

From: [Mitchell, Tami L MAJ USARMY MP SCHL \(US\)](#)
To: [WHS Pentagon EM Mailbox Judicial Panel](#)
Subject: Written comments for proposed amendments to Article 6b and Article 70, UCMJ
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I propose the following amendments to provide additional rights in Article 6b, UCMJ.

1. The right to be informed of his/her constitutional rights, including the Fourth Amendment right to be free of unreasonable searches and seizures of personal property.
2. The right to have the Military Rules of Evidence regarding privileges, as applicable in all stages of criminal and/or administrative proceedings (including the investigative stages of criminal and/or administrative proceedings), interpreted so as to protect the victim's right to keep privileged communications privileged, subject to waiver or written exceptions applicable to the claimed privilege.
3. Regarding the right to enforcement by a Court of Criminal Appeals, I propose adding the following as a basis for petitioning for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with:

- (G) Military Rule of Evidence 502, relating to the lawyer-client privilege.
- (H) Military Rule of Evidence 503, relating to communications to clergy.
- (I) Military Rule of Evidence 504, relating to spousal privileges.

My proposals are based on my previous experiences as a Special Victims Counsel.

1. Several of my clients surrendered their personal phones for data extraction as part of CID's investigations into their cases. However, the data extraction was of the entire phone, as opposed to data extraction limited to obtaining data to confirm or refute the allegation being investigated. The contents of the entire phone revealed much personal, private, and potentially embarrassing data that the defense was able to use to discredit my clients. Informing victims of their constitutional rights, including to be free from unreasonable search and seizure of private property, will empower them to make informed decisions about consenting to Government searches of their phones, potentially encouraging cooperation by providing data relevant to the allegation while at the same time maintaining privacy and keeping irrelevant data out of the Government's possession. Investigating agents can still pursue a search and seizure authorization for the victim's cell phone.
2. I litigated attorney-client privilege and spousal privileges at trial. One military judge gave a very thoughtful analysis, however, the other military judge, after considering written submissions and oral argument, summarily denied my motion in limine and insisted that the trial drive forward that day. Both military judges allowed these privileges to be pierced. My clients had no mechanism to appeal these decisions adverse to their interests. Ultimately, in the first case, the outcome was favorable to my first client, while the impact of piercing the privilege had negligible effect on my second client. Still, I believe victims deserve to

have the ability to appeal adverse rulings on ALL privileges, which would also encourage military judges to provide thoughtful analysis in their rulings. We also have some people in the military justice system who believe the rules on privileges do not apply during the investigatory phase of a case, so I believe it is necessary to establish that the rules on privileges do in fact apply during investigations.

TAMI L. MITCHELL
MAJ, JA
Law Instructor/Writer
U.S. Army Military Police School

[REDACTED]

Fort Leonard Wood, MO 65473

[REDACTED]

I don't want a lawyer to tell me what I can't do. I hire him to tell me how to do what I want to do.

J.P. Morgan

The good lawyer is not the man who has an eye to every side and angle of contingency, and qualifies all his qualifications, but who throws himself on your part so heartily, that he can get you out of a scrape.

Ralph Waldo Emerson