

VIA ELECTRONIC MAIL

May 12, 2016

The Honorable Elizabeth Holtzman
Chair
Judicial Proceedings Panel
One Liberty Center
Suite 150
875 North Randolph Street
Arlington, VA 22203

Dear Representative Holtzman:

I write in response to the Panel's public notice of April 13, 2016, inviting comments on the proposed revisions to Articles 6b and 70 of the Uniform Code of Military Justice submitted by the Special Victim Counsel program managers. Recognizing that these comments are being submitted significantly later than the requested April 29th date they are brief, and at their core they simply ask the Panel to continue the conversation on these critical proposals.

By way of background, I am the Executive Director of the National Crime Victim Law Institute (NCVLI) and a Clinical Professor of Law at Lewis & Clark Law School in Portland, Oregon. NCVLI is a nonprofit educational and advocacy organization with the mission to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education and resource sharing. Our work touches victims' rights in state, federal, and military systems. I have testified before numerous state legislatures and the United States Congress, and have consulted on drafting numerous victims' rights provisions including the 2004 Federal Crime Victims' Rights Act. In 2014, I was appointed to the Victims Advisory Group of the United States Sentencing Commission and during 2013-2014 served on the Victim Services Subcommittee, of the Response Systems to Adult Sexual Assault Crime Panel of the United States Department of Defense.

In reviewing the proposed changes it clear that they aim to fill practical gaps that victims (both civilian and military) experience when their case proceeds beyond the initial trial or court martial phase. Among the significant gaps are timely notice of proceedings or actions that may impact a victim's rights (e.g., existence of appellate, other review, or collateral actions; pleadings or the equivalent materials in these actions) and a meaningful opportunity to be heard before a right is diminished or lost by operation of these proceedings or actions.

These gaps are predictable because victims' rights, including the federal Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, were written to most clearly apply to pretrial and trial-level proceedings. *See United States v. Laraneta*, 700 F.3d 983 (7th Cir. 2012) (recognizing the CVRA's failure to make provision for appellate participation by a victim who has been successful in the trial court and allowing victim intervention in defendant's appeal when the victim's right was at issue).

Certainly legal arguments exist that when a victim's right, whether it be privacy, protection, fairness, restitution or any other, is at stake fundamental principles of due process and standing require notice and opportunity to be heard regardless of procedural posture. Certainly, however, the practice of law operates best when processes are clear rather than having to be argued for. *C.f. Kenna v. United States Dist. Court*, 435 F.3d 1011, 1018 (9th Cir. 2006) (encouraging district courts to modify procedures so as to give full effect to the CVRA after noting hurdles caused by less than clear procedures in victims' rights context).

I applaud the SVC program managers for continuing to identify the significant, practical gaps that victims are experiencing. Their diligence will ensure better outcomes. Based upon the identified concerns I would ask the Panel to undertake a rigorous two-step process: (1) a detailed analysis of relevant law, policies and rules to determine what hurdles continue impede victims' full participation when their rights are at stake; and (2) identification and careful drafting of the most effective tool(s) for removing these hurdles. Only if we continue to evolve this practice will the system improve and victims be afforded genuine participatory status as is intended by victims' rights. *See Kenna*, 435 F.3d at 1016 (recognizing the purpose of the CVRA is to make victims full participants).

NCVLI would be happy to submit a detailed comparison of military and civilian law on these issues if that would benefit the Panel as it continues this conversation. Thank you for your continued work to improve the military justice system for all of those impacted. If I can be of any assistance or provide additional information please contact me at 503-768-6953 or garvin@lclark.edu.

Sincerely,



Meg Garvin, MA, JD