

137. In practice, do investigators read a victim his/her Article 31 rights at any point in time when they suspect that the victim committed “collateral misconduct” (i.e., if the investigator reasonably believes that the victim committed some offense under the UCMJ)?

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| USA | In accordance with Article 31b, UCMJ, investigators read a victim his/her rights before asking any questions about that misconduct or requesting a statement from the victim that might incriminate him/her in some collateral misconduct. |
| USAF | Yes. |
| USN | <p>In practice, an investigator would read a victim his/her Article 31 rights if the victim was suspected of a serious collateral offense. For non-serious collateral misconduct, the collateral misconduct would be noted in the NCIS report and deferred to the command for disposition. A more detailed explanation of the distinction between types of collateral offenses follows.</p> <p>SECNAVINST 5430.107 “Mission and Function of the Naval Criminal Investigative Service” sets forth NCIS’ authority and responsibilities. Specifically, SECNAVINST 5430.107 establishes NCIS’ responsibility to investigate major criminal offenses within the DON. Major criminal offenses are generally defined as offenses punishable under the UCMJ, or similarly framed federal, state, or local statute, by confinement for a term of more than one year; commonly referred to as felonies. In the majority of NCIS sexual assault investigations, the victim’s collateral misconduct doesn’t arise to the felony level. Often, the misconduct is a status offense such as underage drinking or adultery or other minor UCMJ violation. In short, the collateral misconduct falls below NCIS’ threshold, as identified by SECNAVINST 5430.107, and NCIS typically does not expend resources to investigate the misconduct. However, if misconduct is uncovered by the investigator during the course of the investigation, that information will be included in the NCIS investigative report and available for a commander to decide a course of action. An example can be found in a typical alcohol facilitated sexual assault investigation. The NCIS investigation will attempt to establish the victim’s level of intoxication because that is a necessary element to satisfy the UCMJ statute. If the victim voluntarily consumed alcohol while underage and the command ultimately uses the NCIS report as foundation for discipline, then that is a decision made by the command and not the intent of the NCIS investigation.</p> <p>In the event the collateral offense is a felony level offense, NCIS has the responsibility to investigate. However, the focus of the investigation would be directed at the most serious offense known to the investigator and generally speaking very few offenses (i.e. homicide) are higher priority than sexual assault. If during a sexual assault victim interview, the victim disclosed information regarding a serious collateral offense, the NCIS interviewer should recognize the potential of another criminal incident requiring an investigation beyond the sexual assault. The investigator should halt the interview and determine an appropriate course of action. A typical solution would be to inform the victim the disclosure will likely initiate another investigation but the current interview is focused on the sexual assault and that the two incidents should remain</p> |

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| | <p>separate, if possible. It is likely another investigator will be tasked with conducting an investigation of the collateral offense so that the original investigator of the sexual assault can maintain the victim-investigator relationship. If the collateral offense is of a more serious magnitude than the sexual assault investigation, such as homicide, then it is likely the sexual assault investigation will be suspended in order to pursue the higher priority investigation. In the event of a serious collateral offense, the victim would receive an Article 31B Cleansing Waiver but from the investigator assigned to the collateral offense and not the original investigator of the sexual assault.</p> <p>It is important to note that Navy Victims' Legal Counsel (VLC) play an important role in providing advice to sexual assault victims on the issue of collateral misconduct. All sexual assault victims are required to be notified of the availability of VLC, in accordance with Section 1716 of NDAA FY14. If a sexual assault victim has elected to utilize VLC services, the VLC would advise the victim on collateral misconduct issues, to include the impact of Article 31b rights. Additionally, the victim may request the presence of VLC at NCIS interviews. In the event that felony level misconduct is brought up by the victim during his or her statement to NCIS, the VLC should ask for a break to further explain ramifications and potential outcome (NJP, court-martial, etc.). VLC do not advise the victim of what they should do or say. They educate them and help manage expectations so the victim is informed on the front end of what could result.</p> |
| USMC | <p>In practice, an investigator would read a victim his/her Article 31 rights if the victim was suspected of a serious collateral offense. For non-serious collateral misconduct, the collateral misconduct would be noted in the NCIS report and deferred to the command for disposition.</p> <p>SECNAVINST 5430.107, <i>Mission and Function of the Naval Criminal Investigative Service</i>, sets forth NCIS's authority and responsibilities. Specifically, SECNAVINST 5430.107 establishes NCIS's responsibility to investigate major criminal offenses within the DoN. Major criminal offenses are generally defined as offenses punishable under the UCMJ, or similarly framed federal, state, or local statute, by confinement for a term of more than one year; commonly referred to as felonies. In the majority of NCIS sexual assault investigations, the victim's collateral misconduct does not rise to the felony level. Often, the misconduct is a relatively minor offense such as underage drinking or adultery. In short, the collateral misconduct falls below NCIS' threshold, as identified by SECNAVINST 5430.107, and NCIS typically does not expend resources to investigate the misconduct. However, if misconduct is uncovered by the investigator during the course of the investigation, that information will be included in the NCIS investigative report and available for a commander to decide a course of action. An example can be found in a typical alcohol facilitated sexual assault investigation. The NCIS investigation will attempt to establish the victim's level of intoxication because that is a necessary element to satisfy the UCMJ charge. If the victim voluntarily consumed alcohol while underage and the command ultimately uses the NCIS report as a foundation for discipline, then that is a decision made by the command and not the intent of the NCIS investigation.</p> |

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| USCG | <p>Legal (CG-094): Coast Guard policy is to abide by the requirements of the UCMJ, including Article 31, which prohibits a member or agent of the Coast Guard from interrogating or requesting a statement from a member suspected of an offense without first informing the member of the nature of the accusation and advising them that they do not have to make any statement regarding the offense of which they are accused or suspected and that any statement made may be used as evidence against them in a trial by court-martial.</p> <ul style="list-style-type: none"> • CGIS: Yes, at times it becomes necessary, but this is dependent on the nature and gravity of the suspected violation, and addressed on a case-by-case basis. This would be done in cooperation with any designated Special Victim's Counsel, and if necessary, under the guidance of the servicing legal office. These situations are handled with care and, as a general rule; rights are read to victims only when absolutely necessary. |