



# CHAIRMAN OF THE JOINT CHIEFS OF STAFF NOTICE

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CJCS Notice 5768  
9 May 2012

PRESERVATION OF DOCUMENTS OR INFORMATION RELATED TO ARIANA  
KLAY, ET AL. V. LEON PANETTA, ET AL., NO. 1:12-CV-00350-ABJ (D.D.C.)

References:

- a. DoD OGC memorandum, 20 March 2012, "Preservation of Documents or Information Related to Ariana Klay, et al. v. Leon Panetta, et al., No. 1:12-cv-00350-ABJ (D.D.C.)"
- b. DOJ memorandum, 12 March 2012, "Klay, et al. v. Panetta, et al., No. 1:12-cv-350 (D.D.C.)"
- c. U.S. District Court for the District of Columbia Case Document, Filed 6 March 2012, "Case Number, Jury Demand"

1. Purpose. This notice provides guidance for preserving and maintaining evidence relating to the case of Adriana Klay v. Leon Panetta, Robert Gates, and Donald Rumsfeld filed in the U.S. District Court for the District of Columbia.

2. Cancellation. None.

3. Applicability. This notice is applicable to the Joint Staff, Services, Combatant Commands, Defense agencies, and joint activities.

4. Background. On 6 March 2012, eight current or former members of the United States Navy and Marine Corps filed a civil lawsuit. Plaintiffs seek damages from Secretary of Defense Panetta and former Secretaries Gates and Rumsfeld; Secretary of the Navy Mabus and former Secretaries Winter and England; and Generals Amos, Conway, and Hagee, the current and former Commandants of the Marine Corps, all in their personal capacities. Plaintiffs allege defendants violated plaintiffs' constitutional rights by:

- a. Condoning and encouraging a culture of sexism that allowed sexual harassment, sexual assault, and rape to occur.
- b. Failing to implement legislative mandates relating to sexual harassment, sexual assault, and rape.
- c. Failing to protect plaintiffs and other Service members from sexual harassment, sexual assault, and rape.
- d. Failing to conduct proper investigations of sexual offenses and failing to prosecute offenders.
- e. Permitting retaliation against plaintiffs and other Service members who reported being sexually harassed, sexually assaulted, and raped.

5. Action or Procedure

a. The Department of Justice has requested that the Department of Defense conduct a search of its paper and electronic files for documents and other records that may be relevant to this litigation and preserve ALL evidence pertaining to the incidents alleged in the complaint from any routine data destruction practices.

b. This preservation requirement applies to all types of documents—electronic or paper/hard copy—regardless of length, form, perceived importance, location, or whether they reside on a server or have been reduced to paper related to this case.

c. Failure to preserve and retain any pertinent materials, electronic or otherwise, may result in sanctions against the United States.

d. Custodians of such documents shall be prepared to explain, upon request, what steps were taken to preserve and protect materials, if they exist.

6. Releasability. This notice is approved for public release; distribution is unlimited. DoD components (to include the Combatant Commands), other federal agencies, and the public may obtain copies of this notice through the Internet from the CJCS Directives Home Page--[http://www.dtic.mil/cjcs\\_directives](http://www.dtic.mil/cjcs_directives).

7. Effective Date. This notice is effective upon receipt and will remain in effect until formally canceled.

A handwritten signature in black ink, appearing to read "N. W. Tyson", with a long horizontal flourish extending to the right.

N. W. TYSON  
RADM, USN  
Vice Director, Joint Staff

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