




 XVIII Airborne Corps 

## SPECIAL VICTIM COUNSEL PROGRAM



MAJ Stephen J. Valentine  
Special Victim Counsel  
910-908-4309  
stephen.j.valentine.mil@mail.mil

 General Emergence of Victim Rights (2 of 3) 


- State Laws
  - “Crime Victims’ Rights Act” North Carolina General Statutes, Section 15A-830
- State Constitutional Amendments
  - “Rights of Victims of Crime” NC Constitution, Article I, Section 37
- FEDERAL “Crime Victims’ Rights Act” 18 U.S.C. § 3771



 AGENDA 

- History
- Structure & Organization
- Client Eligibility
- Services
- FY 2014 NDAA
- Questions



 Federal Crime Victims’ Rights Act (3 of 3) 

- 8 Enumerated Rights (Effective 30 October 2004)
  - The right to be reasonably protected from the accused
  - The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused
  - The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding
  - The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding
  - The reasonable right to confer with the attorney for the Government in the case
  - The right to full and timely restitution as provided in law
  - The right to proceedings free from unreasonable delay
  - The right to be treated with fairness and with respect for the victim’s dignity and privacy
- Military Specific Variation Included in FY 2014 NDAA
  - UCMJ to be amended to include Article 6b
  - More about FY 2014 NDAA later




 General Emergence of Victim Rights (1 of 3) 

- Pre-Enlightenment: Justice largely victim driven
- Enlightenment: Justice to serve interests of society, not individual victim
- 1970s: Victims Rights Movement
  - Combination of the efforts of the women’s liberation movement, civil rights movement, and conservative law & order movement
  - Response to Warren Court’s expansion of criminal rights
- Emergence of Victim Rights Laws

 Focus on Sexual Assault within the Military (1 of 2) 

- National Spotlight Placed on Sexual Assault within the Military
- The Invisible War
- DoD FY 2012 Sexual Assault Data
  - Reports:
    - USA: 1,423
    - USAF: 790
    - USN: 773
    - USMC: 435
  - Courts-Martial Preferred:
    - USA: 424
    - USAF: 42
    - USN: 99
    - USMC: 29
  - Extrapolated Estimate of Total Sexual Assaults:
    - 26,000





## Focus on Sexual Assault within the Military (2 of 2)





“I believe that we should end the ability of senior commanders to unilaterally overturn a decision or sentence by a military court and from the tenor of his letter, I am hopeful that Secretary Hagel will reach the same conclusion.”





## Special Victim Counsel Program

- SECDEF Memo on Sexual Assault Prevention and Response (14 August 2013)
  - “Secretaries of the Military Departments shall establish a special victim’s advocacy program best suited for that Service that provides legal advice and representation to the victim throughout the justice process.”
- OTJAG Policy Memo # 14-01 (1 November 2013)
  - Addresses Army SVC Program
  - IOC: 1 November 2013
  - FOC: 1 January 2013
  - SVCs to function as part of OSIA LAO
- CID Interim Guidance (1 November 2013)
  - “All questioning of the victim will be delayed if the victim elects the representation of a SVC prior to any interview . . . . The SVC can accompany and advise the victim throughout the investigative process.”
  - CID given discretion to inform victims of SVC services prior to or after the initial interview.
    - Fort Bragg CID very supportive of program.
- Rules of Practice Before Army Courts-Martial (1 November 2013)
  - Rule 2.3: SVC must also comply with rules.
- ALARACT 299/2013 Army Responsibilities, Roles, Procedures, and Authorities for Responding to Sexual Assault (8 November 2013)
  - Implements SECDEF Memo and Establishes SVC Program
  - Additional Changes to Note
    - Allocations of rape, sexual assault, forcible sodomy, and related attempts to be withheld to SPCMAC for initial disposition
    - Judge Advocates to serve as the Article 32 Investigating Officer in such cases
    - Reemphasizes Army’s expedited transfer policy





## Legal Assistance for Special Victims





- USECDEF Memo on Legal Assistance for Victims of Crimes (17 October 2011)
  - After receiving input from Secretaries of Military Departments, concludes that Services can provide legal assistance to victims of crimes including sexual assault.
- Victims of Sexual Assault, Access to Legal Assistance . . .” 10 U.S.C. § 1565b (31 December 2011)
  - Codifies availability of legal assistance to victims of sexual assault
  - Confirms that restricted reports made legal assistance attorneys will be kept restricted.
- DoD OGC Info Memo (9 November 2012)
  - Concludes that the 1985 law establishing military legal assistance (10 U.S.C. § 1044) and 10 U.S.C. § 1565b, read together, permit JAGs to overtly interface with trial counsel, defense counsel, and investigators in a military criminal case to include appearing at court-martial or Article 32 proceeding on behalf of the victim
  - Emphasizes that no new or independent right for a victim is being created
  - However, extent of role is a matter of policy, resource allocation, and risk tolerance
- Air Force Pilot SVC Program began 28 January 2013
  - Stovepipe organization similar to TDS
  - 60 attorneys and 31 paralegals trained
    - 24 attorneys and 10 dedicated paralegals performing services
  - Services mainly provided telephonically
  - Noticeable increase in number of restricted reports transforming into unrestricted reports



## Structure & Organization


- Approximately 67 SVCs across the Army
  - Most DIVs and above will have 1-2 SVCs
  - Most large posts will have 1-2 SVCs
  - Smaller posts receive coverage from other bases (e.g. Fort Benning covers Redstone Arsenal)
  - XVIII Airborne Corps
    - Corps x 2
    - 3rd ID x 2
    - 10th MTN x 2
    - 82nd AD x 2
    - 101st AD x 2
- Not a stovepipe organization
  - SVCs generally answer to Chief of Legal Assistance and ultimately SJA
  - However when representing client, SVCs only answer to client and seek advice/guidance from Program Manager at Pentagon
  - Unlike Air Force, no dedicated paralegals
  - Only uniformed JAs may serve as SVCs





## LRM v. Kastenberg

- Background/Facts
  - MRE 412: Rape Shield Law
    - “The alleged victim must be afforded a reasonable opportunity to attend and be heard.”
  - MRE 513: Psychotherapist-Patient Privilege
    - “The patient shall be afforded a reasonable opportunity to attend and be heard.”
  - MRE 514: Victim Advocate-Victim Privilege
    - “The victim shall be afforded a reasonable opportunity to attend the hearing and be heard.”
  - SVC Standing (Factual Matters & Legal Argument) v. Opportunity to be Heard (Factual Matters)
- 18 July 2013 CAAF Decision
  - “LRM is the named victim in a court-martial seeking to protect the rights granted to her by the President in duly promulgated rules of evidence . . .
  - “LRM’s position as a nonparty to the courts-martial . . . does not preclude standing.”
  - Looking at how the term is used in the RCM and has been used in Federal courts, “reasonable opportunity to be heard” includes “the opportunity to present facts and legal argument.” **BUT LIMITATIONS:**
    - Court may limit to written submissions
    - Court may further curtail opportunity to be heard where the interests of trial counsel and the victim are aligned.




## CLIENT ELIGIBILITY (1 of 2)

CATEGORIES OF CLIENTS	
This chart reflects the discretion set out in the SVC Handbook. If there is any question as to client eligibility, SVCs should consult the SVC Program Manager.	
Victim Status	Representation
Active Duty Army	Yes
Army Reserve (active > 30 days at time of the offense)	Yes
Army National Guard (active > 30 days at time of the offense)	Yes
Adult dependents of the above	Yes, if suspect is a Soldier
Active Duty other Services	Yes, if suspect is a Soldier
Other Services Reserve (active > 30 days at time of the offense)	Yes
Air National Guard (active > 30 days at time of the offense)	Yes
Adult dependents of the above	Yes, if suspect is a Soldier
Army National Guard (Title 32 for thirty days or less)	Yes, if suspect is a Soldier
Army Reserve (Inactive Duty for Training)	Yes, if suspect is a Soldier
Retired members and their adult dependents	Yes, if suspect is a Soldier
Deployed DoD civilian employees	Yes, if suspect is a Soldier
OCOSUS DoD civilian employees and accompanying adult dependents	Yes, if suspect is a Soldier
Foreign military personnel assigned to the United States and accompanying adult dependents	Yes, if suspect is a Soldier
Minors	No
Civilians	No
Deployed civilian contractors	No

- Client must be a victim of sexual assault
- Client must be an adult (The Army is now representing children)
- What if suspect is not a Soldier?

### Client Eligibility: Restricted v. Unrestricted Reports (2 of 2)



- Victims are entitled to SVC services regardless of the status of their report
  - Unrestricted Report
  - Restricted Report
  - Unreported (option unique to Chaplains and SVCs)


### SERVICES: Post-Trial (3 of 8)

- Post Trial Submissions to Convening Authority
- Advise on length of confinement
- Advise on clemency/parole rights
- Advise of need to maintain current contact data with VWL or Army Review Board Agency



### SERVICES (1 of 8)

- SVCs form Attorney-Client Relationships with Victims triggering Privilege (MRE 502) and Rules of Professional Conduct (AR 27-26)
  - Confidentiality (Rule 1.6)
  - Communication with Person Represented by Counsel (4.2)
    - Rule 6.4 – Caution!
- Provide advice and representation to the victim throughout the justice process during:
  - Investigation
  - Referral/Referral/Negotiations
  - Article 32 Proceedings
  - Trial
  - Post-Trial



### SERVICES: VWL v. SVC (4 of 8)


#### Scope of Services

VWL	VWL and SVA Responsibilities	SVA
<ul style="list-style-type: none"> <li>Primary POC through which victims obtain info/assistance in securing victim services at earliest opportunity.</li> <li>Adv ICIV unit VA responsible for crisis intervention, referral, and ongoing nonclinical support to SA victim.</li> <li>Inform and assist with transportation, parking, childcare, lodging, and translators/interpreters.</li> <li>Inform of entitlement to reimbursement for expenses of appearing at Art. 32 or court-martial.</li> <li>Assist with obtaining payment of witness fees and related costs.</li> <li>Provide assistance to non "special victims"</li> </ul>	<ol style="list-style-type: none"> <li>Inform on reporting options</li> <li>Inform on victim rights</li> <li>Inform on military and VA benefits</li> <li>Inform on expedited transfer requests</li> <li>Inform on MPO and civilian protective orders</li> <li>Inform on the M2 System and victim's rights/obligations</li> </ol>	<ol style="list-style-type: none"> <li>Advise victim in collateral civil issues arising from crime</li> <li>Advocate victim's interests with TIC on disposition options</li> <li>Referral to TDC, as necessary</li> <li>Advise victim on victim impact statement</li> <li>Accompany victim to all pre-trial interviews, hearings and court-martial proceedings</li> <li>Dispositional motions regarding medical records</li> <li>Motion/court appearances/appeals on MRE 412, 513, and 514 issues</li> <li>Assist victim in post-trial submissions</li> <li>Traditional Legal Assistance</li> </ol>

Special Victim Advocates


### SERVICES (2 of 8)

- Accompany client to and advise client during interviews, examinations, hearings, and court-martial proceedings
- Represent client in a court-martial as permitted by law (remember *LRM v. Kastenberg*)
- Refer client to TDS for collateral misconduct, if necessary
- Advocate for client's interest with Government counsel on disposition options
- Assist client with post-trial submissions to include victim impact statements
- Advise client on collateral civil issues arising from the crime
- Provide legal assistance services as needed



### ADDITIONAL SERVICES (5 of 8)


- Expedited Transfers
  - Only available in "credible" unrestricted reports
  - Request must be in writing
  - Presumption is in favor of transferring victim
  - Request for intra-post may only be disapproved by first GO in CoC
  - Request for inter-post transfer may only be disapproved by HRC CDR
  - Decision must be made within 72 hours
- Transitional Compensation for Abused Dependents
  - \$1,154 to \$2,463
  - 36 months or remainder of service obligation but not less than 12 months
- MPO, CPO, Pretrial Restrain
- Obtaining Information
  - FOIA
  - Article 54(e)
- Ensuring Other Victims Services are Provided



### SERVICES: Collateral Misconduct (6 of 8)

- Cases may sometimes involve collateral misconduct by the victim
  - Underage drinking, fraternization, adultery...
- SVC may be able to help in issues of collateral misconduct
  - Advocate for client's interests
  - Seek testimonial or transactional immunity for minor misconduct
  - Protect status of unknown minor misconduct
- However, SVC **must** refer issues misconduct to TDS
  - SVCs coordinate with TDS to insure consistency of representation

### SERVICES: Obtaining an SVC



### SERVICES: Conflicts with Government (7 of 8)

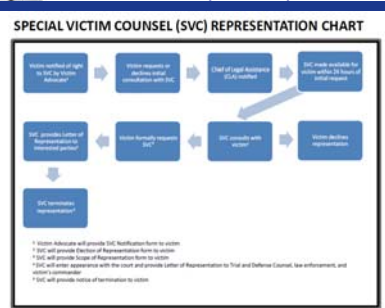
- Alternative Dispositions
- Contrary Positions on MRE 412, 513, and 514
- Other areas:
  - Asserting Privileges
  - US v. Sinclair
    - Objection to Discovery



### 2014 NDAA (1 of 2)

- Adds CVRA to UCMJ
  - The right to be reasonably protected from the accused.
  - The right to reasonable, accurate, and timely notice of any of the following:
    - A public hearing concerning the continuation of confinement prior to trial of the accused.
    - A preliminary hearing under section 832 of this title (article 32) relating to the offense.
    - A court-martial relating to the offense.
    - A public proceeding of the service clemency and parole board relating to the offense.
    - The release or escape of the accused, unless such notice may endanger the safety of any person.
  - The right not to be excluded from any public hearing or proceeding described in above unless the military judge or investigating officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.
  - The right to be reasonably heard at any of the following:
    - A public hearing concerning the continuation of confinement prior to trial of the accused.
    - A sentencing hearing relating to the offense.
    - A public proceeding of the service clemency and parole board relating to the offense.
  - The reasonable right to confer with the counsel representing the Government at any proceeding described above.
  - The right to receive restitution as provided in law.
  - The right to proceedings free from unreasonable delay.
  - The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.

### Services: Retaining of SVC (8 of 8)



**SPECIAL VICTIM COUNSEL (SVC) REPRESENTATION CHART**

1. Victim notified of rights by the Victim Advocate

2. Victim requests "Special Representation" under Article 32

3. Staff of Legal Assistance (TDS) contact

4. SVC must provide to JBLM within 24 hours of TDS request

5. SVC provides Letter of Representation to TDS

6. TDS provides Letter of Representation to TDS



7. SVC provides Letter of Representation to TDS


8. TDS provides Letter of Representation to TDS

SVCs may **NOT** solicit clients!

### 2014 NDAA (2 of 2)

- Codifies victims right to have SVC present at defense counsel interviews as well as TC or VA if victim desires
- Codifies victims right to submit matters for consideration by CA before CA takes action on findings and sentencing
- Codifies SVC Program
- Gives victim the right to opt not to testify at an Article 32 proceeding.
  - JBLM's use of interrogatories

 **SERVICES: Cases Handled by Civilian Authorities** 

- Advocate Soldier victim's interests off-post to civilian prosecutors and law enforcement
- Precluded from representing victims in civilian courts
- Precluded from interacting with the media
- Cumberland County issue 



 **Questions?** 

MAJ Stephen J. Valentine  
Special Victim Counsel  
XVIII Airborne Corps Legal Assistance Office  
Soldier Support Center  
910-908-4309  
Stephen.j.valentine.mil@mail.mil

 **Sister Service Programs** 

- Air Force SVC
- Navy/Marine Corps Victims' Legal Counsel (VLC)
  - Navy
    - 29 VLCs with 10 dedicated paralegals
  - Marine Corps
    - 15 VLCs with 8 dedicated paralegals

 **Paralegals in the Process** 

- How we can assist each other
- LAO Paralegals
- BDE Paralegals
- MJ Paralegals
  - Travel