

(3) Be informed of the purpose of the preliminary hearing;

(4) Be informed of the right against self-incrimination under Article 31;

(5) In accordance with the terms of R.C.M. 405(j)(4), be present throughout the preliminary hearing;

(6) Cross-examine witnesses on matters relevant to the issues for determination under subsection (a) of this rule;

(7) Present matters relevant to the issues for determination under subsection (a); and

(8) Make a sworn or unsworn statement relevant to the issues for determination under subsection (a).”

(g) R.C.M. 405(h)(3)(B)(iii) is amended to read as follows:

“(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) of this rule and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to seek a pre-referral investigative subpoena for the defense-requested evidence from a military judge in accordance with R.C.M. 309 or authorization from the general court-martial convening authority to issue an investigative subpoena. If counsel for the Government refuses or is unable to obtain an investigative subpoena, the counsel shall set forth the reasons why the investigative subpoena was not obtained in a written statement that shall be included in the preliminary hearing report under subsection (l) of this rule.”

(h) R.C.M. 405(i)(2)(A) is amended to read as follows:

“(A) *Inadmissibility of certain evidence.* In a case of an alleged sexual offense, as defined under Mil. R. Evid. 412(d), evidence offered to prove that the alleged victim engaged in other sexual behavior or evidence offered to prove any alleged victim’s sexual predisposition is not admissible at a preliminary hearing unless—

(i) the evidence would be admissible at trial under Mil. R. Evid. 412(b)(1) or (2);

and

(ii) the evidence is not cumulative and is necessary to a determination of the issues under subsection (a) of this rule.”

(i) R.C.M. 405(j)(3) is amended to read as follows:

“(3) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible, whether conducted in person or via remote means. If there is an overriding interest that outweighs the value of an open preliminary hearing, the convening authority or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings. Any restriction or closure must be narrowly tailored to protect the overriding interest involved. Before ordering any restriction or closure, a convening authority or preliminary hearing officer must determine whether any reasonable alternatives to such restriction or closure exist, or if some lesser means can be used to protect the overriding interest in the case. The convening authority or preliminary hearing officer shall make specific findings of fact in writing that support the restriction or closure. The written findings of fact shall be included in the preliminary hearing report.”

(j) R.C.M. 405(j)(4) is amended to read as follows:

“(4) *Presence of accused.* The accused shall be present for the preliminary hearing.

(A) *Remote presence of the accused.* The convening authority that directed the