DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

REPLY TO
ATTENTION OF

0 1 OCT 2014

DAJA-ZA

MEMORANDUM FOR Judge Advocate Legal Service Personnel

SUBJECT: Disclosure of Information to Crime Victims – **POLICY MEMORANDUM 14-09**

1. This policy addresses the disclosure of information by prosecutors 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. Military law has traditionally recognized the rights of crime victims in a variety of ways. Their previous statements may be protected by certain evidentiary privileges, and previous behavior by a victim may be inadmissible at trial. Victims of sexual assault may now receive advice and representation from Special Victim Counsel. Congress has recently amended the UCMJ to expressly provide all crime victims with the rights enumerated in Article 6b, UCMJ, which include the right to reasonable, accurate, and timely notice of certain events during the court-martial process.

3. Policy.

a. It is my intent that prosecutors will vigorously protect the rights of victims as prescribed in Article 6b, UCMJ, without compromising the commander's responsibility to promote justice and maintain good order and discipline. Staff Judge Advocates will also ensure timely and accurate notice to crime victims concerning significant proceedings and events in the military justice process in accordance with Article 6b(2), subject to available resources, operational commitments, and military exigencies.

b. The way in which we treat victims will have a significant effect on their ability to heal and recover from the offenses reportedly committed against them and their confidence in the military justice system. Without victim cooperation, it is unlikely that the military justice system will continue to function as efficiently or effectively. Accordingly, all persons working within and in support of the prosecutorial function must ensure that victims of crime are treated courteously and with respect for their privacy.

4. Implementation. To safeguard the rights of crime victims and provide notice as required by Article 6b(2), UCMJ, the prosecution will provide the victim, Special Victim Counsel, if applicable, with the information listed below without request by the victim.

a. Upon preferral of charges:

(1) A copy of all statements and documentary evidence produced or provided by the victim;

(2) An excerpt of the charge sheet setting forth the preferred specifications pertaining to that victim; and

(3) The date, time, and location of any pretrial confinement review pursuant to Rule for Courts-Martial 305, and the preliminary hearing pursuant to Article 32, UCMJ.

b. Upon receipt or filing by the government:

(1) A summarized transcript of the victim's testimony at the preliminary hearing;

(2) An excerpt of the charge sheet setting forth the referred specifications pertaining to that victim;

(3) Any docket requests, as well as docketing or scheduling orders, including deadlines for filing motions and the date, time, and location for any session of trial;

(4) A copy of any motion or responsive pleadings that may limit a 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 private medical information, or involve the victim's right to be heard; and

(5) Any request to interview the victim received from defense counsel.

4. Requests for Information. Staff Judge Advocates will continue to ensure that requests by victims or designated counsel for investigative reports or other documents are processed **without delay** under the applicable procedures of the Freedom of Information Act or Privacy Act.

5. This policy 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 notice outlined in this policy.

FLORA D. DARPINO
Lieutenant General, USA
The Judge Advocate General

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REPLY TO ATTENTION OF:

DAJA-ZA

1 November 2013

MEMORANDUM FOR Judge Advocate Legal Services Personnel

SUBJECT: Office of The Judge Advocate General Policy Memorandum # 14-01, Special Victim Counsel

1. This policy addresses Judge Advocates (JAs) assigned as Special Victim Counsel (SVCs) and is effective immediately.

2. Background. The Secretary of Defense has directed that each service stand-up a special victim advocacy program to provide advice and representation to victims of sexual assault throughout the military justice process. The Secretary specifically directed that initial operating capability (IOC) be established not later than 1 November 2013 and that full operating capability (FOC) be established not later than 1 January 2014.

3. Implementation. SVCs are part of the Army-wide effort to ensure that sexual assault victims are provided responsive and timely support throughout the investigation and judicial proceedings. In support of this Army priority, Staff Judge Advocates (SJAs) are authorized to limit legal assistance services for Retirees and their Family Members. However, each SJA will implement a mitigation strategy for the curtailment of retiree services, such as retiree weekends.

4. Mission. SVCs have the professional duty to provide advice to their clients and to represent their clients throughout the military justice process. The SVC's primary duty is to zealously represent the best interests of their clients as required by the attorney-client relationship even if their client's interests do not align with those of other interested parties, to include the government of the United States. The SVC also helps build and sustain victim resiliency. An SVC should make every effort to establish and maintain an effective, complementary and professional working relationship with all other attorneys associated with a given case, and with other parties involved, including but not limited to investigators, victim advocates, victim witness liaisons, trial counsel, trial defense attorneys, special victim prosecutors and those professionals working to meet the physical, spiritual, and emotional needs of the client.

5. Appointment of SVCs and Length of Assignments. SJAs will appoint JAs to serve as SVCs, who will be part of the Office of the Staff Judge Advocate (OSJA) Legal Assistance Office. While SVCs do not have to be selected from currently serving Legal Assistance Attorneys, SVCs will function as part of the OSJA Legal Assistance Office when performing SVC duties. They should have trial or defense counsel experience. Regardless of experience, the SVCs must have maturity and good judgment to handle this important duty. SVCs should serve no less than one year and no more than two years in the position.

6. Training. Training is essential to honing the expertise of SVCs. The SVC Program Manager (PM), in coordination with The Judge Advocate General's Legal Center and School, the Criminal Law Division and the Legal Assistance Policy Division, will determine training requirements for SVCs and develop and administer a training program for SVCs. Completion of the SVC course is mandatory unless an exception is approved by the SVC PM. Given the nature and timing of certain training events, individuals may attend SVC training courses prior to their actual assignment as an SVC.

7. Supervision. An SVC's professional duty is to their client. SJAs must ensure a proper balance of mentorship and guidance for their SVCs, including supervision by the OSJA Chief of Legal Assistance. SJAs must recognize that SVCs have an ethical obligation to advocate for their clients even when it is not in the best interest of the government. The SJA, through the Chief of Legal Assistance, shall provide day-to-day supervision of the SVC and ensure the SVC is provided the necessary material and resource support to carry out the SVC mission. The OSJA will facilitate SVCs' requests for official travel for cases within their jurisdiction.

8. Relationship with the SVC PM. The SVC PM is responsible for monitoring the overall execution of the SVC program. Chiefs of Legal Assistance and SJAs remain the primary day-to-day supervisory chain for SVCs. However, due to the nature of the SVC function, there will be some cases in which the interests of the SJA and the command are not in concert with the victim's. In those situations, the SVC's technical adviser and supervisory JA for professional responsibility per AR 27-26 is the SVC PM. Our goal is the SVC program should be effective, transparent, avoid conflicts of interest with other legal assistance clients and complement the way our Corps already delivers legal services.

Army Strong!

FLORA D. DARPINO
Lieutenant General, USA
The Judge Advocate General

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REPLY TO
ATTENTION OF:

DAJA-ZA

22 JAN 2014

MEMORANDUM FOR JUDGE ADVOCATE LEGAL SERVICES (JALS) PERSONNEL

SUBJECT: Special Victim Prosecutors - **POLICY MEMORANDUM 14-06**

1. This policy addresses Judge Advocates (JAs) assigned as Special Victim Prosecutors (SVPs).

2. Background. SVPs are part of an Army-wide effort to enhance the investigation and disposition process for allegations of sexual assault and family violence. SVPs focus exclusively on sexual assault and family violence cases.

3. Mission.

a. The SVP's primary mission is to develop and litigate special victim cases within their geographic areas of responsibility. SVPs must maintain excellent working relationships with investigating agencies and those professionals who provide crime victims with physical, spiritual, and emotional support.

b. Secondary to their primary mission, to the extent practicable, SVPs will develop and implement a sexual assault and family violence training program for investigators and trial counsel in their area of responsibility using both civilian and military resources. The local Staff Judge Advocate (SJA), with the assistance of their SVP, will ensure that trial counsel receive appropriate sexual assault and special victim training.

c. SVPs will not be tasked to perform non-SVP duties, to include litigation support in non-SVP cases. The AJAG (MLO) may waive this duty limitation.

d. The Trial Counsel Assistance Program (TCAP) manages the operation of the SVP program, including the caseload management between SVPs. All SVPs will coordinate their caseload with the Chief, TCAP. At a minimum, SVPs will provide Chief, TCAP a report of the number and status of each special victim case investigated and prosecuted in their area of responsibility. The AJAG (MLO), with recommendations from SVPs, SJAs, TCAP, and Chief, Government Appellate Division, will determine whether to provide SVP assistance outside the SVP's normal geographic area of responsibility.

4. Duty Location. Presently, SVPs are assigned to the U.S. Army Legal Services Agency with duty at a specific installation in order to support a geographic area of

responsibility as identified by the Personnel, Plans & Training Office (PPTO). SVPs are not subject to deployment without approval from the AJAG (MLO).

5. Rating Scheme. To ensure a proper balance between local and Army-wide needs, the SVP rating chain will include both installation and OTJAG-level supervisors.

a. Captains and majors serving as SVPs will be rated by the Chief, TCAP and senior rated by the SJA of the office that serves as the SVP's primary place of duty. The Deputy SJA or the Chief, Military Justice (CoJ) may serve as intermediate rater if deemed appropriate.

b. Lieutenant colonels serving as SVPs will be rated by the SJA of the office that serves as their primary place of duty and senior rated by the AJAG (MLO).

6. SVP Training. TCAP, in coordination with Criminal Law Division (CLD), OTJAG and The Judge Advocate General's Legal Center and School (TJAGLCS), will execute a SVP training program. Training will consist of foundational courses and follow-on annual training. The AJAG (MLO) may waive the mandatory training requirement.

7. Working Relationships.

a. The SJA will ensure that SVPs receive appropriate administrative and logistical support to carry out the SVP mission.

b. SVPs will provide the local OSJA investigative and litigation support, professional development and training. SJAs will notify their SVP of any allegation of sexual assault or family violence and should detail SVPs to sexual assault and family violence cases within their areas of responsibility. SVPs, TCAP, and SJAs will balance SVP caseload considering SVP training and investigative support duties.

c. The SVP will not serve as the local commander's legal advisor. However, CoJs and/or BJAs will consult with the SVP regarding the disposition, to include charging and referral decisions, charge sheet review and review of investigative file for **every** sexual assault and special victim case in their jurisdiction(s). Unless exceptional circumstances dictate otherwise, SVPs will communicate to the command through the servicing trial counsel and chief of military justice.

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DAJA-ZA

25 AUG 2014

MEMORANDUM FOR JUDGE ADVOCATE LEGAL SERVICES PERSONNEL

SUBJECT: Location, Supervision, Evaluation and Assignment of Judge Advocates in Brigades —POLICY MEMORANDUM 14-08

1. This policy addresses Judge Advocates (JAs) assigned to brigade combat teams (BCTs) authorized three JAs (one Major and two Captains) and all other brigades authorized two JAs (one Major and one Captain). Forward recommended changes to Office of The Judge Advocate General (DAJA-PT), 2200 Army Pentagon, Rm 2B517, Washington, DC 20310. NOTE—Use of the term *Staff Judge Advocate* (SJA) in this policy refers to the SJA servicing a BCT or brigade's General Court-Martial Convening Authority (GCMCA) at home station or while deployed.

2. Background.

a. The BCT is the Army's modular force building block of land combat power. The BCT is uniquely capable of operating as an autonomous unit, independent of the standard command and control relationship between a division and an organic brigade. A BCT may operate as a self-contained task force, or it may "fall in" on a higher headquarters element, possibly from a different home station. The Army's brigade-centric approach impacts the Judge Advocate General's Corps' (JAGC) provision of legal services, resulting in an OSJA-BJA shared responsibility for providing legal services. Whether deployed or in garrison, BCT and brigade legal offices are not resourced nor intended to function wholly independent of higher OSJA support. In garrison settings, BCT and brigade legal services must be tightly nested with the garrison OSJA. When deployed, BCT and brigade legal services must be integrated with their higher OSJA organization.

b. The BCT/brigade legal section is responsible for the full spectrum of legal services required by the BCT or brigade and, where it is beyond its capabilities, for coordinating with the OSJA for the delivery of such legal services. CPTs serving as Trial Counsel (TC) in BCT/brigade legal sections are primarily responsible for administering all military justice matters for the BCT/brigade. BCTs are authorized an additional (second) captain (hereinafter "BCT OPLAW JA").

3. Duty Location. The BJA, TC, and, where authorized, BCT OPLAW JA, are all assigned to the BCT or brigade.

a. The BJA will work at the brigade headquarters and lead the BCT/brigade legal section.

b. In garrison, the TC will work at the OSJA military justice section and interact with the BCT/Brigade staff as noted above. This will foster effective training and ensure consistency in the quality of legal services delivered. Although the TC's primary duty location while in garrison is the OSJA military justice section, the nature of military justice necessitates regular interaction with commanders and BCT/Brigade staff at the units involved. I expect TCs to participate, to the fullest extent possible consistent with their military justice responsibilities, in all scheduled BCT and brigade training (e.g., daily PT, field exercises, etc.) and social events. Effective integration of the TC into the BCT and brigade staff is essential to successful legal support and the practice of military justice.

c. The BCT OPLAW JA – normally a first or second tour Captain – will also work in the OSJA. If, however, the SJA, in coordination with the BJA, believes the BCT OPLAW JA has the training and experience to work at the brigade headquarters legal section, then those accommodations will be made. It is the SJA's sole responsibility to ensure the competency of all JAs under his or her supervision.

4. Supervisory Chain. The BJA is a member of the BCT/brigade commander's personal and special staff, with a direct line of communication to that commander. The SJA will provide technical guidance to the BJA, TC, and BCT OPLAW JA, as necessary; however, the brigade commander determines the BJA's routine, day-to-day duties. The TC will be supervised by the BJA during training exercises and operational missions, and supervised by the Chief of Justice in garrison. The BCT OPLAW JA will be supervised by the BJA during training exercises and operational missions, and while working in the OSJA will be supervised by the Chief of Administrative Law, or as the SJA directs.

5. Working Relationships.

a. JAs at every echelon must display the motivation, professionalism, and dedication to duty that are the hallmarks of our Corps regardless of the evolving force structure. JAs must understand the importance of maintaining positive working relationships with one another, as well as their higher and subordinate legal offices. A positive relationship must also exist between the OSJA's Chief Paralegal NCO and the Senior Paralegal NCO at the BCT or brigade.

b. As JAGC senior leaders, SJAs must take every opportunity to teach, coach, mentor, and support less experienced JAs, including BJAs. I expect SJAs to invite BCT and brigade legal personnel to OSJA social events, training events (e.g., Leader Development Program and Non-Commissioned Officer Professional Development), and professional opportunities (e.g., continuing legal education and professional responsibility training). Personnel in the BCT/brigade legal sections BJAs must have the professionalism and maturity to support SJAs, consistent with the demands of their brigades' operational missions.

c. It is optimal that BCT OPLAW JAs are second assignment captains, or captains with prior OSJA experience at that installation. While providing administrative and operational law support to the BCT, it is essential that the BCT OPLAW JA is integrated with the OSJA's administrative law division, whether in garrison or deployed. Administrative law division support to the BCT OPLAW JA will ensure consistency in advice, provide additional technical chain support, and serve as an additional link between the BCT and the OSJA. The BCT OPLAW JA is expected to support other elements under the OSJA's technical chain, including duties as an Article 32 Investigating Officer or Legal Advisor.

6. Rating Scheme. The rating schemes for the BJA and TC will be in accordance with Army Regulation (AR) 623-3, Appendix D. Specifically, the BJA will, wherever possible, be rated by the SJA and senior rated by the BCT or brigade commander, and the TC will normally be rated by the BJA, intermediate rated by BDE XO, and senior rated by the SJA. BCT OPLAW JAs' rating chains will mirror the TC rating chain. These rating schemes are designed to ensure Judge Advocates receive both leadership and mentoring from their unit chain of command as well as professional guidance and development in the practice of law from a senior Judge Advocate. The rating schemes outlined herein are intended to accomplish these goals, while providing maximum flexibility to the BCT or brigade JA's chain of command, under the AR's recognition of dual supervision.

7. Length of Assignments. The BJA will ordinarily be assigned to the BCT or brigade for two years. Tour lengths for the TC and the BCT OPLAW JA will be determined based upon the needs of the Army and JAGC and the professional developmental needs of the officer.

8. Conclusion. As members of dual professions, and in order to provide world-class legal support to our Army, our Soldiers, and our Nation, JAs must leverage the training and mentorship opportunities of both their commands and their technical supervisory chain.

25 Aug 14

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