

Special Victims' Counsel Program

**COL Elizabeth Marotta - Special Victims' Counsel Program
Manager**

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The Judge Advocate General

Director, Soldier & Family Legal Services

**Chief, Legal Assistance
Policy Division**

**Program Manager,
Special Victims' Counsel**

LA Technical
Chain

SVP Technical
Chain

OSJA

Chief of Legal Assistance

SVC



**AMERICA'S ARMY:
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SVC Program Manager

- Executes TJAG's strategic vision for the SVC Program
 - ✓ Policy
 - ✓ Force structure
 - ✓ Certification
 - ✓ Budget
 - ✓ Training
 - ✓ Tech Chain supervision
 - ✓ Lessons Learned
- Oversight for Reserve and NGB PMs



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SVC Attorneys

- Program will reside in the SJA Legal Assistance Office
- Uniformed JAs will serve as SVCs
- Chief, LA (Uniformed & Civilian) will supervise
- TJAG Certifies
 - **Military Justice Experience**
 - **Familiarity with Supporting Resources**
 - **Understanding of Victim Behavior/Impact of Crime on Victims**
 - **Maturity, Sensitivity & Judgment**
 - **Ability to Listen**
- Training Required



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Role of SVC

- SVC are available to victims of sex-related offenses regardless of whether they file a restricted or unrestricted report
- Primary duty is to zealously represent clients' rights and interests, including during:
 - Investigation
 - Preferral/Referral/Negotiations/Alt. Disposition
 - Article 32
 - Motions practice
 - Trial
 - Post Trial
- Informed Decisions - educate victims on the MJ system, roles of sexual assault personnel, and the variety of medical and non-legal assistance available to them



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Authority

- FY14 NDAA Created a new 10 U.S.C 1044(e) establishing a Special Victim Counsel:
 - For “an individual eligible for military legal assistance under [10 USC 1044] who is the victim of an alleged sex-related offense”
- Counsel must receive specialized training and be certified by the TJAG
- Lists 8 areas of services to be provided – Legal consultation regarding:
 - potential collateral misconduct
 - the Victim Witness Assistance Program
 - SARC and VA
 - 3rd party liability
 - the military justice system
 - Representation of the victim at military prosecution proceedings
 - emotional & mental health services
 - traditional legal assistance, in any military justice proceeding & MPO/CPOs



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Authority

- **FY14 NDAA incorporates the Federal Crime Victims' Rights Act into Article 6b UCMJ**
- **8 Rights:**
 - Reasonably protected from the accused;
 - Reasonable, accurate, and timely notice of any pretrial confinement hearing, Art. 32, court-martial, or any clemency or parole proceeding, involving the crime or any release or escape of the accused;
 - Not to be excluded from any of the above public proceeding, unless the hearing official, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding;
 - Reasonably heard at any public proceeding involving pretrial confinement, sentencing, or any clemency/parole proceeding;
 - Reasonable right to confer with the trial counsel in the case;
 - Receive restitution as provided in law;
 - Proceedings free from unreasonable delay; and
 - Treated with fairness and with respect for the victim's dignity and privacy.



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Eligible Clients - AC

- **Soldier Victims of a Sexual Assault**
- **Other Victims eligible for Legal Assistance where accused is a Soldier**
- **Former Soldiers/Dependents – request exception**
- **FY16 NDAA states - may extend SVC services to DoD civilian employees**
- **Child as the Client**
 - **Must gauge competence/maturity of child**
 - **Special training required**
 - **Must obtain approval of SVC PM**



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Eligible Clients - RC

- Reserve Component Soldiers sexually assaulted while on (or perpetrator is on):
 - active duty
 - full time national guard duty
 - Army Directive 2014-09
 - ✓ inactive duty for training
 - ✓ inactive duty
 - ✓ traveling to/from or overnight before/during/after inactive duty
- Reserve Component Soldiers sexually assaulted regardless of duty status if the alleged sex-related offense has a nexus to the military service of the victim (2015 NDAA)
- Dependent of an RC Soldier sexually assaulted (Army Directive 2014-09)



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Notification to Clients

- Initial notification of right to SVC at time of reporting assault
- FY 16 NDAA - Notification of SVC services before CID or TC interviews or gets a statement from victim
- Conflicts Checks in CIS
 - Look to nature of any conflicts
- Access to Counsel: Be available
- Utilize Scope Letter
- Provide notice to TC/DC/CID/Command



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Victims as Clients

- Take your time and build rapport/trust
- Learn to listen
 - Challenge of repeated retelling of story to strangers
- Manage expectations
- Military Justice is foreign to the client
- Challenge w/ Remote Clients
 - PCS after training
 - Expedited transfer
 - Conflicts
 - Build relationships at TDY location
- NDAA – Services shall improve response when victim is male



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Relationships

- Everyone wants a lawyer, but every function does not require a lawyer
- As any LA Atty, you are a part of the SJA Office – even when interests conflict
 - Most conflicts involve communication issues
 - Share workload data with leadership
 - SJA/DSJA should be a mentor/coach
- CLA is supervisor – discuss issues with them
- Build Relationships
 - SHARP/FAP/VA
 - SVP/VWL/TC/TDS
 - CID
 - Military Judge
 - Medical Providers



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Interaction w/ CID/Investigators

- Don't let your role interfere with the investigation
- Victim request for SVC should NOT delay the investigation or collection of evidence
 - Understand your victim's mental state – need help first?
- Relationships matter
- Pretrial
 - What pretrial material do you receive?
 - Requests to contact the Victim should go through you
 - Role in Victim interviews
 - Telephonic interviews/testimony
- Collateral Misconduct – may need TDS
- Negotiations on disposition/PTA
 - Advocate Victim's interests w/ Chain of Command



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Relationship with TC/DC

- You are not a TC – your role is to protect the victim’s rights and interests, NOT to prosecute the case
 - **Brady concerns**
- Challenge for TC to build relationship with victim
 - **Let TC prep victim for Art 32/trial testimony**
- DC interview – insist paralegal also be present
- Interests may be aligned with DC – ex. support of a deal, or if victim refuses to cooperate and gov’t won’t dismiss



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Pre-Trial/Trial

- If victim believes PHO's ruling in an Art 32 violates the rights of the victim, the victim may petition ACCA
- The Government must consult with the victim regarding preference in prosecution venue
 - ✓ **not binding on the CA, it should be considered**
 - ✓ **Government is required to notify the civilian authority with jurisdiction over the offense, and keep the victim informed on the civilian authority's decision on whether or not to prosecute the charges**
- Provide notice to MJ through the Electronic Docket Request
- Request to participate in R.C.M 802 Conf if impact your representation
- Understand how to address the court



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Pre-Trial/Trial (continued)

- **Motions – Government files response, but victim may respond and argue also (limited standing)**
- **During trial, what do you share with the victim**
- **Military judge shall designate a representative to assume the victim's rights on behalf of a minor, incompetent, incapacitated, or deceased victim**
- **Right to submit an unsworn statement during sentencing, without being considered a witness subject to cross-examination**



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Post Trial

- **Post Trial**

- **Explain Post-Trial Process**
- **Explain Impact of Sentence**
- **Explain Appellate Process**
- **Explain Clemency**
- **Submit Post-Trial Matter to CA**

- ✓ Right of a victim to submit matters for the consideration by the convening authority prior to taking post-trial action.



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Other SVC Support

- **Off-Post Jurisdiction Limited Role**
 - **CANNOT represent the victim in off post civilian criminal investigations/prosecutions**
 - **May help Victim get a Civilian Protective Order**
- **Legal Assistance Services – 30% of effort**
 - **Divorce**
 - **Landlord – Tenant**
 - **Family Support**
 - **Child Custody**
 - **Reprisal**
 - **Expedited Transfer**
 - **Community Resources**
- **May provide legal consultation in connection with complaints against the government, including IG and EEO; FOIA requests; and correspondence and communication with Congress**



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Retaliation

- 2014 NDAA Section 1709
- Army Directive 2014-20 (Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense)
- Army Directive 2015-16 (Command Engagement to Prevent Retaliation)
- SVC Actions to Assist Victims
 - Raise the issue to OSJA – don't become a witness
 - Expedited Transfer?
 - Assist w/ NCOER/OER Appeals



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Retaliation

Readiness – retaliation impacts the ability of the victim to perform their duties

Isolation:

- **During the investigation, victim's peers and the NCOs ostracize her, refuse to work with her, call her names, and ask if she is lying about the assault**
- **Peers begin resenting victim because they have to pick up the workload while the victim attends medical appointments**

Harassment:

- **During a post-wide training event for officers and senior NCOs, a colleague of the accused approaches the victim and tells her that he does not care how she is doing or how she feels, and to stay away from him**
- **Victim receives hateful and harassing messages on social media from people who are favorable to the accused**



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Retaliation

Lack of understanding:

- CoC sees that victim has many medical/mental health appointments so they move her to a less demanding (and less career enhancing) assignment.
- CoC continually asks victim how much longer her mental health treatment for the incident is going to last.
- Victim receives an expedited transfer to new duty station and subsequently begins using drugs, goes AWOL and checks herself into the local hospital. Command, who was unaware of the assault, chapters her out of the Army for misconduct rather than looking for the underlying cause of the misconduct and helping her with her issues.
- Victim requests to go before the promotion board and supervisor denies because the victim is frequently out attending medical appointments and others have to cover her work.

Lack of awareness:

- Victim and spouse are a dual military couple. Victim's spouse is moved from his section and placed under the supervision of a Soldier who is favorable to the accused, causing the couple emotional distress.



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Duration/Termination of Representation

- Must address in scope letter
- Challenges upon transition
 - **SVC ETS**
 - **SVC PCS**
 - **SVC reassignment in the office**
- Termination Letter
- Request for Continued Representation
- MFR to SVC PM



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Resiliency

- Victims can be challenging clients – impose limits if necessary
- Be sensitive to YOU
 - Make time for family, PT and other outlets
 - You cannot help others if you don't take care of yourself
- You are not a “SVC of One”
- Know who you can talk to



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Office Admin

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