military authorities. Within the military, these rights include the right to be treated with fairness and respect for your dignity and privacy; the right to be reasonably protected from the accused [to include my advocacy for a Military Protective Order (MPO)]; the right to be notified of court proceedings; the right to be reasonably heard at certain proceedings; the right to be present at all public court proceedings unless the court determines your testimony would be materially altered if you heard other testimony; the right to confer with government counsel in the case; the right to receive restitution, if available; the right to be provided information about any conviction, sentence, imprisonment, and release of the accused; and the right to proceedings free from unreasonable delay.

There may also be additional legal rights implicated in your case, depending on the circumstances, which I will discuss with you during the course of our attorney-client relationship.

b. Military Justice System. I will assist you in understanding the military justice system, which includes the investigative and disciplinary processes. I can answer any questions you have regarding the investigative and disciplinary processes.

I will promote and protect your rights and interests in the military justice system. This will include, with your permission, advocating on your behalf to various parties in the military justice

Victims' Legal Counsel (VLC) Scope of Representation Letter

system including: investigators such as NCIS; military commanders, including convening authorities; lawyers for military commanders, also known as staff judge advocates; military prosecutors, also known as trial counsel; the accused's defense counsel; pretrial investigation officers; pretrial confinement initial review officers; and military judges. At your request, and if locally available, I will attend your interviews with investigators, trial counsel, and defense counsel. If I am unable to attend in person, I will try to attend your interviews via video-conferencing or by telephone, or attempt to reschedule the interview to permit my attendance if possible.

I will assist you in obtaining information relevant to your case that you have a right to obtain, to include the status of the investigation and the status of the accused(s).

I will assist and facilitate your communication with trial counsel where you have a right to confer; this may include the status of disciplinary or court-martial processing, whether or not charges will be preferred, whether charges will be dismissed, or whether a pretrial agreement will be approved.

If the accused is charged, I will represent you in military justice proceedings, such as court-martial or Article 32 pretrial investigation, where you are afforded an opportunity to be present and heard. When necessary and appropriate, I will present facts and legal arguments on your behalf to the court.

I also plan to attend military justice proceedings when it is both necessary and appropriate that I do so.

If you believe you are the subject of harassment, retaliation, or intimidation related to your report of sexual assault, I will discuss, advise, and assist you on avenues of complaint to redress that treatment.

c. Advocacy to Civilian Prosecutors/Law Enforcement. My representation of you will be more limited with civilian authorities than military authorities. I cannot represent you in civilian court proceedings or advocate on your behalf with civilian prosecutors. If there is a joint military and civilian investigation, I can assist in obtaining the status of the investigation and may possibly attend, in person or via phone or VTC, your interviews with investigators. If desired, I will assist you in seeking civilian resources to help you work with civilian authorities.

d. Cooperation with other Navy Support Providers. As a victim of sexual assault, you may be offered or may already be in contact with other support providers who work for the Navy. This may include counselors or case workers assigned to the Family Advocacy Program (FAP), Chaplains, medical and mental health personnel and others committed to aiding in your recovery. As we discussed, our communications remain confidential and I will not discuss your case or our conversations with any of those providers unless you wish me to. If you are working with a FAP counselor or case worker, it may be beneficial for me to keep that provider aware of the general status of your case and your general well-being. We can discuss this matter now if you prefer or wait until you desire to do so.

Victims' Legal Counsel (VLC) Scope of Representation Letter

5. Duration of Attorney-Client Relationship. In general, our attorney-client relationship will continue unless you release me, the legal aspects of your reported sexual assault are concluded, or per the exceptions noted below, either of us transfers to a new duty station, moves, or terminates military service.

Generally, the legal aspects of your case will conclude shortly after a disposition decision is made by the appropriate Sexual Assault Initial Disposition Authority or, in the case of a court-martial, shortly after the court's findings and sentence, if any, are acted upon by the convening authority.

If I transfer or leave military service before completion of your case, I will protect your interests. This will include giving you reasonable notice of my transfer/separation, providing you assistance in acquiring a new VLC to serve as your attorney, and completing a turnover of your case with your new VLC to assure continuity of legal services. No matter my next assignment or status, discussions you and I have had related to your case will remain confidential, subject to the exceptions previously mentioned.

If you move or transfer out of my geographic area of responsibility before completion of the legal aspects of your reported sexual assault, you may request a new VLC at your new location. Generally, if you request a new VLC, I will be released as your attorney unless continued representation is approved by my boss.

If you move or transfer but the legal processing of your reported sexual assault remains active with military authorities at this location, I will continue representation in your case unless you seek my release and/or appointment of an alternate VLC.

Finally, sometimes there are unforeseen legal or ethical obligations that apply to all attorneys that require an attorney to seek release or to withdraw from the attorney-client relationship. For example, a conflict of interest could require me to withdraw as your attorney. If I am required to withdraw or seek release as your attorney, I will protect your interests. This includes giving you reasonable notice of my withdrawal, allowing you time to obtain alternate VLC if applicable, and delivery of papers and property to which you are entitled.

6. Your Role: Your full participation and cooperation are critical to successful representation of your rights and interests. My job is to help you understand and exercise your rights as you see fit. We need to maintain good and private communications to do that, so please contact me at any time if you have questions, concerns, or worries about what is going on in your case. When I contact you, please respond quickly as it may be something we need to discuss immediately. As we discussed, it is very important that our communications remain private. Please consider this fact when you are responding to me, make sure you keep our discussions private, and do not discuss matters with me over the phone, text or email where other people can see or hear our communications.

My contact information is:

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VLC , JAGC, USN
Fleet & Family Support Center
Telephone Number:
Email:

As a Naval Officer and your attorney, I am concerned about your general health, morale, welfare, and safety. I urge you to take advantage of the other available support services including medical treatment and counseling.

Client Acknowledgment

I understand the nature and limitations of my attorney-client relationship with my VLC.

Name of Client

D.O.B

Client's Signature

Date

VLC, JAGC, USN Date
Victims' Legal Counsel

Parent/Guardian Acknowledgment

Name of Parent/Guardian

Parent/Guardian Signature

Date

(VLC) - Parent/Guardian Declined Signature

Victims' Legal Counsel (VLC) Scope of Representation Letter

Date /2014

From: (Name of Attorney) JAGC, USN
To: Parent/Guardian of Child

Subj: NOTIFICATION AND LIMITATIONS OF ATTORNEY-CLIENT RELATIONSHIP

1. VLC Program. The Department of the Navy is committed to promoting and protecting the rights and interests of sexual assault victims and ensuring they receive assistance through the Victims' Legal Counsel (VLC) Program and other support services available throughout the Navy and Marine Corps.

Per your request, I have been retained to serve as your child's VLC and provide legal services related to your child's report of sexual assault. Your child and I will form an attorney-client relationship and I will provide legal services to benefit your child. I will act as your child's attorney, and you, as the parent or guardian of the child, can help me better understand your child's communications and interests.

The purpose of this memorandum is to explain the nature and limitations of my attorney-client relationship with your child and the legal services I can provide on behalf of your child.

2. My Military Duty Is To Represent Your Child. As your child's VLC, I am your child's attorney. I have been licensed by a state bar to practice law, and have been certified by the Judge Advocate General of the Navy to act as counsel in courts-martial and to represent victims of sexual assault. As your child's attorney, your child has my undivided loyalty and concern. My sole legal and ethical obligation is to be your child's attorney to the best of my ability subject to the rules discussed in detail below.

I do not work for your commanding officer, the commanding officer of your spouse (if applicable) or anyone within the accused's chain of command. I am assigned to the Department of the Navy's VLC Program and belong to an independent chain of command whose sole mission is to represent victims of sexual assault. My independence means that no one other than your child will influence my representation of your child.

If I determine that your child does not possess considered judgment or capacity to reach a decision or direct my actions on one or more matters I may choose to consult with any of the following persons at my discretion: you (the child's parent), any appointed guardian, FAP personnel, your child's mental health counselor or therapist, my VLC chain of command. After consulting any persons I deem appropriate and gathering any additional information I feel germane, I will make a decision on how to proceed on the matter at hand. The decision I thereafter make on behalf of your child will be the decision that I deem best for the child if the child were to make the decision under the circumstances present at the time the decision is made.

| At all times your child will be my client and my services will be directed accordingly.

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3. Confidentiality. The law recognizes that your child must be able to share information with me in confidence. As your child's attorney, I am generally prohibited from revealing information related to my conversations with your child unless your child gives me consent to do so after we discuss that possibility. Importantly, this means that everything your child and I discuss remains confidential unless your child gives me permission to discuss the information with others.

If your child gives me specific instructions that certain confidential information should not be disclosed, even in furtherance of promoting or protecting your child's rights and interests, I am required to keep that information confidential except as explained in the next paragraph.

There are a few limited exceptions to this confidentiality that apply to every attorney. These exceptions are very narrow. For example, I may be required to reveal information to prevent serious physical harm to any person, including you or your child, or to comply with court orders. Another example would be if your child was directing me to take or not take an action and I objectively believed the direction would likely cause serious injury of a permanent nature (physical, mental or otherwise) to your child. If I believe it necessary to reveal confidential information under one of these exceptions, I will attempt to discuss my intentions with your child and only disclose information to the extent necessary to comply with my professional and legal obligations.

The confidentiality described above exists only between an attorney and his or her client. There are different professional and legal rules of confidentiality relating to medical providers, psychotherapists or psychologists, chaplains, Family Advocacy Program (FAP) counselors, and victim advocates. Other people are not bound by the same confidentiality rules I am. This means that if other people are present, including you the parent, when I communicate with your child, those third-parties can be required to disclose what was said or shared in their presence.

4. Scope of Legal Services Provided. As your child's VLC, I will provide your child legal services connected to his/her reported sexual assault. My focus will be to promote and protect your child's rights and interests related to that assault. The legal services I can provide include:

a. Legal Rights. As above, I will assist you and your child in understanding and exercising your child's legal rights connected to his/her reported sexual assault. This will include advocating on your child's behalf to promote, preserve, and protect those victim's rights. With your child's permission, I can advocate on your child's behalf to military authorities. Within the military, these rights include the right to be treated with fairness and respect for your child's dignity and privacy; the right to be reasonably protected from the offender [to include my advocacy for a Military Protective Order (MPO)]; the right to be notified of court proceedings; the right to be present at all public court proceedings unless the court determines your child's testimony would be materially altered if he/she heard other testimony; the right to be reasonably heard at certain proceedings; the right to confer with government counsel in the case; the right to receive restitution, if available; the right to be provided information about any conviction, sentence, imprisonment, and release of the accused; and the right to proceedings free from unreasonable delay.

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If a military judge appoints a “guardian” to promote and preserve your child’s established “Victim’s Rights”, I will cooperate with that agent to enforce those rights, subject to the confidentiality, consent, and representation requirements established above.

There may also be additional legal rights implicated in your child’s case, depending on the circumstances, which I will discuss with you and your child during the course of our relationship.

b. Military Justice System. I will assist you and your child in understanding the military justice system, including the investigative and disciplinary processes and answer any questions you both have regarding these processes.

I will promote and protect your child’s rights and interests in the military justice system. This includes, advocating on your child’s behalf to various parties in the military justice system including: investigators such as NCIS; military commanders, including convening authorities; lawyers for military commanders, also known as staff judge advocates; military prosecutors, also known as trial counsel; the accused’s defense counsel; pretrial investigation officers; pretrial confinement initial review officers; and military judges. If locally available, I will attend your child’s interviews with investigators, trial counsel, and defense counsel. If I am unable to attend in person, I will try to attend your child’s interviews via video-teleconferencing or by telephone, or attempt to reschedule the interview to permit my attendance if possible.

I will assist you in obtaining information relevant to your child’s case that you have a right to obtain, to include the status of the investigation and the status of the accused(s).

I will assist and facilitate communication with trial counsel where your child or you have a right to confer; this may include the status of disciplinary or court-martial processing, whether or not charges will be preferred, whether charges will be dismissed, or whether a pretrial agreement will be approved.

If the accused is charged, I will represent your child in military justice proceedings, such as a court-martial or an Article 32 pretrial investigation, where your child is afforded an opportunity to be present and heard. When necessary and appropriate, I will present facts and legal arguments on your child’s behalf to the court.

I will attend military justice proceedings when it is both necessary and appropriate that I do so.

c. Advocacy to Civilian Prosecutors/Law Enforcement. My representation of your child will be more limited with civilian authorities than military authorities. I cannot represent your child in civilian court proceedings or effectively advocate on his/her behalf with civilian prosecutors. If there is a joint military and civilian investigation, I can assist in obtaining the status of the investigation and may possibly attend, in person or via phone or VTC, your child’s interviews with investigators. If desired, you may obtain civilian counsel at your own expense to represent your child with civilian authorities and I may work along with any civilian attorney you retain as assistant counsel.

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d. Personal Civil Legal Affairs. I can provide your child basic legal assistance services directly connected to his/her reported sexual assault, to include notarizations and basic powers of attorney. If your child needs assistance in more substantive matters, I will coordinate a referral to the nearest Legal Assistance Office.

e. UCMJ Article 6(b) Rights. I can assist you in determining and potentially enforcing your child's rights as a victim under Article 6(b) of the UCMJ.

5. Duration of Attorney-Client Relationship. In general, my attorney-client relationship with your child will continue unless your child releases me, the legal aspects of your child's reported sexual assault are concluded, or per the exceptions noted below.

Generally, the legal aspects of your child's case will conclude shortly after a disposition decision is made by the appropriate Sexual Assault Initial Disposition Authority or, in the case of a court-martial, shortly after the court's findings and sentence, if any, are acted upon by the convening authority.

If I transfer or leave military service before completion of your child's case, I will protect your child's interests. This includes giving you reasonable notice of my transfer/separation, providing you assistance in acquiring a new VLC to serve as your child's attorney, and completing a turnover of your child's case with a new VLC to assure continuity of legal services. No matter my next assignment or status, discussions you and I have had or discussions I have had with your child related to your case will remain confidential, subject to the exceptions previously mentioned.

If you move out of my geographic area of responsibility before completion of the legal aspects of your child's reported sexual assault, your son/daughter may request a new VLC be assigned at your new location. Generally, if a new VLC is assigned, I will be released as your child's attorney unless continued representation is approved by my chain of command.

If you move but the legal processing of your child's reported sexual assault remains active with military authorities at this location, I will continue representation in your child's case unless your child seeks my release and or appointment of an alternate VLC.

Finally, sometimes there are unforeseen legal or ethical obligations that apply to all attorneys that require an attorney to seek release or to withdraw from the attorney-client relationship. For example, a conflict of interest could require me to withdraw as your child's attorney. If I am required to withdraw or seek release as your child's attorney, I will protect your child's interests. This includes giving you and your child reasonable notice of my withdrawal, allowing you time to obtain alternate VLC if applicable, and delivery of papers and property to your child which he/she is entitled.

6. Your Role: Your full participation and cooperation are critical to successful representation of your child's rights and interests. Full participation and cooperation includes but is not limited to providing transportation for and reasonable access to your child so I can meet with him/her and provide them legal services. It also includes providing me with access to your child's other

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records, which may include but are not limited to medical, mental health, and academic records as necessary so that I can provide competent, informed legal representation for your child. As we proceed, please contact me immediately with any questions or concerns that you have about your child's legal rights or the legal services I can provide.

My contact information is:

VLC, JAGC, USN
Fleet & Family Support Center
Address:
Telephone Number:
Email:

As a Naval Officer and your child's attorney, I am concerned about your child's general health, morale, welfare, and safety. I urge you to take advantage of the other available support services including medical treatment and counseling available for your child

Client Acknowledgment

I understand the nature and limitations of my relationship with the VLC representing my child.

Name of Child Child's DOB

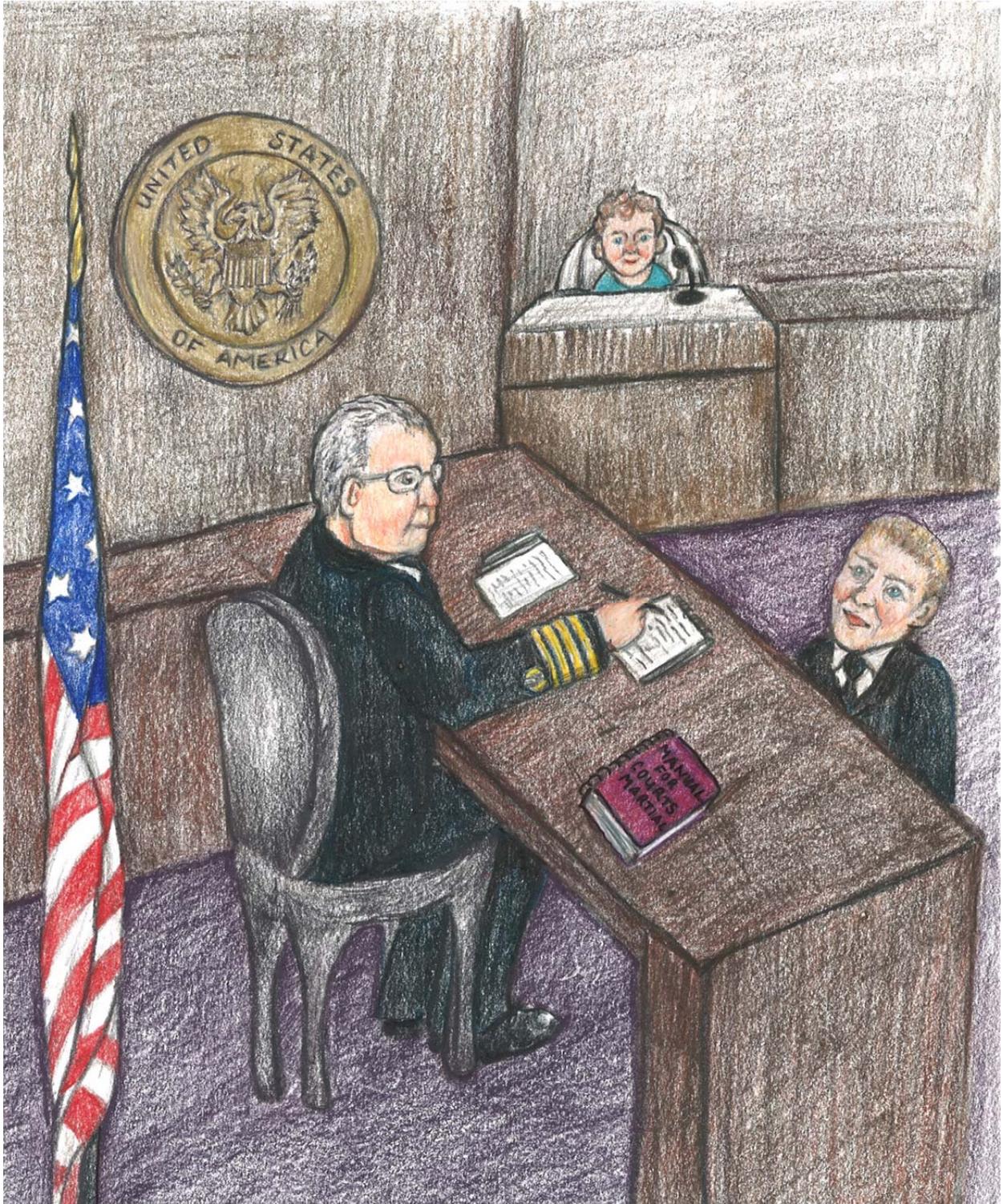
Name of Parent

Parent's Signature Date

(Attorneys name), JAGC, USN Date
Victims' Legal Counsel

WHEN KIDS TESTIFY AT COURTS-MARTIAL

Helping Children Understand the Military Justice System



Based on “When Kids Testify in Court”
by Robyn B. Light,
Victim-Witness Manager/Senior Investigator (Retired) Yakima County Prosecuting
Attorney's Office Yakima, Washington

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Adapted and Illustrated by LCDR Ann Lundwall, JAGC, USN



THIS BOOK BELONGS TO: _____

GIVEN IN FRIENDSHIP BY: _____

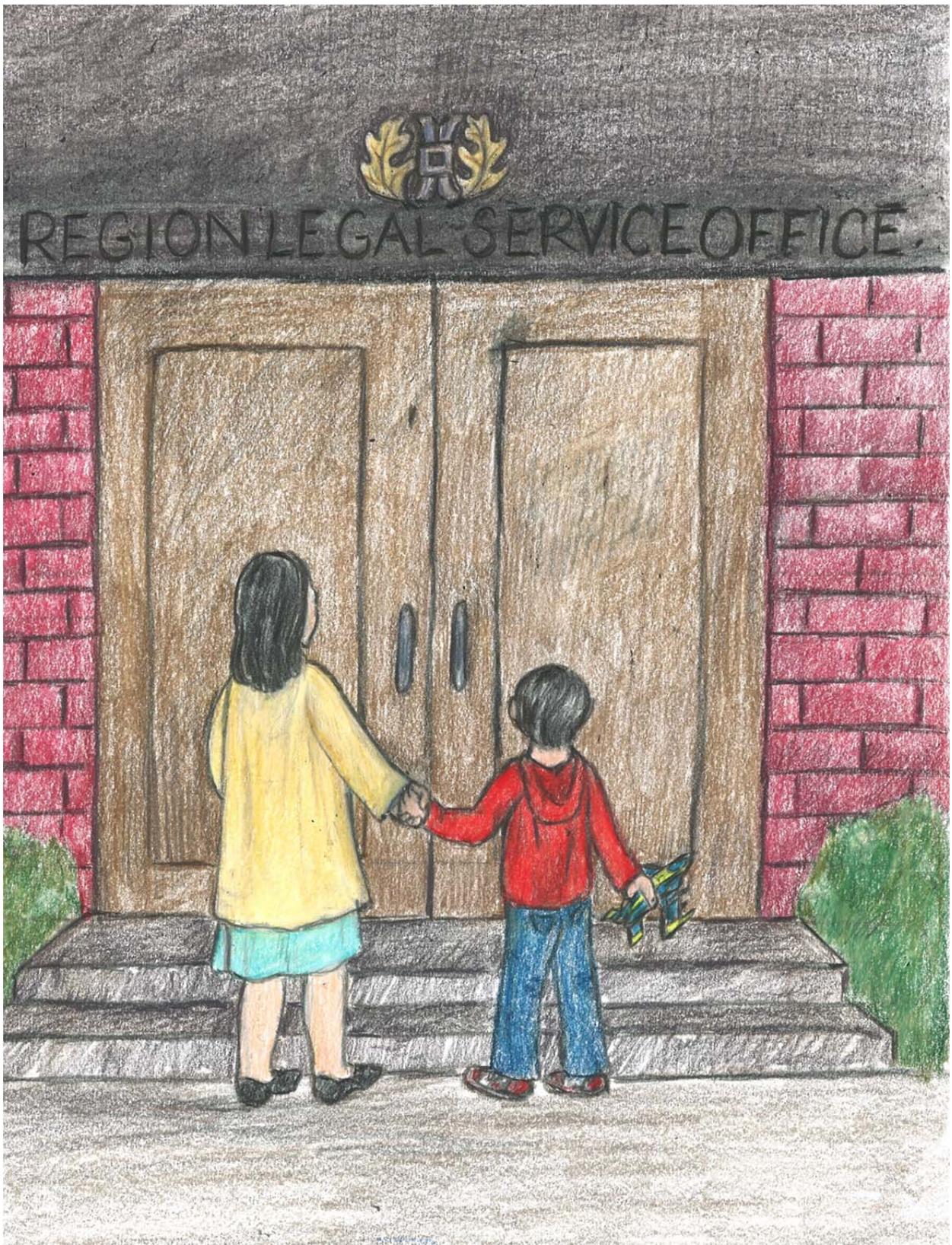
YOUR COURT FRIENDS ARE:

VICTIMS' LEGAL COUNSEL _____

NCIS AGENT _____

TRIAL COUNSEL _____

MILITARY JUDGE _____



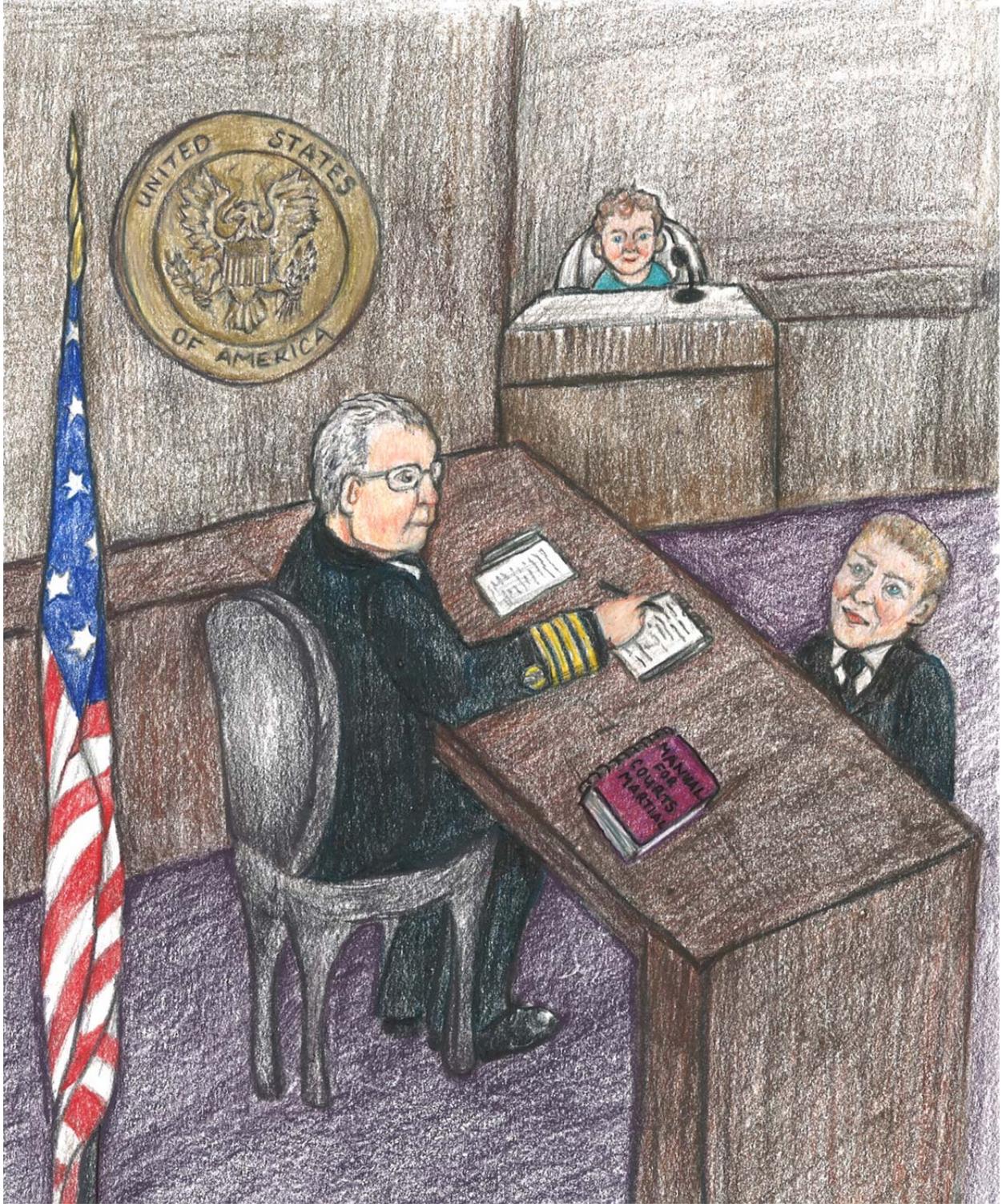
You have been asked to come to **Courts-Martial** to tell about something that happened to you, or to tell something that you saw happen to someone else. Courts-martial is a special kind of court that takes place on a military base. When something is new or unfamiliar, it can make us feel a little scared. Going to court can be a new experience but it doesn't have to be scary.

When you are asked to come to court to answer questions, you are called a **witness**. A witness is a helping person. As a witness, you will be called to the **courtroom** to sit in the **witness stand**. The courtroom is where you will talk to the **Military Judge** and a group of people, called the **Members**, who will listen to what you have to say. The witness stand is where you sit in the courtroom when it is your turn to talk to the Judge and the Members.



You will be asked to give your **testimony**. To give your testimony means you answer questions about what you know. The **Trial Counsel** or the Military Judge will ask you to take an **oath**. An oath is when you promise to tell the truth. Telling the truth is a very important job.

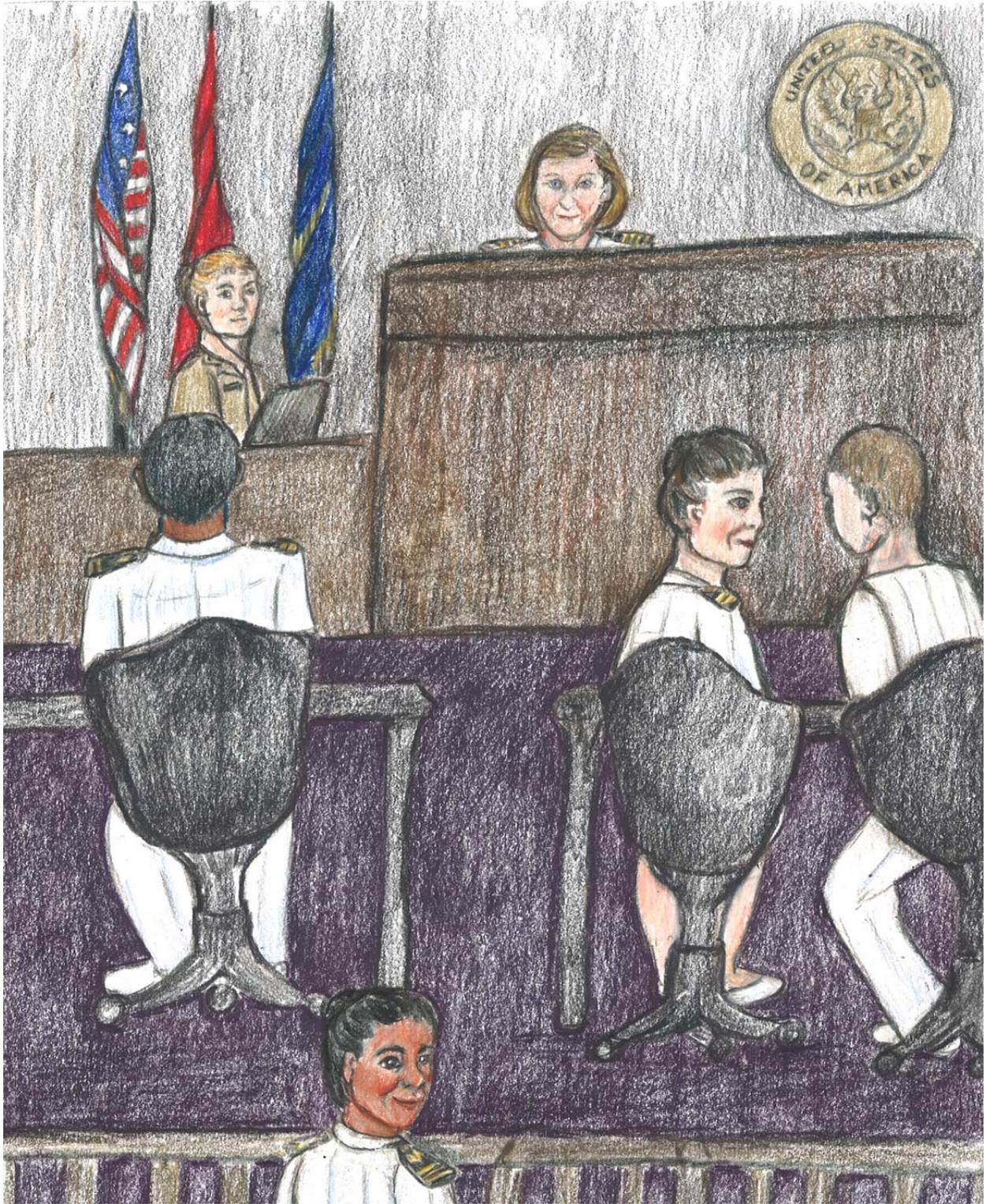
There will be lots of people at court who are there to help you. You will already know some of these helping people. You will also get to meet some new people who will be in court to make you feel more comfortable. Let's learn more about the courtroom and your courtroom helpers.



The **Military Judge** is an important helping person. The Military Judge wears a uniform and sits at a high desk. It is the Military Judge's job to make sure that the **law** is followed. Laws are rules that everyone must follow. The Military Judge explains the law to the members and answers questions about the law for the attorneys. The Military Judge wants you to feel safe in the courtroom so you will feel comfortable answering questions. The Military Judge wants you to tell the truth about what you know.



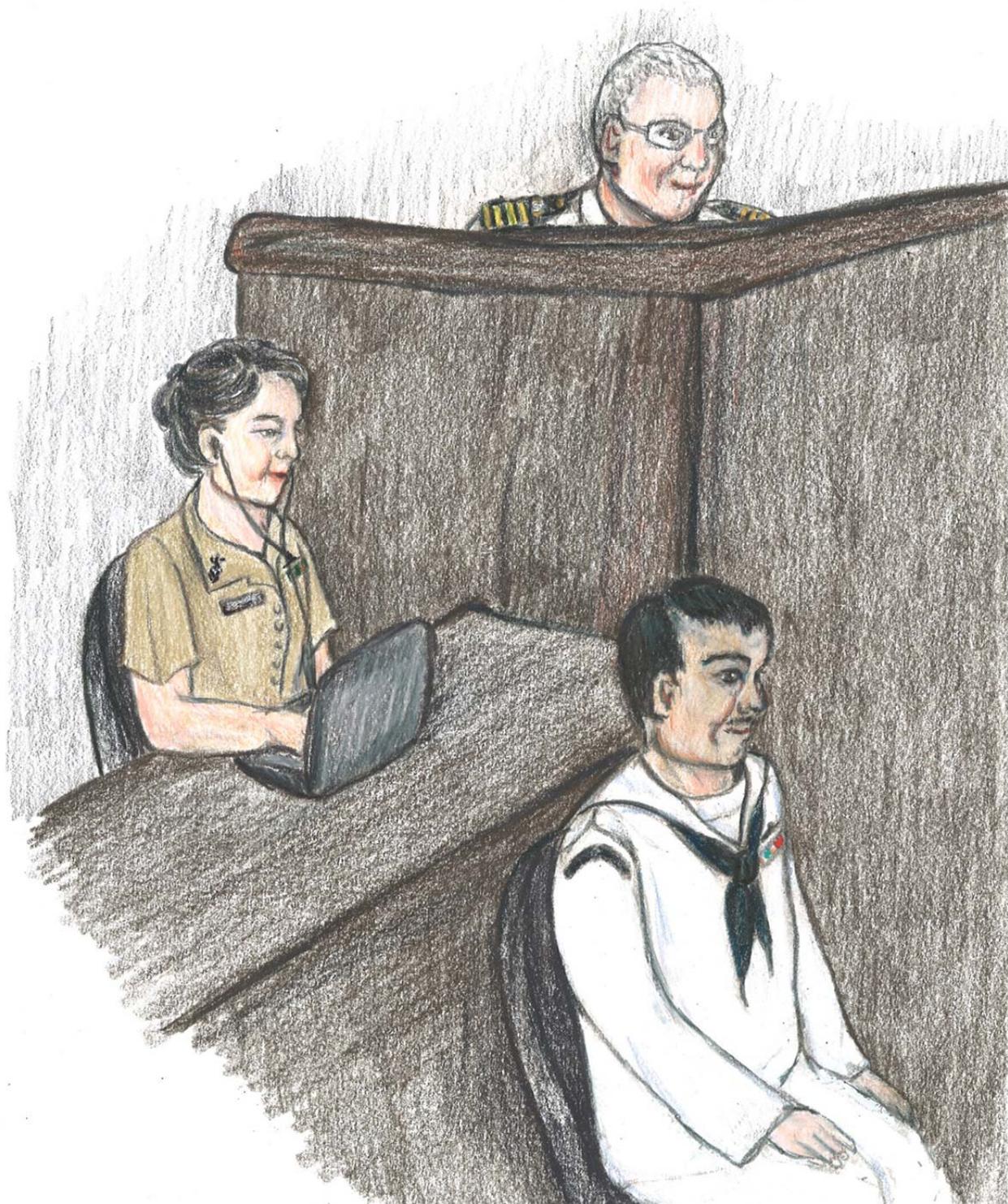
The **Victims' Legal Counsel** is your special helping person. The Victims' Legal Counsel is your attorney who helps you in court. Your Victims' Legal Counsel will explain to you how court works. Your Victims' Legal Counsel can talk to the judge for you and explain to the Judge how you feel.



The **Trial Counsel** is a helping person. The Trial Counsel must prove to the court that the **Accused** broke the law. The Accused is the person accused of breaking the law. The Trial Counsel and the Defense Counsel will sit at a table in front of the Military Judge. The Victims' Legal Counsel usually sits behind the Trial Counsel and sometimes has a separate table.

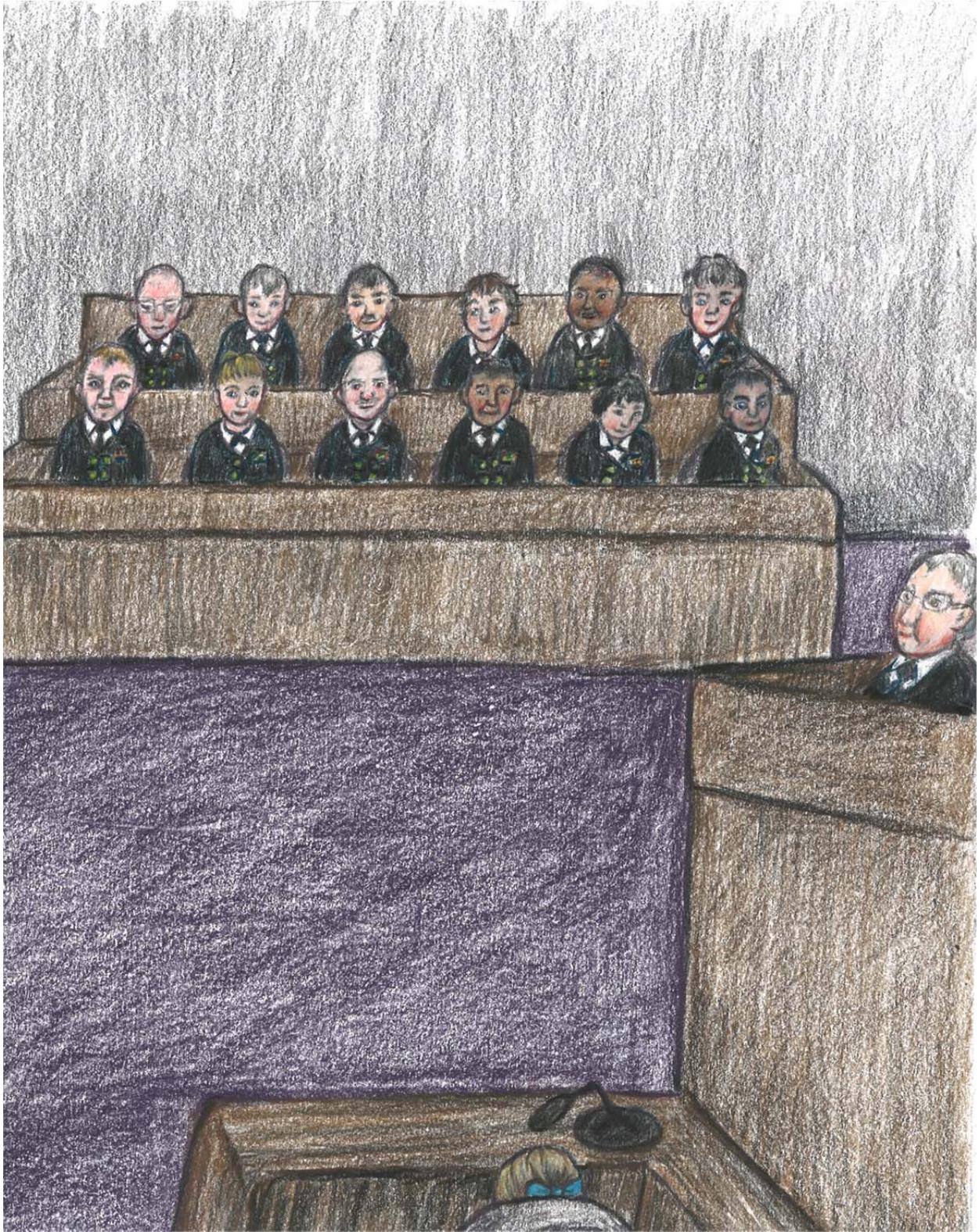
The **Defense Counsel** is a helping person who helps the accused in court. The Accused will sit next to the Defense Counsel at the table in front of the Judge.

The Trial Counsel and the Defense Counsel will take turns asking you questions. The Trial Counsel asks you questions first, and then the Defense Counsel asks you some questions. You get to ask your Victims' Legal Counsel questions outside of the courtroom.



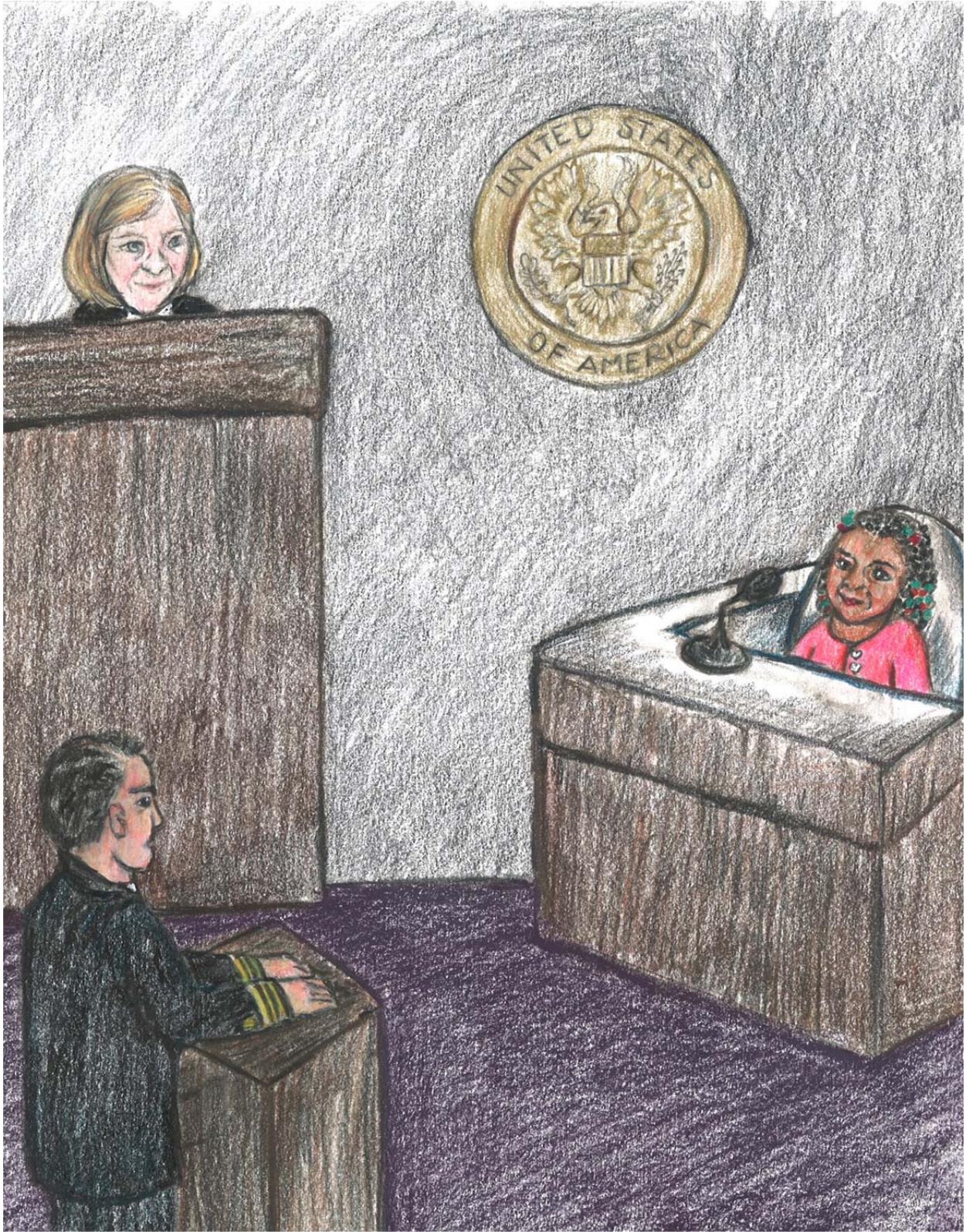
The **Court Reporter** is a helping person. The Court Reporter is there to help the Military Judge. The Court Reporter helps record all the testimony and keeps track of all the court papers and other information and other information that is called evidence. The evidence is brought into court by the attorneys to help explain their side of the case.

The **Bailiff** is a helping person and wears a uniform. The Bailiff helps the Military Judge and keeps order in the courtroom. When the Military Judge comes into the courtroom, the Bailiff says “all arise” and everybody stands up.



The **Members** are helping people. **Members** are people who work in the military and wear uniforms. They do not usually work at a courthouse. Instead, they are asked to come to court and listen to a court case. For example, a Member could be a pilot, a nurse, a mechanic, or a cook. The Members must listen very carefully to everything that is said in court. They also look at all the evidence that is brought into court. It is the Members' job to decide if an **Accused** is **guilty** or **not guilty**.

If an Accused is found guilty, it means that the Members decided that the Accused broke the law. If an Accused is found not guilty, it means that the Members decided that there was not enough information or evidence to prove that the Accused had broken the law.



Now you have learned about going to court. You have learned that there are many helping people in the courtroom. You have learned that as a witness you are a helping person. Telling the truth about what happened to you, or what you saw happen to someone else is a very important job.

All your court helpers want to thank you for coming to court and telling the truth about what you know. We think you are a really **TERRIFIC KID!!!**

LET'S REVIEW THE WORDS YOU HAVE LEARNED

1. **Courts-Martial:** Courts-martial is a special kind of court that takes place on a military base.
2. **Witness:** The person who is called to the witness stand to answer questions and tell the truth about what they know.
3. **Courtroom:** The room where you will go to talk to the judge and where the jury will listen to what you have to say.
4. **Testimony:** A statement given under oath by a witness in court.
5. **Oath:** When you promise in court to tell the truth.
6. **Military Judge:** The person in charge of the court who makes sure that the law is followed.
7. **Law:** The law is made up of many rules that everyone must follow.
8. **Victims' Legal Counsel:** My lawyer who helps me in court and who will explain to me all about how the court works.
9. **Trial Counsel:** The lawyer who must prove in court how the accused broke the law.
10. **Defense Counsel:** The lawyer that helps the accused in court.

11. **Accused:** The person accused of breaking the law.
12. **Court Reporter:** The person who helps the judge by recording all the testimony and keeps track of all the paperwork and evidence.
13. **Evidence:** Items that are brought into court to help attorneys explain their side of the case.
14. **Witness Stand:** Where you will sit in the courtroom when it is your turn to talk to the judge or the members.
15. **Bailiff:** The person who helps the judge keep order in the court and says “all arise.”
16. **Members:** The people who decide, after reviewing all the facts and evidence, if the accused broke the law.

LET'S DRAW A PICTURE ABOUT GOING TO COURT

LET'S SEE WHAT WE HAVE LEARNED ABOUT GOING TO COURT

HERE ARE THREE GOOD THINGS I LEARNED ABOUT GOING TO COURT

1. _____

2. _____

3. _____

I LIKE MY "GOING TO COURT" BOOK BECAUSE

1. _____

2. _____

3. _____

WHEN I GO TO COURT AND TELL THE TRUTH ABOUT WHAT I KNOW, I

AM A HELPING PERSON

