

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

A. Policy Questions for Service Special Victims' Counsel Program Managers

Policy Question 1: Article 32 Preliminary Hearing.

JPP recommendation 55 requested the DAC-IPAD continue to review the usefulness of the Article 32 preliminary hearing process including the weight given to preliminary hearing officers' (PHOs) recommendations. DAC-IPAD members reviewing penetrative sexual assault investigative case files have found instances in which a PHO indicated, typically in a very thorough report, that no probable cause existed for a penetrative sexual assault offense, the staff judge advocate disagreed, the case was referred to court-martial and an acquittal resulted. To begin its evaluation of the Article 32, UCMJ, process, the Committee requests narrative responses to the following questions:

- a. Should the recommendations of PHOs against referral of sexual assault charges to court-martial, based on a lack of probable cause, be binding on convening authorities?**
- What are the most compelling arguments for and against this proposition from your organization's perspective?**
 - Does your organization support or oppose the proposition? Why or why not?**

USA SVC (A.Q1a): The recommendations of the PHOs against referral of sexual assault charges to court-martial based on a lack of probable cause should NOT be binding on convening authorities. For the reasons listed below, the Army SVC Program Office (SVCOPM) does not support this proposition.

The rank and legal background of the PHO is largely dependent upon the available officer population within each General Court-martial Convening Authority's jurisdiction. Every jurisdiction will not have available judge advocates with military justice training and experience to serve as PHOs. As a result, the understanding of the legal requirements for probable cause determinations will vary among cases. Where a PHO misapplies legal requirements, the Article 34 advice of the SJA, a judge advocate with extensive legal experience and military justice subject matter experts available to assist, serves to counter misunderstandings of the law and probable cause requirements. Every case is unique and the ability of the convening authority to consider both the PHO recommendation and the SJA advice prior to making a referral decision is paramount to ensuring every case disposition decision is made based on a clear understanding of the case facts and appropriate legal standards.

USN SVC (A.Q1a): VLCP does not intend to answer this question from the perspective of the wider military justice process. VLCP will instead share perspectives from the field VLC. There is not one answer to this question that will serve all victims. All victims are different, their cases are different, and a change like the one proposed here would help some victims, and harm others.

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

Regardless, this question seems narrow and does not consider other changes that could be made to the preliminary hearing process in order to alter the effectiveness of the hearing. A concern VLC have noted is that PHOs tend not to have sufficient military justice litigation expertise and therefore inconsistently or even incorrectly apply the probable cause standard. This may contribute to some SJAs advising CAs against the PHO's recommendation in some instances. VLCP supports PHOs being required to have sufficient military justice litigation experience in order to act as PHO.

If the process is changed in order to improve the reliability of the outcomes of preliminary hearings, making the PHO's recommendations binding on CAs could help some victims, harm others, but in either case, is inconsistent with all other American civilian systems of criminal justice. This would be detrimental to the military justice system as a whole. If the PHO's recommendation is binding, it would lead to a "one bite at the apple" approach that could preclude the government from referring charges in the event that (a) something simply went wrong at the Art. 32 or (b) the government found additional evidence after the initial Art. 32 (DNA evidence, for example, is frequently not available in time for a preliminary hearing).

For the reasons outlined above, VLCP leans toward not supporting PHO recommendations being binding on the CA. However, VLCP supports all PHOs or counsel involved in any type of preliminary probable cause determination being required to be experienced military justice litigation specialists to ensure appropriate and consistent application of the probable cause standard.

USMC SVC (A.Q1a.): No. Although PHOs are now considerably more experienced on average than they were in the past due to changes in rules and policy, they are still not generally experienced to the level of a military judge. While their analysis and opinions are overwhelmingly well thought out and reasonable, they are not fully reliable enough to be absolutely binding on a CA in those small minority of cases where a PHO does not analyze the evidence, facts, and charges correctly. Discretion should remain for the CA to refer the case to court-martial after receiving a recommendation from the PHO and advice from a senior SJA.

Oppose. For the reasons stated above, discretion should remain with the CA. If this proposal were to be enacted, then movement away from the current Article 32 process to one more akin to a civilian grand jury should occur. This grand just process, however, would add additional complexities and resource constraints to an already stressed system. The key is to ensure that prosecutors are only preferring charges for which they believe probable cause exists based on admissible evidence, and that these charging decisions are reviewed internally by a well-resourced and experienced prosecution team and supervisors.

USAF SVC (A.Q1a.): No. These recommendations should continue to be a factor for convening authority consideration, but should not be the dispositive factor.

PRO: The PHO is an unbiased judge advocate who possesses sufficient experience and expertise to evaluate the case evidence, and provide the convening authority with an analysis for the limited scope and purpose of the preliminary hearing. If the PHO's determination of insufficient probable cause to refer the charge and/or specification were binding on the convening authority,

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

the charge and/or specification would have to be dismissed. This procedure has the potential to eliminate other administrative requirements, such as the Staff Judge Advocate's Pretrial Advice, which could result in a streamlined disposition process for allegations deemed to have a lack of sufficient evidence. As such, victims would potentially be informed of the final disposition decision in a timelier manner.

CONs: This proposal would limit the convening authority's ability to refer charges when the PHO does not find sufficient probable cause for a charge and/or a specification. The PHO is making a probable cause determination based upon evidence properly provided to the PHO. Given the limited scope and purpose of the preliminary hearing, the PHO is unable to review the case evidence in the same manner as a court-martial procedure. For example, many victims choose not to testify at an Article 32 hearing, and therefore, the PHO is limited to evaluating the victim's statement to law enforcement. In many cases, the PHO is providing a probable cause determination and disposition recommendation based solely on an analysis of the law enforcement report of investigation.

Additionally, not all PHOs have the same background, training and experience. Even in cases using a military judge as a PHO, there is no guarantee the PHO is an expert in sexual assault. SVCs have found the majority of preliminary hearings are not presided over by military judges, because the military judges are often not available. As such, the quality and depth of analysis varies between PHOs.

Currently, there are two trained legal professionals, the PHO and Staff Judge Advocate (SJA), who make recommendations to the convening authority regarding the disposition of charges. These judge advocates may look at the same facts, but arrive at differing conclusions about probable cause. In contrast to the PHO, the SJA will typically have more access to evidence (such as speaking with the victim), to develop a feel for the quality of available evidence. In this way, the SJA serves as a quality control for the PHO.

Finally, SVCs have found convening authorities often appreciate the victim's views as a part of the disposition decision. If the PHO's recommendation were to become binding on the convening authority, it may have the consequence of rendering the victim's disposition views meaningless.

For reasons stated above, CLSV opposes this proposal.

USCG SVC (A.Q1a): No. The convening authority should consider the PHO's recommendations but the recommendation should not be dispositive.

PRO: The PHO can provide an unbiased evaluation of the evidence to the convening authority.

CON: Because, historically, the Coast Guard has prosecuted fewer cases, not all PHOs have the same level of military justice experience. Accordingly, the quality of the recommendation contained in a PHO's report may suffer due to inexperience of the attorney. Additionally, PHOs do not receive all of the information that will be submitted into evidence at a court-martial and,

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

instead, must rely on a paper review or, on occasion, taped interviews, which makes it difficult to adequately assess witness credibility which can be especially relevant in a sexual assault prosecution.

Also, from an advocacy standpoint, if the PHO's recommendations are binding, the victim's input to the convening authority would be meaningless.

For the reasons previously noted, the SVC program opposes. However, the SVC program does support requiring PHOs attend training that covers counter-intuitive sexual assault victim-witness behavior and the impact trauma has on memory so that PHOs would be better versed in the particulars of Article 120 offenses.

b. Alternatively, should Article 34, UCMJ, and/or R.C.M. 406 be amended to require additional written explanation when a staff judge advocate's Article 34 advice disagrees with a PHO's finding of no probable cause?

- **What are the most compelling arguments for and against this proposition from your organization's perspective?**

- **Does your organization agree or disagree with instituting such a requirement? Why or why not?**

USA SVC (A.Q1b.): Article 34 and/or R.C.M. 406 should NOT be amended to require additional written explanation when a staff judge advocate's Article 34 advice disagrees with a PHO's finding of no probable cause. For the reasons listed below, the SVCOPM disagrees with this proposition.

Convening authorities should continue to benefit from confidential legal advice from their staff judge advocates. Any written documents put before convening authorities would likely be found by a judge to be discoverable and available for review by accused Service members and their attorneys. A mandate that SJAs certify in their Article 34 advice that they have provided additional legal advice and counsel to convening authorities where the SJAs' legal conclusions differ from the PHOs' recommendations may be an alternative to additional written explanation.

USN SVC (A.Q1b.): Once again, VLCP does not intend to answer this question from the perspective of the wider military justice process. Similar to the above, there is not one answer to this question that will serve all victims. All victims are different, their cases are different, and a change like the one proposed here would help some victims, and harm others.

The VLCP generally favors transparency of process and therefore concurs that where a SJA disagrees with a PHO's recommendation and intends to advise the CA accordingly, a written justification should be required. A concern is that SJAs are often not military justice litigation specialists. Written justification of a disagreement with the PHO's recommendation may be helpful in illuminating the reasoning behind the difference in analysis.

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

If the only choice is between PHO's recommendation being binding on the CA and a SJA being required to justify in writing advice to the CA that goes against the PHO's recommendation, then VLCP would support the latter for the reasons previously stated.

USMC SVC (A.Q1b.): A proposed rule change requiring the SJA to state a conclusion when the PHO finds no probable cause, but the SJA believes probable cause does in fact exist, is not necessary to ultimately convey the SJA's conclusion to the convening authority (CA). The SJA, as the senior legal advisor to the CA, provides an invaluable review and analysis of what has occurred at the Article 32 stage.

What this proposed rule change would likely do is create a written "battle of written reports" that will sew more confusion, delay, and second guessing.

Disagree for the above mentioned reasons.

USAF SVC (A.Q1b.): PRO: It is essential to the convening authority's decision that he or she understand the nature of any disagreement between the SJA's pretrial advice and the PHO's recommendation. Requiring an in-depth analysis of the SJAs' opinions strengthens accountability and analysis within the process. The SJA's written analysis may assist with the convening authority's decision regarding the decision to refer or dismiss a charge and specification. We note, many SJAs currently do something like this, so codification would merely make it universal.

CONS: This document could be discoverable, unless the proposal language explicitly says otherwise.

With the caveat about release of the document to the defense, CLSV supports this proposal.

USCG SVC (A.Q1b.): Yes. PRO: Additional written explanation benefits the convening authority and provides more information with which to make a decision while strengthening accountability overall. It can provide transparency and justification for the convening authority's decision to refer or withdraw charges and would help protect the integrity and fairness of that decision.

CON: The document would be discoverable unless the enacting statute provides otherwise.

Agree, because it provides more transparency in the decision-making process which, regardless of whether charges are referred, is helpful to victims in understanding why certain decisions were made. It also protects against perceptions of bias or unlawful command influence. While, potentially, this provides defense counsel a preview of the government's case, the SVC program believes the requirement would have more benefits than negative consequences.

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

c. Could there be a benefit in having a preliminary hearing akin to the function of a federal grand jury proceeding PRIOR to the preferral of charges?

- **What are the most compelling arguments for and against this proposition from your organization's perspective?**
- **Does your organization agree or disagree with this proposition? Why or why not?**

USA SVC (A.Q1c.): There is NO benefit to have a preliminary hearing akin to the function of a federal grand jury proceeding prior to the preferral of charges. For the reasons provided below, the SVCOPM does NOT agree with this proposition.

To the extent that the preliminary hearing prior to preferral would be an additional step in the military justice process, such may serve to further discourage sexual assault victims from reporting offenses and/or participating in investigations and adjudications. One of the key issues victims often raise to explain their frustration with the military justice system and/or their decisions not to participate concern the substantial length of time a case takes to investigate and adjudicate. Mandating a preliminary hearing before preferral of charges would serve to increase the time a sexual assault case is pending resolution. Greater time lengths may serve to provide some victims with additional time to consider their participation and become comfortable with the process. However, for a majority of the victims, such increased time will serve to frustrate them and discourage confidence that justice will be done.

Additionally, instituting a federal grand jury mandate would remove from commanders their responsibility within the military justice system. Commanders are responsible for the good order and discipline within their ranks. The military justice system is one tool available to commanders to maintain order. The junior commanders who typically make preferral decisions would be removed from the process and denied the opportunity to understand and participate in the system. This experience is not only necessary for their immediate command responsibilities, but also to help them develop as future court-martial panel members responsible for determining guilt and innocence and appropriate sentences when necessary.

USN SVC (A.Q1c.): Once again, VLCP is not in a position to offer definitive input on the wider military justice process. This idea bears more study and discussion. VLCP supports a preliminary hearing where military justice litigation specialists are part of the probable cause determination. A preliminary hearing akin to a federal grand jury proceeding is unlikely to have this effect. Rather, a standing panel or panels of military justice litigation specialists receiving evidence and reviewing cases for probable cause may be a more effective alternative. VLCP cannot however provide any input on the logistic possibility of implementing such a process.

VLCP does not generally support a preliminary hearing akin to a federal grand jury because such a process is unlikely to alter preliminary recommendation outcomes. However, VLCP recognizes

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

that this proposal or any similar change in preliminary hearing procedure bears further study and discussion.

USMC SVC (A.Q1c.): Yes. Although it would be somewhat manpower intensive, having a “military grand jury” of members meeting general Article 25, UCMJ criteria in normal peacetime and non-forward deployed environments would add credibility, overall efficiency, and accountability to the charging process and ultimate consideration by the convening authority (CA) whether to refer charges to court-martial. While there is no current defect to a PHO conducting this function, there are some benefits to a panel of members - applying common sense and judgment to analyze whether charges survive first contact – to conduct this function.

Agree, but it is not a critical area for a rule change. The key at present is to ensure that PHOs have the requisite knowledge and experience to conduct their duties. However, there is merit to placing this function before more than one person (the PHO) and in the hands of a panel where multiple highly qualified individuals can weigh the evidence. More analysis in this area should occur.

USAF SVC (A.Q1c.): No. There is no benefit to having an additional preliminary proceeding. As written, the proposal adds an additional hearing in which a victim will have to decide whether or not to participate. The proposal would, in most cases, simply be redundant with the Article 32 hearing. If the grand jury proceeding takes the place of an Article 32 hearing, however, then there are possible benefits for sexual assault victims.

PROs: If a grand jury type hearing replaces an Article 32 preliminary, this type of proceeding has the potential benefit of protecting the victim’s grand jury testimony. A hearing that is closed to the public maximizes the privacy most victims deeply desire. Additionally, the victim’s testimony would be protected from disclosure to the defense. This would be similar to the federal grand jury system. An additional possible benefit is prosecutors will receive a determination of probable cause from jurors who are similar to trial court members. This is a valuable tool for prosecutors to use in explaining the disposition of charges to victims.

CONs: Having a grand jury hearing and a preliminary hearing in order to determine probable cause is redundant. Redundancy has no positive consequence for a sexual assault victim. Additionally, a closed hearing prevents victims from having access to testimony or other evidence presented during the grand jury hearing. Under the current Article 32 hearing process, the victim is provided a copy of the hearing’s audio record and may attend the proceedings. The victim also has the choice to testify at the Article 32 hearing or remain silent during the hearing. A grand jury risks removing this choice from victims. The victim may also provide his or her stance on the case disposition and other relevant matters to the convening authority and this input must be considered. The Article 32 preliminary hearing provides transparency for the victim and the accused at a critical stage of the process. A grand jury will have the potential consequence of losing that transparency and limit the victim’s ability to interact with convening authorities in a meaningful way.

CLSV does not support the proposal to create an additional hearing.

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

USCG SVC (A.Q1c): No. It would be redundant and time-consuming. However, if the grand jury proceeding takes the place of an Article 32 hearing, there would be benefits to sexual assault victims.

PRO: If a grand jury type proceeding replaced the current Article 32, it would be closed to the public and provide the victim with the privacy they frequently desire. Additionally, it would provide the legal office a probable cause determination from panel members in advance of the court-martial and could be a valuable tool in assessing how to move forward, or not, with charges. It would provide victim's a chance to tell their version of events and receive "feedback" on their testimony and the strength of the prosecution's evidence.

CON: An additional hearing would create a burden on trial counsel, is duplicative of the Article 32 process, and would further slowdown an already lengthy process. Article 32 preliminary hearings provide sufficient protections to the accused and far surpass what a pre-preferral hearing would offer; for example, detailed defense counsel, discovery and production, and the start of the speedy trial clock. Introducing a separate proceeding would only lengthen an already-long process (a main component of victim dissatisfaction) and eliminates, to a large extent, prosecutorial discretion. It would also force the victim to testify and weaken the value of the input victim's currently provide to the disposition authority.

Disagree for the reasons previously noted. Also, victims overall have been satisfied with the current process.

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

Policy Question 2: Non-Disclosure of Article 34 Pretrial Advice.

In JPP Recommendation 58, the Panel requested that the DAC-IPAD review whether Article 34 of the UCMJ and R.C.M. 406 should be amended to remove the requirement that the SJA's pretrial advice to the convening authority be released to the defense upon referral of charges to court-martial. The Panel was concerned that this requirement inhibited the convening authority's legal staff from providing a fully developed, candid analysis of the evidence in the case. To begin its evaluation of Article 34, UCMJ, the Committee requests narrative responses to the following questions:

Should the UCMJ and/or Manual for Courts-Martial be amended to protect a staff judge advocate's Article 34 pretrial advice, and any written proof analysis by a trial counsel (sometimes referred to as a "prosecution merits memorandum"), from disclosure to the defense in order to provide more fully developed and candid written advice to the convening authority regarding the strengths and weaknesses of the charges?

- a. What are the most compelling arguments for and against this proposition from your organization's perspective?**
- b. Does your organization support or oppose the proposition? Why or why not?**

USA SVC (A.Q2): The UCMJ/Manual for Courts-Martial should NOT be amended to protect the staff judge advocate's Article 34 pretrial advice, and any written proof analysis by a trial counsel, from disclosure to the defense in order to provide more fully developed and candid written advice to the convening authority regarding the strengths and weaknesses of the charges. For the reasons provided below, the SVCOPM does NOT support the proposition.

Article 34 does not mandate the SJA advice contain extensive underlying analysis or rationale for the advice. This information is typically discussed verbally between the SJAs and convening authorities. The information contained in the advice is the basic information necessary for convening authorities to understand what offense was committed, who committed the offense, and assurances that there is a legal basis to hold the named individual accountable via referral to court-martial and there is jurisdiction over the name individual to do so. Mandating that the Article 34 pretrial advice contain the underlying rationale would potentially hinder open, candid communication between the convening authorities and their SJAs as there would still be concerns that the written advice may ultimately become discoverable based on military judges' constitutional determinations. With respect to the written proof analysis by trial counsel, there is no requirement that this be produced for discovery. This document is typically not provided to convening authorities for their consideration and as such, efforts to produce them are routinely unsuccessful as they are protected as attorney work product.

USN SVC (A.Q2): Again, VLCP is not in a position to offer definitive input on the wider military justice process. In support of this proposal, VLCP generally favors transparency in order to promote trust in the military justice system, and reduce discovery litigation and appellate

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

issues. This proposal also creates a concern that the protection of this type of advice from the accused will make it inaccessible to the victim, as well, even after trial.

USMC SVC (A.Q2): Protect from disclosure the TC's prosecution merits memo as it can contain analysis and theories of the case (strengths and weaknesses) which are intended to be attorney work-product and necessarily confidential. Disclose the SJA's Article 34, UCMJ written advice which presently requires mere conclusions to be stated and is more akin to a public record of the decision making process.

Enact rules consistent with the above analysis.

USAF SVC (A.Q2): Currently, there is no procedural requirement that the government provide a prosecution merits memorandum or proof analysis to the convening authority. R.C.M. 406 requires that a statement with the SJA's conclusions and recommendations be provided to the convening authority before a case may be referred to a general court-martial. R.C.M. 701(a)(1)(A) requires the government provide the SJA's pre-trial advice to the defense as part of discovery.

PROs: The convening authority's SJA must prepare written pretrial advice for every GCM in accordance with R.C.M. 406. The required contents for pretrial advice are prescribed in R.C.M. 406(b):

- (1) Conclusion with respect to whether each specification alleges an offense under the UCMJ;
- (2) Conclusion with respect to whether there is probable cause to believe that the accused committed the offense charged in the specification;
- (3) Conclusion with respect to whether a court-martial would have jurisdiction over the accused and the offense; and
- (4) Recommendation as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline.

Currently, pretrial advice does not need to contain any underlying analysis or rationale for the conclusions contained in it. If the SJA pretrial advice were changed to require an in-depth analysis of the evidence and charges this would provide convening authorities additional written advice. Furthermore, it would create a record of the SJA's rationale and legal analysis for the conclusions contained within the pretrial advice. This type of document may assist the convening authority in making a fully informed decision regarding referral of charges. However, such information is normally discussed by the SJA with the convening authority, but is not put into written form. If such a statement is protected from disclosure, the SJA is more likely to produce this type of written advice to the convening authority. This could have the consequence of providing the SJA and convening authority with a more productive discussion of the merits of a case.

SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates

CONs: The current system of providing the SJA's pretrial advice to the convening authority adequately identifies the basic information necessary for a convening authority's decision regarding referral of charges and specifications. SJAs routinely discuss the evidence and disposition options with convening authorities. A requirement that SJAs provide a prosecution merits memorandum or proof analysis may be redundant with current practice. Additionally, if the pre-trial advice were to become a protected document it would remove an element of transparency from the current system.

CLSV supports the proposal to enhance candid discussion of case evidence and disposition options between a convening authority and his or her SJA. However, CLSV only supports the proposal if the requirement for convening authorities to consider victim disposition views remains the same.

USCG SVC (A.Q2): The SJA's Article 34 advice should not be withheld from defense and the prosecution merits memorandum that trial counsel frequently provide the SJA should be protected from disclosure.

PRO: The prosecution memo is trial counsel's opportunity to provide candid communication about a case's strengths and weaknesses to the SJA. It should be protected so that the trial counsel can articulate evidentiary issues as well as their personal opinions about the case's likelihood of success. SJAs, while not providing all the information in prosecution memos, are able to synthesize the information to provide their best recommendation to the convening authority. If the prosecution memo were to take the place of the SJA's Article 34 advice and it was withheld from defense, it would eliminate an element of transparency that currently exists in the process.

CON: Maintaining the status quo means that some of the written information prosecutors provide their SJAs stays within legal channels and, potentially, convening authorities are not as well-informed of the possible legal hurdles to successful prosecution.

Oppose for the reasons previously noted.

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

C. Operational Questions for Program Managers for the Special Victims' Counsel and Victims' Legal Counsel Programs

Question 1: Managing Victim Expectations.

- a. Do you and your SVCs/VLCs manage expectations with victims regarding court-martial results or does the trial counsel do this? Please explain.**

USA SVC (C.Q1a.): Both the SVC and TC have a role in managing victims' expectations. The TC has access to more info with which to make an assessment of the case (Victims/SVC have no entitlement to discovery), but the SVC is a more trusted advisor whose assessment will likely carry more weight with the victim.

USN SVC (C.Q1a.): Yes, it is a standard practice for VLC to manage expectations with their clients regarding the potential for court-martial, the court-martial process, and possible court-martial outcomes. Trial Counsel also do this, and where there is a VLC, they work in tandem. Not all victims are eligible for or desire a VLC, so it is a critical function of Trial Counsel. Navy VLC are required to have some level of military justice litigation experience or other relevant experience in order to be selected for a VLC billet, therefore they have the expertise to analyze cases and offer potential outcomes.

USMC SVC (C.Q1a.): Both VLCs and TCs do this. The VLC, as the client's attorney, and the TC, as the government's representative, have a role to play in this effort. Most of the time VLCs and TCs are in general agreement on the overall complexities of a case prevailing at trial, and their management of client expectations are complimentary despite having different loyalties to different clients. However, there are some differences. VLCs have an even closer working relationship with their clients than the TC, and as that client's attorney, VLC have specific obligations under the rules of professional conduct which governs their practice. TCs, on the other hand, have access to all the evidence and reports in the possession of the government, unlike VLCs who only have limited access, and so they play a significant role as well in managing client expectations.

USAF SVC (C.Q1a.): Predominantly the SVCs manage victim expectations throughout the process. SVCs are their clients' confidantes and have candid discussions with their clients concerning the case. Clients want to understand the process, the quality of the evidence and the chances of a conviction should they decide to participate. Trial counsel and circuit trial counsel also provide victims with information regarding the trial process and may provide the victim information regarding any issues they may see regarding the case.

USCG SVC (C.Q1a.): SVCs have an imperfect understanding of the case because they are reliant on the SJA's office to provide case information. Still, SVCs make sure victims understand the probabilities of whatever outcome the victim is seeking (which is not always a court-martial). SVCs try to help the victim re-define success (having the convening authority hear the victim's version of events, getting to take the stand to tell their story, etc.) as opposed to focusing

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

exclusively on a court-martial conviction. In the Coast Guard, SVCs sometimes struggle to engage with trial counsel and, frequently, the amount of trial counsel involvement with the victim depends on the experience level of the trial counsel.

However, SVCs always try to facilitate a positive relationship early in the process between trial counsel and the victim because, as prosecutorial decisions are made, it is helpful for a trial counsel to explain the “whys” behind the government’s decisions and the government’s views on the probability of success. Countering the ability of trial counsel to engage with victims early is that, in comparison to DoD, USCG does not designate which attorney will be serving as the case prosecutor until relatively late in the process.

SVCs ability to manage victim expectations would likely be enhanced if trial counsel were required to consult with victims at certain stages of the process (e.g. charging decisions or a decision not to prosecute.) This would avoid relying on the experience level and discretion of the trial counsel to obtain information and would ensure the government is made aware of victim concerns. The Coast Guard is currently evaluating this recommendation which, if merited, could be implemented by service policy rather than a change to the Manual for Courts-Martial or UCMJ.

b. What effect does a full acquittal in a sexual assault case have on victims’ perceptions of the military justice process?

USA SVC (C.Q1b.): As much as SVC are able to manage expectations of their clients with regard to courts-martial results, a full acquittal in a sexual assault case is generally very difficult for victims to process. The acquittal outcome may tend to make victims believe going through the courts-martial process was not worth the difficulties they experienced with participating. The experience of the SVC is that generally victims understand a full acquittal is possible yet they are rarely prepared for that outcome.

USN SVC (C.Q1b.): It is impossible to generalize all victims' perceptions. However, it is true that despite honest VLC advice and guidance, including the effort to depersonalize the court proceeding, victims are almost universally emotionally devastated by a full acquittal. Some victims do express a loss of faith in the military, the justice system, and/or justice in general. Some victims feel as if the military (via the jury members) believe they are liars, and that the military doesn't truly want to support victims. At the same time, other victims say that although the outcome is not what they wanted, they felt the system did support and respect them throughout the process and they glean some satisfaction from having participated in the process to the end.

USMC SVC (C.Q1b.): It entirely depends on the victim. Many clients are devastated and feel that the trier of fact did not believe them. They feel angry that their offender “got away with it” and will not be convicted, which in many of their minds, equates to not being held accountable.

SVC/VLC Organization Combined Service Responses to RFI 11 Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates

Many others are disappointed, but feel that their participation in the military justice process was the first step towards their healing and recovery. They feel that their voice was heard and taken seriously. Their reaction, in large part, will depend on whether they perceive that they were valued as a person: Was my case thoroughly investigated by law enforcement? Did the command take my accusations seriously? Did my command care about me? Did the TC treat me with respect? Was the accused charged and held “accountable? Did my VLC represent me well and to the best of his/her ability?”

USAF SVC (C.Q1b.): This is a victim-specific query, without a singular response. Any victim who has participated in a fully litigated trial is invested in the outcome of that proceeding. They made allegations that another person, (or other persons), has wronged them in deeply personal manner; and victims often equate a not-guilty verdict with a conclusion that the members or judge did not believe them.

Often a victim’s perceptions of the military justice process are often determined by the victim’s opinion of the government trial team. The victim’s opinion of how well the government trial team interacted with the victim, kept the victim informed and performed at trial are important factors in the victim’s opinion of the system. If the prosecution team appeared unprepared and ineffectual, the victim is often disappointed in the system. If the trial team performed well, but the verdict was still not guilty, the victim may be unhappy with the members’ decision without being disappointed in the system itself. However, each victim’s reaction is particular to that individual.

Many victims see the act of participating in a court-martial as more important to their recovery than the final result of the trial.

USCG SVC (C.Q1b.): It varies from victim to victim but, understandably, victims are disappointed. More likely than not, a victim who testifies at a court-martial that fully acquits an accused on a sexual assault charge walks away feeling dejected and SVCs report that victims in some cases perceive that the trial was pro forma. Despite SVCs’ best efforts to prepare a victim for trial, because court procedure and rules of evidence are focused on fairness towards the accused, victims frequently view the process as protecting the accused while allowing them (the victim) to be unfairly attacked. Additionally, if the prosecution team appeared unprepared and ineffectual, the victim is often disappointed in the system.

However, even with full acquittals, some victims feel validated in the process. Usually, this is a result of an engaged legal office and experienced trial counsel who treats the victim as someone worthy of being included in decisions and who ensures the victim knows, regardless of the outcome, that the trial counsel believes the victim. If the trial team performed well, but the verdict was still not guilty, the victim may be unhappy with the members’ decision, but feel as if their participation was not in vain.

Still, each victim’s feelings and reactions are different and individualized.

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

Question 2: Victim Participation in the Reporting, Investigation, and Prosecution of Sexual Assault Crimes.

The DAC-IPAD's Third Annual Report (March 2019), indicates that in a random sample of 164 penetrative sexual assault investigations reviewed by Committee members, 34% of the cases had a record of the victim declining to participate or to participate further at some stage in the military justice process, meaning the victims declined to be interviewed by investigators or trial counsel or declined to testify at an Article 32 hearing or at trial.

- a. From a program management perspective, do you think it's helpful to identify and understand the reasons why victims are not willing to participate in the military justice process?**

USA SVC (C.Q2a.): As the SVC PM, I believe it would be good to know the reasons why victims are unwilling to participate, but that it will be extremely difficult to discern this since the reasons are so variable and dependent on the personality of the victim involved, the situation the victim is in, and the specific facts and circumstances surrounding the reported sexual assault. Also, I find it less than optimal for an SVC to provide a questionnaire or survey to their client - it seems like a more appropriate function for the SHARP Program.

USN SVC (C.Q2a.): Yes, it is valuable to know, understand and accept the often complex reasons why victims may not be willing to participate in the military justice process. The overarching lesson must be that victims are not all the same, their cases are not the same, and their goals are not the same. Therefore, if the aim within the military is to ensure victims feel safe reporting offenses and pursuing their cases, then victims should be offered the maximum array of options for doing so. This should include those options not only within the military justice system, but also administrative options as well.

USMC SVC (C.Q2a.): VLCO does not use client participation rates as a metric in overall program success or even success of the military justice system as a whole. The goal of the VLCO is twofold: 1) ensure that victims have sufficient information, expert legal advice and analysis, and emotional support to allow the victim to make the best decision for themselves (participate or not participate), and, 2) provide the highest level of competent, diligent, professional, and zealous representation to effectively advocate and represent the clients' interests. There are a multitude of reasons why a victim, even when having the highest level of the above support, may decide not to participate in the military justice system. The choice is so individual that a "one size fits all" approach or view is unworkable.

It is useful, however, to know why victims are not participating in the military justice system to the extent they choose to divulge these reasons in order to best ensure that adequate focus, policies, and resources are expended in those areas which might increase victim participation. There are societal and military justice reasons to do this so long as not infringing upon the Constitutional rights of the accused. For example, and totally hypothetical, if a clearly identifiable segment of victims did not believe that criminal investigators treated them with

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

dignity and respect and caused those victims to no longer participate, and if they gave examples that were capable of being successfully addressed, then additional training of these investigators or policy changes in those areas may be warranted.

USAF SVC (C.Q2a.): Understanding the reasons victims choose not to participate may be helpful in shaping policy and lawmaking. It may be equally important to consider “*when*” a victim chooses to opt-out as “*why*.” Those that drop out of the process early often have very different reasons than those who drop out later in the process.

USCG SVC (C.Q2a.): Yes. However, these reasons differ from person to person and it may not be possible to extrapolate any trends from anecdotal data. It also may be counterproductive to try and increase victim participation if it means taking away their agency or perception of control over the process. Still, the SVC program sees value (assuming participation is voluntary), even if the question was simply recorded at the field level, for SJAs and Coast Guard Investigative Services to understand how their actions influence a victim’s willingness to participate in the process.

b. At what stage of the military justice process—investigation, preferral of charges, Article 32 hearing, or up until trial—are victims most likely to decline to participate in the process? Why do you believe this is so?

USA SVC (C.Q2b.): Generally, victims are most likely to decline at the outset of the investigation or at the conclusion of the investigation into sexual assault allegations. It is a very small percentage of clients that decline to participate close in time to court-martial proceedings. Where victims decline at the outset, typically these are cases where the report was made by a third party and not the victim him or herself. Where declinations occur after the conclusion of the investigation, they are typically the result of the amount of time investigation of the allegations took and victims are not willing to move forward for even greater amounts of time that will be taken to prosecute the matters. Finally, SVC report that circumstances where a victim declines to participate close in time to court-martial proceedings is very rare. Where this has occurred, it is typically due to a continuance granted in the case close in time.

USN SVC (C.Q2b.): Not all victims elect or are eligible for VLC services, therefore the following input is limited to those victims who have engaged a VLC. Field VLC report victims declining to participate in the military justice process at every stage. Anecdotally, victims tend to leave at the following stages for the following reasons:
-A majority of victims who decline to participate in the military justice process do so during the investigation (either before or after they are interviewed by NCIS, but before the investigation is completed). This tends to be for a variety of reasons including: (1) the offender is unknown and there is no reasonable expectation of discovering his identity; (2) the victim is married to the offender and is not interested in a court-martial due to the

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

financial impact on the family; (3) the victim is not emotionally prepared to discuss an assault with law enforcement or other entities; (4) the victim reported the offense not to seek justice, but instead to seek services for him/herself such as mental health services, or to feel safe and get away from the offender (via an Expedited Transfer, for example); or (5) a third party made the report and the victim never intended to report the offense. These victims generally seek to "move on" with their lives and careers and are not interested in reliving the offense in order to seek justice against an offender. In "touching" cases, victims often simply want to have a safe work environment free from harassment by the offender and once transferred, have not wish to participate in a full court-martial process. Victims in this latter category often would prefer the option for swift administrative action at the command level that would illustrate that the command supports them and confirms that the "touching" was wrong.

-The next most common time for victims to leave the military justice process is after the investigation is completed and where the case could potentially go forward but the evidence presents challenges. These challenges are explained to the victim, in order to properly manage victim expectations, and at that time victims decide to decline to participate to avoid a difficult cross-examination, for example, which may not lead to a guilty finding.

-Victims will also decline to participate later in the military justice process because it simply takes too long to get to trial. By the time a trial date is set, the victim has often transferred to another command and has moved on with his or her life and is not interested in reliving a trauma from a year or two before.

USMC SVC (C.Q2b.): Victims are most likely not to participate in the military justice process if unwilling to participate since prior to preferral of charges; stated another way, once charges are preferred, they are much more likely to continue to participate throughout the process. Although victims refuse to participate during all stages of the military justice process, even after the referral of charges to court-martial and on the "eve of trial," once they begin their participation and various resources are there to support them (VLC, TC, etc.) they largely feel supported and have the strength and knowledge to continue their participation.

USAF SVC (C.Q2b.): This information is not tracked by the SVC Division; however, SVCs have observed the majority of non-participating clients made that decision fairly early in the process. There are myriad reasons offered for why victims arrive at that decision: a need for privacy; time to recover from the incident; a sense that no one will believe them; a belief that the judicial process is not designed to help them; a distrust of people in general; a general fear of what is an unfamiliar process (i.e. the military justice process); fear about consequences of possible collateral misconduct; fear of stigmatization; and possible ostracism or reprisal. Others reasons cited for early drop-out are the allegations were reported by a third party, that a victim reported solely to access support services, or the victim wishes to be able to speak openly about their experience as a sexual assault victim without pursuing an investigation or prosecution.

The next largest number of clients decline to participate after the Article 32 hearing, but before trial. Many of the reasons victims decline to participate at this stage of the process remain the same as above. Additionally, SVCs have observed their clients opt out of the process because the Article 32 hearing left them feeling that they had lost too much privacy or the hearing was an

SVC/VLC Organization Combined Service Responses to RFI 11 Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates

unpleasant process. For many victims, the longer the process takes the more likely it is they will drop-out.

Importantly, victim participation is often dependent upon how the victim defines success. Clients discover that the value they may have placed on getting a conviction as a prerequisite for their “closure” was misplaced. The passage of time and presence of other positive life experiences give victims a sense of healing.

USCG SVC (C.Q2b.): Although the SVC program does not track this data, anecdotally, most victims decline to participate at some point in the investigation due to the differences between the Coast Guard and DoD policy. Specifically, unlike the military departments, in the Coast Guard, if a victim tells any member of the Coast Guard other than a SARC, VA, SVC, or chaplain that he or she was sexually assaulted, the person the victim told is required to formally report the sexual assault. DoD policy allows sexual assault victims to make an initial report of sexual assault, informally, to a service member friend who is outside of the chain of command. It is the SVC program’s experience that victims who are required to come forward because of a third party report are much less likely to participate in the investigation of the allegation they never wanted to report in the first place.

However, if charges are preferred/referred, many victims will cooperate to the extent possible. Still, reluctant victims are very likely to express a strong preference for a plea agreement or some form of alternative disposition like administrative separation as opposed to going through the lengthy and potentially demeaning process of a court-martial (particularly if the legal office has not engaged with them).

c. What are the most common reasons why victims decline to participate in the investigative or court-martial process? Do these reasons differ when comparing civilian and military victims?

USA SVC (C.Q2c.): For civilian victims who were involved in intimate partner cases, the primary basis for declining to participate is the career of the offender and their financial dependence on the offender Servicemember. For military victims, the primary reason victims fail to go forward are based on fears of retaliation and being viewed by command officials as a troublemaker. Victims engage in a cost-benefit analysis; whether the benefits of going forward with a sexual assault case outweigh the risks associated with participation (loss of financial support, ostracism, retaliation, etc).

USN SVC (C.Q2c.): See above for common reasons for victims to decline to participate in the military justice process. Since all victims are different, there is no consistent difference between all military and all civilian victims. However, a common factor for some military victims is how a report and resulting trial might affect their jobs (with the command being involved in the case), their careers (with future travel and work interruptions required to participate in the process) and their social lives (ostracism by peers at the command).

SVC/VLC Organization Combined Service Responses to RFI 11 Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates

Civilian victims may not have the same work-related concerns, but may be victims of domestic violence where they may recant due to financial or emotional dependence on the offender. Also, some civilian victims are able to voluntarily move away from the site of the investigation and trial, and after doing so, may not be willing or able to take time away from work and/or family to participate in a trial. These are only some examples that may have an impact on the decisions of these victims, but it is worth reiterating that all victims are different and have different reasons for declining to participate.

USMC SVC (C.Q2c): Victims choose usually not to participate in the military justice process because they believe they cannot handle the stress of the process and just want to “move on with their lives,” that they will forfeit much of their privacy and be embarrassed, or they want to put the whole experience behind them so they can continue to focus on their careers.

Some victims also feel that their perpetrator will not be convicted at trial and their participation will be a “waste of time.” This last point, however, is totally dependent on the individual victim and circumstances, and many find it cathartic to know that they can go forward and let people know what happened to them and exercise their voice throughout the process.

Many more resources on average are available to victims in the military than civilian communities or jurisdictions generally speaking. Anecdotally, this likely increases military victim participation rates as compared to civilian rates. Also anecdotally, military convening authorities refer (“indict”) cases to court-martial routinely that a civilian prosecution office would not because the civilian prosecutors do not seek an indictment generally, among other reasons, unless they believe there is a high likelihood that they will secure a conviction at trial. Military commanders are not solely influenced primarily whether they will secure a conviction at trial in deciding whether to go forward to court-martial. They have many other factors that they weigh: good order and discipline, holding the alleged offender accountable, fairness to the accused, giving the victim her/his opportunity to tell their side of events, letting the “process work,” etc. In short, military commanders are less concerned with conviction rates. These factors likely increase military victim participation rates because there are comparatively more military cases that go forward to trial than under similar facts in the civilian context, and therefore, there will be more military victims participating where civilian victims never had an opportunity.

While there are commonalities to military and civilian victims in general, there are some general differences. A military victim is often a part of a small and close knit unit or military occupational specialty (MOS); often times the alleged perpetrator is also a part of this small and close knit unit or MOS (or known by others within the unit); a military victim often has at least some concerns about how she/he will be perceived by other members within the unit or MOS. On this point, that is why it is so important for commands to treat victims with dignity and respect and to have a healthy command climate so that victims will not feel ostracized. Civilian victims also have these workplace factors influence their participation decisions. More broadly speaking, however, the overall percentage is likely lower than in the military even though it routinely occurs. These above factors can all have some bearing on military victim and civilian victim participation rates, and the military has tried hard to properly address them. The major

SVC/VLC Organization Combined Service Responses to RFI 11 Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates

differences and even subtleties of these two systems, military and civilian, however, make them hard to exactly compare as they relate to victim participation rates.

USAF SVC (C.Q2c.): While this data is not collected, SVCs have observed their clients often decline to participate because they wish to protect their privacy, move past the incident without recounting it to multiple parties, and avoid the scrutiny of testifying or participating in an investigation. These reasons are common to both civilian and military victims participating in the military justice process. Military victims often have a high level of concern for protection of their privacy within the military community.

USCG SVC (C.Q2c.): The most common reason is that the victim did not intend to report a sexual assault/inadvertent unrestricted report. Other reasons are that the victim prefers to move on and put the incident behind them, fears the trial process, or other people (family/friends) have told them they are unlikely to get justice. Additionally, victims may not want to see a spouse/significant other/friend punished. Over time, some victims become fatigued if they are constantly at war with an unsupportive command, feel ostracized by co-workers once others learn of their report, or by the length of time the process takes; in these cases, victims occasionally decide they would rather “give up” than keep trying.

d. In reviewing investigative and court-martial case files, the DAC-IPAD has found that many cases take more than a year from the offense being reported until the court-martial takes place. Does the length of time it takes for a case to proceed to court-martial have an effect on victim participation in the military justice process?

USA SVC (C.Q2d.): The question will not bring a statistics based answer, just an anecdotal response we can glean from talking to our more experienced SVC in the field. The likely answer will be that the more lengthy the process, the more negative the effect on the victim.

USN SVC (C.Q2d.): Yes, the length of time the case takes to progress to court-martial has an effect on victim participation in several ways. At the beginning of a case, VLC educate clients of the investigation and military justice processes, including specifically on how long the process could take. It is at that early stage that many clients who have concerns about participating in a lengthy process decide to decline to participate. Those victims at that point who choose to participate in the military justice process do so with accurate information and realistic expectations, and those victims tend to stay the course, regardless of how long the process takes. Although field VLC report relatively few victims declining to participate close to the time of trial, some victims do experience "case fatigue" and lose interest in actively participating in the case so long after the event. They simply have moved on with their lives and feel it would be detrimental to their recovery to participate further.

USMC SVC (C.Q2d.): It can have an effect on military victim participation rates as some victims, as mentioned above, just want to move on with their careers and life; however, generally, it has much less of an impact if the victim knows that there are ample services

SVC/VLC Organization Combined Service Responses to RFI 11 Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates

dedicated to their emotional/medical care, safety, legal representation, and overall professional welfare. If these factors are in place, and the victim feels valued as a person and Marine, the length of time for the completion of a court-martial process is a factor, but not a predominant one.

USAF SVC (C.Q2d.): Yes. As discussed above, lengthy investigations and court-martial processing have an effect on a victim's desire to participate in the military justice process. Anecdotally, many victims find with the passage of time they are less willing to participate in a trial and wish to focus on recovery. Repeated delays by the parties often have a negative impact on the victim's willingness to participate. In some cases, victims become more inclined to support an alternative disposition as time passes. For example, a discharge in lieu of court-martial or other administrative disposition may become more attractive to victims to finally put an end to the process. SVCs noted that when the trial counsel have a good relationship with the victim, because they communicate well and often, then victims are more likely to continue participating in a court-martial proceeding.

USCG SVC (C.Q2d.): Yes—the length of time is one of the most significant factors in a victim's decision to participate. Repeated delays by the parties often have a negative impact on the victim's willingness to participate. This can be ameliorated when the trial counsel have a good relationship with the victim because if they communicate well and often, then victims are more likely to continue participating in a court-martial proceeding.

e. Has the SVC/VLC program had an effect on victim declinations to participate in the investigative and court-martial process?

USA SVC (C.Q2e.): The only statistical data we can provide would be the number of victim's who are represented by an SVC who make a restricted report, who then convert these reports to unrestricted. During FY18, SVC assisted 241 clients who originally filed restricted sexual assault reports. Of this number, 124 clients converted their restricted reports to unrestricted reports. A review of SHARP statistics for the number of victims without SVC who filed restricted reports and later convert them to unrestricted reports may assist in evaluating the impact the SVC Program has had on victim declinations to participate in the investigative and court-martial process. Aside from these statistics, it is extremely difficult to ascertain the basis for non-participation as the reasons victims decline to participate are variable and dependent on the victims' personalities, their unique situations, and the specific facts and circumstances surrounding each report of sexual assault. The impact of the SVC Program on victim declinations can also be attributed to victims now being able to make informed decisions with regard to the investigative and court-martial processes and their willingness to participate in either or both processes.

USN SVC (C.Q2e.): Yes, VLC have likely had an effect on victim declinations to participate in the investigative and court martial process. However, without firm data, which is not currently available, it is difficult to assess exactly how. Regardless, it would be difficult to

**SVC/VLC Organization Combined Service Responses to RFI 11
Prosecution Decisions, Victim Participation, and Conviction/Acquittal Rates**

determine that early, thorough, accurate and confidential advice to victims would not affect their initial and continued choices throughout the military justice process. VLC frequently disabuse victims of false information about the process, thereby affecting their decisions early on. Overall, VLC ensure that the victims who decline to participate, do so for the right reasons for them and make fully informed decisions. And, victims who choose to participate, do so for the right reasons for them and with an attorney advising and supporting them along the way. Regardless of the numbers of victims who ultimately decline to participate, VLC ensure that victims' rights, including their right not to participate, are enforced and victims are able to choose how they move forward with their lives.

USMC SVC (C.Q2e.): Yes. The VLCO experienced a significant increase in the number of victims seeking its services and representation starting in approximately May 2017 and continuing to the present day. This increase and continued high number is believed to be in large part due to the belief on the part of victims that VLCO representation is in their best interest.

Other factors are likely the attention and education DoD has emphasized in the area of sexual assault prevention and response, the #MeToo movement, and Congressional attention. As stated above, VLCO does not measure success in the number of victims participating in the military justice process, but there is no doubt that once a victim has a VLC assigned to them that they feel more informed and prepared to participate in the military justice system.

USAF SVC (C.Q2e.): This is not a data point that is tracked. From an SVC perspective, the number of declinations by victims to participate is neither good nor bad. SVCs are committed to obtaining the outcomes their clients want, whatever those outcomes may be.

USCG SVC (C.Q2e.): The SVC program does not track this data point and, from a program perspective, declinations by victims are neither inherently good nor bad. Some victims have said that they would have stopped participating but for the support and legal advice from their SVC while other victims may be less willing to participate once they receive candid advice from their SVC about what the process looks like and how long it realistically takes.