DEPARTMENT OF THE NAVY
NAVAL LEGAL SERVICE COMMAND
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Canc frp

COMNAVLEGSVCCOMNOTE 5810.1
VLCP
30 Jan 15

COMNAVLEGSVCCOM NOTICE 5810.1

From: Commander, Naval Legal Service Command

Subj: DISCLOSURE OF INFORMATION TO CRIME VICTIMS

Ref: (a) DoDD 1030.1 dtd 23 Nov 94
(b) DoDI 1030.2 dtd 23 Dec 94
(c) SECNAVINST 5800.11B dtd 5 Jan 06
(d) OPNAVINST 5800.7A dtd 4 Mar 08
(e) JAGINST 5800.4A dtd 18 Apr 11
(f) SECDEF Memo of 14 Aug 13
(g) National Defense Authorization Act of 2014, Pub. L. No. 113-66, § 1701 *et seq.* (2013)
(h) LRM v. Kastenberg, 77 M.J. 346 (C.A.A.F. 2013)
(i) Executive Order 13669 of 13 Jun 14
(j) ALNAV 086/14

Encl: (1) Disclosure of Information to Crime Victims

1. Purpose. To establish a policy for the disclosure of information to victims who report suffering direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the Uniform Code of Military Justice (UCMJ).

2. Background. The Armed Forces recognize the rights and interests of victims in a variety of ways. Per references (a) through (e), the Department of Defense (DoD), Department of the Navy (DON), and Judge Advocate General's Corps maintain a robust Victim and Witness Assistance Program (VWAP), ensuring the rights of victims are protected and their needs are respected and met. Per references (f) and (g), victims of sexual offenses are entitled to legal advice, assistance, and representation by Victims' Legal Counsel (VLC). As used throughout this notice, VLC include active duty Navy or Marine Corps VLC, Special Victims Counsel (SVC) from other services, and civilian counsel retained by victims. In reference (h), the Court of Appeals for the Armed

Forces reaffirmed that a victim has a limited right to be heard to present facts and legal arguments to a military judge individually or through counsel on issues where the victim's rights are implicated. Lastly, per references (g), (i) and (j), Congress recently amended the UCMJ and the President promulgated new Rules for Courts-Martial (RCM) aimed at fostering victim participation and confidence in the military justice system.

3. Policy.

a. Trial Counsel, Staff Judge Advocates, Command Services Attorneys, and their legal support staff play a vital role in the administration of military justice. The manner in which these personnel treat victims has a significant impact on each victim's ability to heal and recover and on the victim's underlying trust and confidence in the military justice system to address the alleged offenses. Meaningful victim participation is an essential component to a fair, effective, and efficient military justice system. Accordingly, all Trial Counsel, Staff Judge Advocates, Command Services Attorneys, and their legal support staff will ensure victims are treated courteously, with respect for their privacy and dignity, and afforded all rights, privileges, and protections under applicable law and policy.

b. Victims shall receive all rights, privileges, and protections afforded by the UCMJ, RCMs, Military Rules of Evidence (MRE), VWAP, and other DoD, DON, and service policies.

c. To ensure victims are afforded all rights, privileges, and protections under military law, it is necessary that victims receive timely and accurate notice of significant military justice matters, events, decisions, and proceedings and are provided materials in the possession of Trial Counsel, Staff Judge Advocates, and Command Services Attorneys. Such notice and materials are necessary for victims to meaningfully exercise their rights, privileges, and protections under military law.

4. Implementation. Victims are entitled to receive the materials listed below from the Trial Counsel, Staff Judge Advocate, and Command Services Attorney, as applicable. Victims, or their VLC if applicable, may elect which materials they wish to receive using enclosure (1).

a. During the investigative stage prior to preferral of charges:

(1) A copy of all statements and documentary evidence adopted, produced, or provided by the victim that are in possession of the Trial Counsel, the Staff Judge Advocate, and Command Services Attorney;

(2) Copies of any official requests, subpoenas, search authorizations, or search warrants issued by military authorities to any third party custodian for documents or records in which the victim maintains a privacy interest. This includes but is not limited to requests for the victim's medical or behavioral health records from a military treatment facility or subpoenas issued to a telecommunications carrier for a victim's telephone records. Copies should be provided prior to execution when possible.

(3) The date, time, and location of any pretrial confinement review hearing pursuant to R.C.M 305.

b. Following preferral of charges:

(1) A copy of any statements and documentary evidence adopted, produced, or provided by the victim that are in possession of Trial Counsel, Staff Judge Advocate, and Command Services Attorney that have not previously been provided;

(2) The charge sheet setting forth the preferred charges and specifications pertaining to that victim;

(3) A copy of any appointing order directing a preliminary hearing under Article 32, UCMJ and any requests for a continuance of such preliminary hearing; and

(4) Copies of any official requests, subpoenas, search authorizations, or search warrants issued by military authorities to any third party custodian for documents or records in which the victim maintains a privacy interest which have not previously been provided. Copies should be provided prior to execution when possible.

c. Following referral of charges to court-martial, if not previously provided:

(1) The charge sheet setting forth the referred charges and specifications pertaining to that victim;

(2) All docket requests, scheduling orders, and motions for any continuance;

(3) A copy of any motion or responsive pleadings that implicates the victim's rights, privileges, or protections. Such motions and pleadings include those that seek to limit the victim's ability to participate in the court-martial, affect the victim's possessory rights in any property, concern the victim's privileged communications or personal health information, involve the victim's right to be heard, seek to admit evidence of the victim's past sexual behavior or sexual predisposition, or seek to obtain information from a third party custodian for documents or records in which the victim may maintain a privacy interest;

(4) Notice of pretrial agreement negotiations and an opportunity to express the views of the victim regarding proposed terms of the agreement; and

(5) A copy of any approved pretrial agreement.

d. Additional materials: Trial Counsel, Staff Judge Advocates, and Command Services Attorneys will ensure that requests by a victim or his or her VLC for other case-related documents, including Results of Investigations or other investigative materials, are processed without delay under applicable Rules for Courts-Martial, the Freedom of Information Act (FOIA), and/or the Privacy Act.

e. Pursuant to reference (g), a victim may request access to, or a copy of, the recording of Article 32 preliminary hearing proceedings. Upon request, counsel for the government shall provide the requested access to, or a copy of, the recording to the victim not later than a reasonable time following dismissal of the charges, unless charges are dismissed for the purpose of re-referral, or court-martial adjournment. A victim is not entitled to classified information or closed sessions in which the victim did not have the right to attend at the preliminary hearing.

5. Limitations. This policy supplements and does not replace the specific requirements to provide information and materials to victims under the UCMJ, RCMs, MREs, VWAP and other sources of applicable law and policy. This notice is not intended to, and does not, create any entitlement, cause of action, or defense in favor of any person arising out of the failure to accord a victim the information outlined in this policy.

6. Cancellation Contingency. This notice will remain in effect until cancelled or superseded.

J. W. CRAWFORD III

Distribution:
Electronic only via the
OJAG website at
http://www.jag.navy.mil.

SUBJECT: Disclosure of Information to Crime Victims – United States v. _____

1. Meaningful victim participation is essential to a fair, effective, and efficient military justice system. To assist in these efforts, it is necessary that victims receive timely and accurate notice of significant military justice matters and are provided materials necessary for victims to exercise their rights, privileges, and protections under military law. Under Article 6b, Uniform Code of Military Justice, and Commander, Naval Legal Service Command policy, you are entitled to the following notices or materials, if you so desire:

a. **During *any* stage of the investigation or court-martial process:**

(1) A copy of all statements and documentary evidence adopted, produced, or provided by you that are in possession of Trial Counsel/Staff Judge Advocate/Command Services Attorney.

I (do) (do not) wish to receive a copy of any such statements or evidence. _____
(Victim's Initials)

(2) Copies of any official requests, subpoenas, search authorizations, or search warrants issued by military authorities to any third party custodian for documents or records in which you maintain a privacy interest.

I (do) (do not) wish to receive a copy of any such requests. _____
(Victim's Initials)

(3) The date, time, and location of any pretrial confinement review hearing held pursuant to R.C.M 305.

I (do) (do not) wish to receive notice of any review hearing. _____
(Victim's Initials)

b. **Following preferral (swearing out) of charges:**

(1) An excerpt of the charge sheet setting forth the preferred charges and specifications pertaining to you.

I (do) (do not) wish to receive an excerpt of the preferred charge sheet. _____
(Victim's Initials)

(2) A copy of any appointing order directing a preliminary hearing under Article 32, UCMJ and any requests for a delay of the hearing.

I (do) (do not) wish to receive a copy of any order and requests for delay. _____
(Victim's Initials)

c. **Following referral of charges to court-martial**:

(1) An excerpt of the charge sheet setting forth the referred charges and specifications pertaining to you;

I (do) (do not) wish to receive an excerpt of the referred charge sheet. _____
(Victim's Initials)

SUBJECT: Disclosure of Information to Crime Victims – United States v. _____

(2) All docket requests, scheduling orders, and motions for any continuance.

I (do) (do not) wish to receive a copy of any such materials. _____
(Victim's Initials)

(3) A copy of any motion or responsive pleadings that implicates your rights, privileges, or protections.

I (do) (do not) wish to receive a copy of any such pleadings. _____
(Victim's Initials)

(4) Notice of pretrial agreement negotiations and an opportunity to express the views of the victim regarding proposed terms of the agreement.

I (do) (do not) wish to be notified of any agreement and to be heard. _____
(Victim's Initials)

(5) A copy of any approved pretrial agreement.

I (do) (do not) wish to receive a copy of any approved agreement. _____
(Victim's Initials)

2. I understand that all requested disclosures will be sent to me via e-mail by the Trial Counsel. I request that any disclosures be sent to the following e-mail address(es): _____.

NAME
RANK, BRANCH
Victim

NAME
RANK, BRANCH
Victim Legal Counsel

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I hereby acknowledge receipt of this memorandum, which will be made part of the case file. A copy of this memorandum will be disclosed to the accused's Defense Counsel after the victim's contact information has been redacted.

NAME
RANK, BRANCH
Trial Counsel