

RECORD VERSION

STATEMENT BY

**LIEUTENANT GENERAL DANA K. CHIPMAN
THE JUDGE ADVOCATE GENERAL, UNITED STATES ARMY**

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ON OVERSIGHT: SEXUAL ASSAULTS IN THE MILITARY

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MILITARY JUSTICE - A Proven System

Sexual assault is an issue with which the Army continues to grapple. Its impact on readiness and individual survivors can be devastating. The Army takes accountability for sexual crimes very seriously and is committed to reducing and ultimately preventing sexual assault in the military. To that end, we believe the modern military justice system, in existence and evolving since the 1950's and based on the Uniform Code of Military Justice (UCMJ), is well equipped to meet the challenges of crime and indiscipline in the Army, and in particular, the terrible crime of sexual assault. Indeed, our system is focused, well resourced, intent on doing what is right and, cognizant of the necessary scrutiny we receive every day. A modern, comprehensive criminal statute, combined with trained commanders and qualified investigators and prosecutors, with a fully resourced justice system provide all the tools necessary to hold offenders accountable, to protect due process rights of accused Soldiers and to provide support and justice for victims. In the Army, our professional and independent investigators and prosecutors form the vanguard for our modern Special Victims Capability, simultaneously mandated by the Congress and initiated by the Department of Defense in 2012.

The military justice system was established as a separate system because of the worldwide deployment of military personnel, the need for a system that can be responsive to the unique nature of military life and the combat environment, and the need to maintain discipline in the force. Though instituted with a draft Army in 1950, the UCMJ remains a key element of our all-volunteer force.

Ultimate authority in our system is vested in the commander for very important reasons. The commander is responsible for all that goes on in a unit – health, welfare, safety, morale, discipline, training, and readiness to execute the mission. The commander's ability to punish quickly, visibly, and locally is essential to maintaining

discipline in units. The Uniform Code of Military Justice ensures that commanders can maintain good order and discipline in the force.

This unique role of the commander has raised questions in two areas: why do we allow a non-lawyer to make disposition decisions in a criminal justice system? And can a commander improperly influence the military justice process? Our system addresses these concerns through career-long training, the role of the Judge Advocate, and other procedural safeguards. First, the commanders who make these disposition decisions do not go into this process blindly, nor execute their authority in a vacuum. They are trained in their responsibilities under the Uniform Code of Military Justice from the day that they are commissioned and throughout their careers. Second, commanders have at their disposal Judge Advocates to provide advice and counsel. Judge Advocates are an integral part of the military justice system, and they serve as command legal advisors, prosecutors, defense counsel, and military judges. Judge advocates are trained to analyze evidence to determine if there are sufficient facts to support allegations, and to make recommendations to commanders on disposition. Third, there are a variety of procedural safeguards that ensure commanders make evidence-based disposition decisions, particularly in regard to sexual assault allegations. These include the ability of senior commanders to withhold disposition of an allegation from a subordinate.

The most fundamental procedural safeguard is written into the UCMJ. Commanders are, before all else, officers whose commission and oath of loyalty is to no person – but to the Constitution. Secondly, judge advocates are officers of the court – sworn to the profession of law and to uphold the due process accorded by the Constitution and our laws. These profound tenets of our American Army, conscientious commanders and judge advocates, adhering to and enforcing the rule of law and doing what is right regardless of costs, are, in my view, the best safeguards for our system of justice. Although the individuals operating within the institution are not perfect we have a system in place that holds these Soldiers accountable. Our Uniform Code speaks loudly to the proper role of the Commander in military justice. Article 37 prohibits unlawful command influence - that is, a commander may not influence a subordinate commander's independent decision making. However, the ultimate procedural

safeguards include the oversight authority vested in the civilian judges of the Court of Appeals of the Armed Forces, and in Article III courts, as well as the authority vested in the Army and DoD Inspectors General. To that end, it must be stated expressly – we attempt to track and report every allegation of sexual assault and make every disposition decision available for review.

What this means is that the military shares the truth in every case reported. In those cases where hindsight reveals a failure, we make adjustments. We have been in a self-evaluation and reaction mode for six consecutive legislative cycles now, and the policy, programmatic, and statutory changes made are comprehensive, progressive, and meaningful.

DISPOSITION: OPTIONS AND AUTHORITY

Commanders have a wide range of disposition options available to them, from four levels of court-martial, nonjudicial punishment, punitive administrative discharge, adverse administrative action, imposing nonpunitive measures to taking no action. The particular level of disposition is based on the nature and circumstances of each offense. This toolbox of disposition options allows Commanders to address the entire spectrum of sexual misconduct, from precursor behaviors of verbal harassment up to and including a rape. Civilian systems do not provide a corresponding range of disposition options.

Given the unique nature of sexual assault allegations, disposition authority for the penetrative offenses (rape, sexual assault, forcible sodomy and attempts to commit these crimes) has been withheld to Brigade Commanders, Colonels with 20-25 years of experience in the Army, and significant training and experience in executing their authority and duties under the Uniform Code of Military Justice. These senior officers also have dedicated legal advisors. The dynamics of each case are evaluated and treated individually, just like any civilian criminal case, and there is no doubt that commanders listen carefully to their legal advisors. After ten years of complicated contingency operations, the commander-legal advisor relationship is stronger than it ever has been in our military history, in my opinion. The dynamics of each case are

evaluated and treated individually, just like any civilian criminal case, and there is no doubt that commanders listen carefully to their legal advisors. Commanders are not afraid to require the prosecutors to try the most difficult cases.

SEXUAL ASSAULT STATUTES UNDER THE UCMJ

The punitive articles of the Uniform Code of Military Justice, including Articles 120 and 125, criminalize a broad range of sexual misconduct from an unwanted touch over the clothing to forcible rape. Article 120 is a modern, offender-focused statute that recognizes constructive force as it exists in the unique hierarchy of the military. It is one of the most progressive sexual assault statutes in the country. The statute also provides the ability to prosecute drug and alcohol facilitated sexual assaults like many other states with progressive statutes. Other Articles of the UCMJ criminalize behaviors that have been identified as precursors to sexual assault such as sexual harassment and indecent language. This enables Commanders to hold potential offenders accountable for what is considered non-criminal behavior in the civilian justice system

As in every civilian criminal jurisdiction, there are procedural and evidentiary rules that protect victims, particularly victims of sexual assault. Military Rule of Evidence 412, the “rape shield” rule, nearly identical to Federal Rule of Evidence 412’s criminal provisions, excludes evidence of a victim’s past sexual history subject to limited Constitutionally-required exceptions. Motions and hearings regarding Rule 412 evidence are closed to the public and sealed in the record of trial. Confidentiality provisions, found in Military Rule of Evidence 513 and 514, protect disclosure of confidential statements made by victims to their mental health providers and their Victim Advocates.

The Army has made tremendous progress in providing special training to prosecutors and investigators since 2009. I will talk about our Special Victim Prosecutors in a minute, but want to emphasize the importance of victim privacy to our prosecutors and commanders. We know that victims are subject to pressures, direct and indirect, after a sexual assault allegation is made. Commanders, prosecutors, investigators, and especially victim advocates, are extremely sensitive to this reality.

ACCOUNTABILITY PROCESS FOR SEXUAL ASSAULT ALLEGATIONS

I believe that the investigative and prosecutorial arms of our system provide an independent, professional process for accountability. Victims have a variety of options to report an allegation of sexual assault including unit Victim Advocates, unit Sexual Assault Response Coordinators, the chain of command, military or civilian police, military or civilian hospitals and hotlines. Because victim reporting is a universal problem, the goal of these initiatives is to encourage victims to come forward by providing adequate support and services. All unrestricted sexual assault allegations in the Army, from an unwanted touch over the clothing to forcible rape, are referred to the Army Criminal Investigation Division, CID. There, specially trained criminal investigators, independent of the command, are free to pursue their investigations without interference or agenda. CID agents receive some of the best and most extensive training in sexual assault investigations of any investigative agency, including their initial training, annual refresher training, and an in-depth 80-hour Special Victim Unit (SVU) Investigation Course. Further, CID has hired civilian sexual assault investigators (SAIs) to supervise their SVUs and sexual assault investigative teams. The sexual assault investigators bring, on average, 16 years of experience and expertise from civilian police agencies and other Federal law enforcement agencies.

The legal offices that provide advice and counsel to the criminal investigators, as well as to commanders, are made up of licensed attorneys who are trained and skilled in the practice of criminal law. In the Army, we employ Special Victim Prosecutors (SVP) to advise on and develop these cases. The objective of these collaborative criminal investigations, led by the SAI and the SVP is the same as in any criminal investigation – to develop sufficient facts and evidence to allow a decision maker to make an appropriate decision. SVPs are notified of and track every allegation of sexual assault. SVPs confer early and often with the investigators to ensure a thorough and professional investigation. SVPs are trained to meet with the victim as soon as practicable after the report, to establish rapport and begin the relationship that will serve as the foundation of every case. Educating and supporting the victim is the primary

charter of the prosecutor, who must serve both the interests and rights of the victim and the community's interest in holding offenders accountable and preserving good order and discipline. The SVP utilizes a member of the prosecution team known as the Victim Witness Liaison (VWL) to inform and educate a victim of his or her rights and the benefits to which one is entitled. The VWL is normally a civilian paralegal within the Staff Judge Advocate's Office who receives special training to provide victim care and support victim rights.

If the investigation reveals that there is sufficient evidence to support the allegation, that report is referred to the command for disposition. When a commander of any active duty servicemember determines that allegations are supported by the evidence, criminal charges are preferred. For a general court-martial to occur, the charges must first be referred to an investigation under Article 32 of the Uniform Code of Military Justice. The purpose of the Article 32 investigation is to have an independent officer review the case and determine if the charges are in the proper form, if there is sufficient evidence to support the charges, and whether a general court-martial is appropriate. Rules of evidence, including rape shield protections under Military Rule of Evidence 412, apply in the Article 32 proceedings. SVPs and paralegal Victim Witness Liaisons work with victims from the day of the initial report to prepare victims to testify. The Article 32 investigating officer makes a recommendation that informs the review and action of an intermediate-level Commander, a Colonel with between 20-25 years experience. From there, the case is forwarded to the Staff Judge Advocate who advises the General Court-Martial Convening Authority. Ultimately, the General Court-Martial Convening Authority decides whether the case will be referred to court for trial based on the legal advice of the SJA.

When a case is referred to court-martial, the parties to the trial and the process are similar to what one would see in a civilian criminal court. We have an independent military judiciary, made up of military lawyers who have extensive criminal law experience. It is their duty to be fair and impartial in overseeing trials, applying the law, and if applicable, determining guilt or innocence and imposing an appropriate sentence upon an accused Soldier. An accused Soldier is represented by a military defense counsel who zealously represents their client's legal interests. It is important to note

that military defense counsel and military judges are assigned to separate organizations within the military, with command and performance rating chains that are separate from those of the prosecutors and convening authorities. Finally, the government is represented by a trial counsel, or prosecutor, whose mission is to present the evidence and argue the case against the accused on behalf of the United States.

After a Soldier is convicted, the military justice system has a unique process for post-trial clemency and review by the Convening Authority known as the Initial Action under Article 60, UCMJ. The Staff Judge Advocate conducts an initial legal review of the proceedings and advises the Convening Authority on appropriate action. Convicted Soldiers are permitted to submit materials for review by the Convening Authority. A recent court-martial conviction and sentence received significant media coverage because the Convening Authority disapproved the panel's findings of guilt and sentence and the convicted Lieutenant Colonel was released from jail. I cannot speculate about that matter, but I can say that I have not seen such a result in a court-martial in 32 years of service. Should we evaluate the need for the commander authority exercised here and for changes to our post trial system? Absolutely. Our Services already collectively evaluate military justice processes and procedures in an ongoing forum through the DoD constituted Joint Service Committee. Any changes to our system must be done with a full appreciation for the second and third order effects on our post-trial and appellate processes.

Moreover, the Uniform Code of Military Justice has been in place since 1950 – more than 60 years. Before its enactment, the Congress took two years, conducted numerous hearings, took testimony from lawyers and non-lawyers, and carefully drafted the law creating our current military criminal legal system. Since that time, Congress made major changes to the Code on only one occasion, when it enacted the Military Justice Act of 1968. That Act, passed during the Vietnam War era, similarly involved months and months of hearings and testimony. This deliberate and thoughtful approach has ensured that the UCMJ not only is a first class piece of legislation, but also has ensured that unforeseen or unanticipated consequences did not adversely affect our military legal system. Consequently, it is my view that any changes to our UCMJ -- even if we agree that change is required -- not be made in piecemeal fashion. We must

ensure that we adopt the best possible legislative update and that we avoid the law of unintended consequences. I believe with the Congressionally mandated panels directed in NDAA '13, we have the right vehicles in motion to responsibly consider possible changes to our Code.

SPECIAL VICTIM PROSECUTOR PROGRAM

For sexual assault cases in the Army, we have established a Special Victim Prosecutor program to develop and prosecute sexual assault and special victim cases. In 2009, the Secretary of the Army authorized 15 Special Victim Prosecutors to assume responsibility for sexual assault and domestic abuse cases. As a result of the success of this program, in 2012, I increased the number of SVPs to 23. The SVPs have regional responsibilities. These judge advocates are individually selected and assigned based on demonstrated court-martial trial experience, ability to work with victims and ability to train junior counsel. They complete a specially designed foundation and annual training program to elevate their level of expertise in the investigation and disposition of allegations of sexual assault and family violence. This training includes the career prosecutor courses offered by the National District Attorneys Association and on-the-job training with a civilian special victim unit in a large metropolitan city. The SVP's primary mission is to investigate and prosecute special victim cases within one's geographic area of responsibility. Their secondary mission is to develop a sexual assault and family violence training program for investigators and trial counsel in their area of responsibility. SVPs are involved in every sexual assault and special victim case in their assigned region. The SVPs work hand-in-glove with the SAI investigators throughout the process. They train together and, in some locations, SVPs and SAIs are in the same office. As our program develops, we intend to strengthen and formalize the relationship to enhance the Army's accountability efforts. For example, one of our most senior SVPs will move to a new jurisdiction where he will not only prosecute special victim offenses, but also teach at the military police school. Finally, in addition to working directly with victims in these cases, SVPs provide training, support and guidance to those professionals responsible for the physical, emotional and other needs

of victims, including Victim Advocates (VAs), Sexual Assault Response Coordinators (SARCs) and Victim Witness Liaisons (VWLs). The SVPs also work closely with local police, prosecutors and service providers. To provide continuity and develop expertise, we have assigned SVPs to 3- year tours and developed a strategy to assign former SVPs to positions that will utilize their skills. We are growing and developing a corps of Judge Advocates educated and experienced in the adjudication of these difficult cases. Looking to the future, we will expand and formalize the concept adding additional resources and personnel to establish a premier Special Victim Capability, consistent with NDAA '13 direction.

What I am most proud of is the rapport these SVPs develop with victims. What you don't read about in the media is the case where the SVP went with the victim to the victim's custody hearing, or where the SVP helped the victim get out of a lease so she could move, or where the SVP helped a civilian victim obtain a restraining order in civilian court. Even better is a recent note from a victim's mother, in which she wrote that the SVP is considered a member of her family and that the SVP made her daughter feel stronger and more capable than she knew she could feel. Along with the reality that we try the harder cases that many civilian prosecutors will not touch, our SVPs work hard to connect with and assist our victims. From counterintuitive behavior, to traumatic memory recollection, to an understanding of alcohol-facilitated sexual assaults in general, our primary focus is knowing and supporting our victims.

HIGHLY QUALIFIED EXPERT ASSISTANCE

At the same time the Army initiated the SVP program, we hired seven civilian Highly Qualified Experts (HQEs) to further enhance our ability to effectively investigate, prosecute and defend sexual assault and special victim cases. The HQEs bring a wealth of civilian experience and trial litigation expertise to our program. One HQE is assigned to the Criminal Law Department at the JAG school. His primary mission is to develop and train the curriculum on litigating sexual assault and special victim cases that we use to train our judge advocates. Two HQEs are assigned to our Trial Counsel Assistance Program to provide direct assistance to our Special Victim Prosecutors and

other trial counsel in developing and litigating sexual assault and special victim cases. These dedicated professionals meet with victims, advise trial counsel, SVPs and Staff Judge Advocates on individual cases, assist in every phase of the prosecution of complex cases and train at conferences and outreaches. Their training includes the entire spectrum of first responders; including Judge Advocates, law enforcement, victim advocates, medical providers, and victim services providers for the Army and all other services. Two HQEs are assigned to our Defense Counsel Assistance Program to provide direct assistance to military defense counsel representing soldiers in sexual assault and special victim cases.

VICTIM WITNESS LIAISON (VWL)

The final component of the Army's Special Victim capability, working alongside the SAI criminal investigator and the Special Victim Prosecutor, is the Victim Witness Liaison (VWL). The VWL is a paralegal immersed in the military justice system and trained to work with all victims of crime, including sexual assault victims. The role of the VWL is to assist the victim in navigating the court-martial process. The VWL will educate the victim on her rights and the military justice system. The VWL may accompany victims to interviews with defense counsel, sit with the victim through Article 32 hearings or motions, coordinate travel or childcare for victims and provide referrals for all available resources. We are continuing to improve training for the VWLs to ensure they are equipped to educate victims about the process and their rights. We hope the relationship between victims and VWLs reflects the same level of care and assistance common between SVPs and victims and believe that adding additional highly skilled, highly trained VWLs to our team will facilitate that goal.

TRIAL COUNSEL /DEFENSE COUNSEL TRAINING – Comprehensive, Integrated & Synchronized

The Army has an extensive training system in military justice for judge advocates from 3 months to 25 years in service. All of our judge advocates are trained on their

role in the military justice system in general, and specifically on the unique aspects of prosecuting and defending sexual assault and special victim cases. Prosecutors are trained that the Army is their client, rather than any individual commander. If there is a conflict between the interests of the individual commander and the interest of the Army, the Army's interests should prevail. Our prosecutors are trained that the Army's interest in "doing the right thing" is paramount to any interest that is contrary to that principle. All of our military justice practitioners are put through a synchronized, graduated training program administered by The Judge Advocate General's Legal Center and School, and our Trial Counsel Assistance and Defense Counsel Assistance Programs. Sexual assault and special victim cases are complex, and difficult to prosecute and defend. However, we strive to provide the training and resources to ensure that these cases are appropriately investigated, analyzed, developed, and resolved. In addition, we carefully analyze our training synchronization and planning to provide defense-specific training commensurate with the expertise required. This requires a delicate balance, and we are careful to allocate our resources appropriately.

VICTIM SERVICES/POLICY

An essential element to the success of the Army's accountability efforts is providing victims with ongoing support. Although the prevention and response arms of the Army Sexual Harassment/Assault Response Program (SHARP) fall within the responsibilities of The Deputy Chief of Staff for Personnel (G-1), it is important to provide you with a comprehensive picture of the Army's efforts. The Army has invested unprecedented resources, over \$50 million in each of the past two fiscal years, into a prevention and response program designed to achieve culture change. The I.A.M. STRONG training, emphasizing Army values and teaching bystander intervention techniques, saturates Soldier training at every level beginning with our newest recruits. A senior leader priority, this is an ongoing and monumental institutional effort. Advocacy and assistance for the victim are provided from the initial report through post-trial proceedings. Alongside the other Services, the Army has implemented policy to address the unique needs of Soldier- victims, who have concerns about privacy and

collateral misconduct. Details of the Army SHARP prevention and response program are attached.

VICTIM RIGHTS AND REMEDIES

As to victims' rights in the military justice system, rights afforded to victims in the Army are set forth in regulations and generally track the provisions of the Federal Crime Victims Rights Act, 18 USC 3771. These rights include the right to be treated with dignity and fairness, with a respect for privacy; the right to be reasonably protected from the accused offender; the right to be notified of court proceedings; the right to be present at court proceedings related to the offense; the right to confer with the attorney for the Government; the right to restitution; and, the right to information regarding conviction, sentencing, imprisonment and release of the offender from custody. These rights are provided both in written, standard forms and in letters to victims after the court-martial process concludes. I note the CVRA was amended by Congress in 2004 which added 2 rights: the right to proceedings free from unreasonable delay, and the right to reasonably be heard at any public proceeding in the district court involving release, plea, sentencing or any parole proceeding. Current DoD regulations were drafted prior to the 2004 amendment to the federal law and must be updated to reflect these two additional rights.

The responsibility to inform victims about these rights and the duty to enforce the rights are shared by all of the personnel who assist a victim. An overlapping and encompassing team of professionals, this includes the Commander, the Victim Advocate, the Sexual Assault Response Coordinator, the CID investigator, the Victim Witness Liaison, a Legal Assistance Attorney, the trial counsel prosecutor, the appellate court Victim Witness Liaison and Army Corrections Command officials. Army regulations require these personnel to provide information to the victim throughout the investigative and accountability process. In CY2011, Army Victim Witness Liaisons and investigators provided 31,898 victim's rights forms to victims and witnesses of all crimes. During the court-martial process, the VWL, the trial counsel prosecutor and the SVP work together to keep the victim informed and actively participating. An educated

victim is the most important asset the prosecutor and the Command have in the effort to hold offenders accountable.

Army legal assistance attorneys represent victims on any legal issues arising from the offense, including child custody, child support, landlord-tenant and other personal matters. A 2011 survey of legal assistance attorneys in the field indicates that many victims avail themselves of these services and that Army legal assistance attorneys were able to provide meaningful assistance. Legal assistance attorneys can also assist victims with requests for expedited transfers or other matters that arise in the command.

Each of the military Services has sought innovative solutions to providing advocacy for victims within the military justice system without sacrificing the ability to hold offenders accountable. Recently, the Air Force began a pilot program to provide a Special Victim Counsel, generally defined as an attorney detailed to represent victims who can intervene in the court-martial proceedings against the accused. The Army will watch this program carefully to learn best practices and potential pitfalls in such a change, one not contemplated by current rules and procedures. Our concern is that introducing an adversarial relationship between the government representative, the prosecutor, and the victim, especially during the presentation of evidence at trial, will have an adverse impact on the ability to prosecute and achieve accountability for offenders. The relationship between the prosecutor and the victim remains the bedrock of every case. If that trust or confidence is eroded, or a wedge is forced between them, the offender will reap the benefits. Even lawyers will admit that entry of another 'lawyer-litigant' to litigation almost by definition does not improve the process. The Army's specially trained SVPs are taught to work with victims to understand their concerns and address their needs, and we believe this is a more effective method of securing sexual assault accountability while also caring for the victim's interests, pursuing the interests of discipline, and enforcing the statutes created by this Congress. The prosecutor's responsibility to protect victim privacy and rights to the greatest extent possible should not be delegated to another party.

If a victim feels that one of his or her rights has been violated, the victim has several avenues of redress. The first avenue is the most direct – through the chain of command, the Victim Advocate, the Legal Assistance Attorney, the VWL or the SVP. All of these personnel are available to address the victim’s concern and seek a remedy. In the event that a victim does not get relief from these personnel or does not wish to utilize these personnel, the victim has a set of secondary options. The victim can contact the Army or DoD Inspector General’s office, independent investigative agencies. If the victim believes the chain of command is not enforcing the victim’s rights, the victim can file a complaint under Art. 138 “Complaint of Wrongs” of the Uniform Code of Military Justice, with the assistance of a Legal Assistance Attorney. Finally, a victim can seek assistance and information from hotlines run by the Army SHARP program and the Department of Defense Sexual Assault Prevention and Response Office (SAPRO). But in the end, the first and best resource for a victim is the prosecutor and those on the government team (the VA for example) who are trained and focused specifically on ensuring the victim succeeds.

METRICS TO MEASURE PROGRESS

In my view, prosecution and conviction rates do not alone measure a criminal justice system’s ability to address the crime of sexual assault. If we pursue challenging cases because we believe that serves victims and our community interests, some defendants will be acquitted. An acquittal in American justice is not failure. Whether there is an acquittal or a conviction is a manifestation of our reliance on the presumption of innocence. We cannot lose sight of this enduring bulwark in our foundation. The real measure or metric is the quality of our training, the ardency of our counsel in the pursuit of justice, the care we provide victims, and the commitment to equally resourcing our defense bar. These are the metrics, the benchmarks of a healthy justice system. And in each of these categories we strive for excellence. Furthermore, in my experience, the Army JAGC takes on types of sexual assault cases that the civilian authorities decline to prosecute. For example, the Army often prosecutes sexual assault allegations involving an incapacitated or intoxicated victim. In my experience, civilian

authorities often decline to prosecute these types of cases, especially when the accused has no prior criminal record.

Having said that, the Army's focus on accountability has produced measurable benefits and results. The close coordination between the Judge Advocate General Corps SVPs and the Criminal Investigation Command SAIs has improved the investigation, prosecution and victim-care aspects of sexual assault allegations. Commanders are trained to make evidentiary based disposition decisions with the advice of experienced, senior judge advocates and SVPs who understand the nuances of sexual assault allegations, particularly the unique aspects of behaviors exhibited by some victims in the wake of the trauma of sexual assault. The statistics on the number of sexual assault prosecutions in the Army reflect a healthy military justice system focused on these difficult cases. Since the inception of the SVP program in 2009, the number of courts-martial for sexual assault and domestic violence has steadily increased.

We know this because of the transparency of the process and our reporting. For example, the Annual Report to Congress on Sexual Assault in the Military shows a comprehensive breakdown of the numbers of sexual assault reports and their dispositions. However, the report was never intended to serve as a vehicle for calculating prosecution and conviction rates for four primary reasons. First, the report is a snapshot in time, taken on the last day of the fiscal year and thus includes in the total number of reports cases that are still pending investigation or disposition. Second, the total number of reports includes restricted reports, in which no law enforcement investigation is triggered, preventing commanders from taking any disciplinary actions. Third, the total number of reports includes cases involving either a Soldier victim or a Soldier offender and thus includes cases in which a Soldier has been assaulted by a civilian, foreign national or unknown offender. The military does not have jurisdiction over these individuals and cannot take any disciplinary actions against them. Fourth, the report covers the entire spectrum of sexual assault as defined by the UCMJ in seven separate offenses that range from an unwanted touch over the clothing to rape. Any collective discussion of disposition data ignores the fact that at one end of the spectrum of misconduct, administrative or nonjudicial punishments are likely appropriate, while at

the other end of the spectrum, courts-martial should be considered. Statistics garnered from the Annual Report that place the number of convictions over the total number of reports are misleading and of no value in measuring our success. However, when one looks at the most serious penetrative offenses, rape and aggravated sexual assault, in which there is a completed disposition and jurisdiction over the offender, the Army's rate of prosecution is strong and compares favorably with any other jurisdiction – civilian or military. The Army pays equal attention to the non-penetrative, contact offenses that can be just as disturbing and traumatic to victims.

The military justice system, through the Annual Report to Congress, is simply the most transparent and scrutinized system in the country. We welcome the scrutiny because we understand our obligation to the American public. Civilian jurisdictions are not required to report on the circumstances, demographic data and disposition of every report of the full range of sexual assault offenses.

Some members of the public and media have confused reported “clearance rates” for civilian jurisdictions with prosecution rates. Civilian jurisdictions report data to the Federal Bureau of Investigation for the Uniform Crime Report (UCR) on clearance rates only for the offense of rape. Only now does the FBI define rape as expansively as the military. Prior to 2012, the UCR definition of rape, unchanged since 1927, did not include rapes where the victim was incapacitated by drugs or alcohol, sleeping victims, male victims or penetration with an object or finger. For purposes of the UCR, an allegation is considered cleared when there is an arrest and a presentation for charging or when there is probable cause to identify an offender, but no arrest. Many civilian jurisdictions have policies requiring corroboration of a victim's complaint, either through DNA evidence, injury or a confession, in order to prosecute a case. The Army has no such requirement. In 2009, the Congressional Defense Task Force on Sexual Assault in the Military examined the investigation and prosecution of sexual assault allegations and reported “the military services prosecute many types of sexual assault cases that civilian prosecutors choose not to pursue.”

VICTIM TESTIMONIALS

Much of the criticism of our system comes from experiences of past victims who have felt revictimized by the system. The nature of the crime of sexual assault can make the process of the system exponentially more difficult to navigate than any other crime. In recognizing this additional burden on victims of sexual assault we have developed and mandated specialized training for all SVPs and trial counsel that addresses the unique needs of these victims from rapport building through proper interview and direct examination techniques that employ compassion and empathy. As a result of these efforts, we have received feedback from victims and their families attesting to the dedicated, compassionate assistance provided by the specially-selected and trained Special Victim personnel. In a letter sent to supervisors, the mother of a rape victim described the SVP as “a member of the family” who “fought for her daughter... but most of all, showed her that the Army does the right thing.” A victim in an acquittal wrote “I want to thank you for what you did. Even though we didn’t win I was very comfortable having you on my side and help tell my story.” Another victim wrote, “To many people it may not seem like much, but you made it easier for me to sleep at night. You helped me to take my life back and get the justice I needed.”

Since 1950, we have evolved our military justice system in response to forces both internal and external. That evolution continues today, reflected in an extraordinary number of changes over the last several years. I am convinced that our focus on the Special Victim Capability, and the constant training and education of Commanders, investigators and judge advocates, will help create a command climate that will allow military victims to feel safe and confident in reporting misconduct. Leadership is the solution to the change in culture we seek. Along with senior leaders across the Army, we in the JAG Corps will lead the march to accountability that reinforces committed leadership efforts to solve this critical problem.