

consistent with subsection (f) of this rule. For the purposes of this rule, “matters in mitigation” are defined as matters that may serve to explain the circumstances surrounding a charged offense. Both counsel for the government and defense shall be afforded an opportunity to cross-examine adverse witnesses. The preliminary hearing officer may also question witnesses called by the parties. If the preliminary hearing officer determines that additional evidence is necessary to satisfy the requirements of subsection (e) of this rule, the preliminary hearing officer may provide the parties an opportunity to present additional testimony or evidence relevant to the limited scope and purpose of the preliminary hearing. The preliminary hearing officer shall not consider evidence not presented at the preliminary hearing. The preliminary hearing officer shall not call witnesses *sua sponte*.

(2) *Notice to and presence of the victim(s).*

(A) The victim(s) of an offense under the UCMJ has the right to reasonable, accurate, and timely notice of a preliminary hearing relating to the alleged offense and the reasonable right to confer with counsel for the government. For the purposes of this rule, a “victim” is a person who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.

(B) A victim of an offense under consideration at the preliminary hearing is not required to testify at the preliminary hearing.

(C) A victim has the right not to be excluded from any portion of a preliminary hearing related to the alleged offense, unless the preliminary hearing officer, after receiving clear and convincing evidence, determines the testimony by the victim would be materially altered if the victim heard other testimony at the proceeding.

(D) A victim shall be excluded if a privilege set forth in Mil. R. Evid. 505 or 506 is invoked or if evidence is offered under Mil. R. Evid. 412, 513, or 514, for charges other than those in which the victim is named.

(3) *Presentation of evidence.*

(A) *Testimony.* Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony. All testimony shall be taken under oath, except that the accused may make an unsworn statement. The preliminary hearing officer shall only consider testimony that is relevant to the limited scope and purpose of the preliminary hearing.

(B) *Other evidence.* If relevant to the limited scope and purpose of the preliminary hearing, and not cumulative, a preliminary hearing officer may consider other evidence, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, offered by either side, that the preliminary hearing officer determines is reliable. This other evidence need not be sworn.

(4) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible. The convening authority who directed the preliminary hearing or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings if an overriding interest exists that outweighs the value of an open preliminary hearing. Examples of overriding interests may include: preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening authorities or preliminary hearing